

Case: 1800205/2020;
1802647/2020; 1804994/2020;
1900911/2020; 1803307/2021 &
1803307/2021



EMPLOYMENT TRIBUNALS

Claimant: Mr I Khan
Respondent: Tesco

AT A HEARING

Heard at: Leeds On: 3rd (in private), 4th (in private), 6th, 9th,
10th, 11th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th, 25th, 26th,
30th (in private), and 31st May 2022, and 1st (in
private) and 8th (in private) June 2022.

Before: Employment Judge Lancaster
Members: J Hiser
M Taj

Representation

Claimant: In person
Respondent: Mr S Purnell, counsel

JUDGMENT

1. The application to strike out the Responses in their entirety because of a delayed exchange of witness statements is refused, because it is not proportionate.
2. The claims are dismissed.

WRITTEN REASONS

Introduction

1. These six consolidated claims were listed on twenty two days. The Tribunal did not sit on the mornings of Thursday 19th or 26th May 2022, to accommodate the Claimant attending counselling sessions. 3rd and 4th May 2022 were allocated reading days for the Tribunal.

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5th May was a non-sitting day. The Claimant gave evidence over four days, 6th to 11th May 2022. 12th and 13th May 2022 were vacated to allow additional time for the Claimant to prepare his cross-examination. The timetabling of the Respondent's witnesses was then further staggered also to allow possible time for preparation before each tranche of evidence was heard. The Respondent's witnesses¹ gave evidence over nine days, 16th to 26th June 2022: all attended in person except for Mr Justin George, who had tested positive for Covid, and therefore gave evidence by CVP video link. Mr Aaron Carr was not required to be called, because the allegation of religious discrimination (54.1 in the List of Issues) was withdrawn. In addition, the Tribunal read the witness statements of Mr Sadaq Parvez, for the Claimant, and Mr Neil Killoran and Mr Nigel Green, for the Respondent, none of whom were in fact called. 27th May 2022 was vacated to allow preparation of submissions. 30th May 2022 was allocated for the reading by the Tribunal in private of the Respondent's written submissions, and for further preparation by the Claimant. Oral submissions from both parties and the Claimant's written submissions were considered on 31st May 2022. The parties were then released for the Tribunal to deliberate in private. Written reasons for the decision are therefore required.

The issues

2. The issues in all the pleaded cases were comprehensively and finally identified at a preliminary hearing before Employment Judge Shepherd on 15th March 2022. That list is reproduced in full and renumbered consecutively, for consistency of presentation, in respect of the allegations under each claim as an appendix to this decision.
3. Where any matter in that List of Issues is not otherwise expressly addressed in this decision, it is because a complaint was withdrawn, or because an allegation was no longer pursued, or because there was no material evidence in fact adduced on the point.
4. Where any complaint is pleaded in the alternative as including an allegation of harassment on the grounds of race, any proven act could not also constitute a detriment for the purposes of any other complaint: section 212 Equality Act 2010. Since no circumstances have been identified in which the Claimant might arguably be said to have been subjected to a relevant detriment where that did not also potentially constitute unwanted conduct for the purposes of the section 26 complaint, or vice versa, these dual allegations are not dealt with separately but are considered under the most obviously appropriate head of complaint.

The law

5. Mr Purnell for the Respondent in closing submissions has referred us comprehensively to relevant authorities on the legal questions identified within the list of issues, and we have taken those into account in our deliberations.

¹ Ben Goss; Ron Smith; Lee Shannon; Jason Chester; Cara Wilson; Karen Vincent; Darren Bowey; Verity Garside; Richard Turner; Carl Foster; Sarita Prashar; Rachel Budgen; Rachel Holmes; Rachel Saliba; Lewis King; Kate Forth; Justin George; Clare Findlay.

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6. Essentially this is a case of alleged discrimination which turns upon the “reason why question”. Why did the Respondent do what it did? Was the reason for any proven detrimental treatment because of the Claimant’s race or disability (if material) (section 13 of the Equality Act 2010) or because he had done a protected act (section 27)?
7. Alternatively under the harassment provisions in section 26 of the Equality Act was any proven unwanted conduct which objectively had the effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him, in fact related to race?
8. Under section 136 of the Equality Act 2010 it is in the first instance for the Claimant to show facts from which we could in the absence of any other explanation conclude that the Respondent has contravened the Act, either by treating the Claimant less favourably than a relevant comparator (section 13) or unfavourably (section 27). An appropriate comparator, real or hypothetical, under section 23 is one who does not share the protected characteristic but whose circumstances are otherwise not materially different: a mere difference in status and difference in treatment will not suffice to show that the detrimental treatment was because of race or disability as the case may be.
9. Where the claim is of a failure to make reasonable adjustments under sections 20 and 21 of the Equality Act 2010 the Claimant must show that a relevant provision criterion or practice puts him (if in fact disabled) at a substantial disadvantage compared to people who are not disabled and the Respondent will then be under a duty to take such steps as are reasonable to avoid that disadvantage.
10. The provisions in respect of the Employment Rights Act 1996 in respect to the unfair dismissal claim are separately considered where that complaint is separately analysed, though there is considerable overlap with the discrimination complaint.

Summary

11. Although the Claimant has been able to articulate a catalogue of complaints which he believes demonstrate how, over time, he has been disadvantaged in the workplace, we have concluded that he has not proved any facts from which we could conclude that this was in any way actually because of his race.
12. Where the Claimant has done a protected act we are mindful that this provides the historical context for subsequent events, including of course the ultimate dismissal. However, we are satisfied that proper distinctions can be made between saying that “but for” the protected act something would not have happened and that it was in fact the reason why it happened.
13. We have analysed the facts related to the separate identified issues, as set out below, and drawn conclusions as appropriate, also having regard to the totality of the evidence to establish the full context.

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14. Although the Claimant has suffered from anxiety, and has no doubt found both the internal proceedings as well as this Tribunal case stressful, we have concluded that he was not in fact disabled at the material time.
15. Unfortunately relationships between the Claimant and others eventually deteriorated to the extent that the Respondent was entitled to consider that he had in fact become unmanageable. In those circumstances his dismissal was fair.

Protected acts

16. Under section 27 Equality Act 2010: “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.”
17. The Claimant relies upon six alleged protected acts for the purposes of the victimisation complaints. We are satisfied that only two of those in fact come within the definition in the Act. That is that they are under section 27 (2) (c) “the doing of any other thing for the purposes of or in connection with this Act”, or under section 27 (2) (d) “making an allegation (whether express or implied) that A or another person has contravened the Act.” Whilst the bringing of the tribunal proceedings would, by definition, be a protected act under section 27 (2) (a) that is not how the claims are put.
18. We have been referred by the Respondent to a number of authorities, but for our purposes it is sufficient to quote the principle expounded by Langstaff P in **Durrani v London Borough of Ealing** UKEAT/0454/2012/RN: “it is not necessary that the complaint referred to (race) using that very word. But there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the Act applies.”
19. The first alleged protected act is an email of 17th March 2016 where the Claimant complains that he had not been provided with an opportunity to gain experience in the same way that it had been afforded to a colleague. There is nothing in this complaint which is sufficient to suggest that the fact that the named colleague happened to be female was of any significance whatsoever.
20. The second alleged protected act is a complaint by email dated 23rd August 2017 that there was a redistribution of work between the Claimant and his fellow night manager. The responsibility for the Health and Beauty Department was reallocated to him, which he claimed would have led to an increased and uneven workload. Although the Claimant describes this as “harassment” and “victimisation” there is nothing which is sufficient to suggest that this is in fact by reference to any protected characteristic to which the Equality Act might apply. This is particularly so where the Claimant had, as it came out in oral evidence although it is not substantiated in any documents in this case, apparently brought a previous complaint explicitly of race discrimination in 2013 so that he “understood the language of race discrimination” to quote HHJ McMullen QC in **Fullah v Medical Research Council & Anor** UKEAT/0586/12/RN.

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21. The third alleged protected act is an oral complaint at the meeting held on 7th March 2018 when the Claimant's appeal against the refusal of his flexible working request was allowed. The Claimant said that he was "starting to feel discriminated against". When asked to elaborate he said firstly that it was "non-Asian people coming to me, it's clearly evident", and subsequently that he "felt like a GA" (general assistant rather than a manager). The first statement is not entirely clear, but we accept the Claimant's evidence that he intended to convey the fact that it was not only Asian colleagues who had observed what he considered to be the unfavourable treatment of himself. However the clarification that he felt that he was being treated like a GA contextualises this as only a generalised allegation which, even if it had also been commented on by non-Asian colleagues, is insufficient to suggest that it is in fact of itself an assertion of racial discrimination.
22. The fourth alleged protected act is the grievance against Nigel Green which was raised on 22nd March 2018. Although this is a complaint about being "bullied" and that the Claimant felt "harassed" and "discriminated against", again there is nothing which is sufficient to suggest that this is in fact by reference to any protected characteristic to which the Equality Act might apply.
23. The fifth alleged protected act, the grievance initially raised on 22nd October 2019 is specifically an allegation of various acts of discrimination on the grounds of religious belief or race or sex. Although these allegations were unsubstantiated, and are to that extent false, we find that they were nonetheless made in good faith so that they remain protected acts.
24. The original written grievance alleged religious discrimination in respect of pay, with Hav Younis a named comparator. Further particulars provided on 6th November 2019 made further allegations of "discrimination", "harassment" and "victimisation". Without more these generalised assertions would once again have been insufficient. At the grievance meeting with Ryan Billington on 17th December 2019 the Claimant, however, clarified that he was relying on religious belief, race and sex as protected characteristics. It is evident that the basis of all these allegations was a comparison made by the Claimant with the perceived treatment of one or more of his colleagues where he could potentially identify a difference in status. So if his comparator was, for instance, a woman he alleged sex discrimination. Whilst this mere difference in status, without anything more to suggest that the reason for any proven difference in treatment was in fact because of a protected characteristic of the Claimant, would not be enough for the allegation of discrimination to succeed, we accept that he was genuine in believing at the time that he could formulate his complaint in this way. In this he appears to have been encouraged by his trade union representative at the grievance meeting. It was his representative who expressly represented to Mr Billington that what the Claimant wanted out of the grievance was "to be appropriately compensated *if* determined to have been discriminated against due to race, religion or sex" (emphasis added). The allegations were not, therefore, made, as the Respondent contends, in bad faith, being reckless as to whether they could be made

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out and because the Claimant was pursuing the collateral purpose of seeking enhanced financial compensation.

25. The sixth and final alleged protected act is not contentious. On 8th June 2021 the Claimant raised a grievance specifically alleging victimisation on the grounds of his having raised an earlier grievance complaining of discrimination. He also made allegations of disability discrimination, race discrimination and of “harassment” not linked to any protected characteristic. That is admitted to be an express allegation of a contravention of section 27 of the Equality Act.

Disability

26. Disability is a contested issue in this case: it is for the Claimant to show that he in fact comes within the definition in sections 6 and 212 and in Schedule 1 of the Equality Act 2010. That is, for the purposes of this case, that he has a disability if he, at the material times had a mental impairment which had a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. Although the Claimant provided an “impact statement” dated 10th September 2021 seeking to set out the adverse effects of his anxiety and depression, the Respondent is right to point out that it provides no dates and, being written solely in the present tense, does not specifically address the position at the relevant time which is up to the date of dismissal, 2nd July 2021, and in particular from 27th August 2020 (the date of the first alleged act of disability discrimination).

27. Despite having been directed on 26th July 2021, in the same Order which required him to produce an impact statement, also to provide any medical evidence relied upon the Claimant did not in fact do so. Some medical evidence has been adduced in the course of this final hearing, and has been admitted by consent although late. This is, however, very limited in scope. It comprises of GP notes from 5th March 2020 to 10th May 2022, a full set of fit notes to cover the known periods of absence in 2019, 2020 and 2021, and a psychologist’s report dated 9th February 2021 which was prepared for solicitors in connection with a personal injury claim arising out of an assault at work on 31st May 2019. In addition the disclosed documents already included two Occupational Health reports dated 17th August 2020 and 4th January 2021.

28. What can readily be ascertained from the evidence is that the Claimant is not, in the words of the psychologist, Dr Stockton, “of normal psychological fortitude”. He is prone to anxiety and has suffered from what the Claimant himself describes as “panic attacks”, although there is no independent corroboration of this or of the severity of any such incidents. In particular the Claimant has what he admits to be irrational concerns about his health, fearing that any symptoms of illness are more serious than they really are and imagining the worst possible outcome. The stresses which trigger his general anxiety as recorded in the limited medical notes available are, however, all said to be related to work-related issues, specifically the internal processes in which the Claimant had engaged and the subsequent tribunal proceedings which he initiated. That is corroborated by the OH reports which both record an opinion that the Claimant would not

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meet the definition of disability, because although experiencing workplace stress, he was not otherwise impaired in carrying out his normal day-to-day activities.

29. The GP notes indicate that the Claimant had been prescribed propranolol at an unspecified date in the past and that this prescription was recommenced on 20th March 2020. There were repeat prescriptions reducing from 3 per day to “3 per day or as required” from 19th May 2021. From 25th June 2021 the Claimant was also prescribed sertraline.
30. The history throughout the relevant period is firstly that there is no record of an anxiety-related condition impacting upon his work until 16th April 2019. The Claimant had already been signed off work with a groin strain from 3rd April and following his return to work he then obtained a further sick note stating that he was fit for work with reduced duties, namely going down to 3 days a week (see issue 15). This second fit note referred to the groin injury but also now to “health anxiety”. The obvious conclusion to draw is that the Claimant had reported to his doctor that he had anxieties specifically about his groin strain and the effects on his health if he were to resume full-time working.
31. The Claimant was then certified unfit to work due to “anxiety” from 6th July 2020 until 26th August 2020. He was then issued with a further fit note stating that he would be able to return to work on unspecified amended duties for a period of two months, and he did in fact return on limited shifts, continuing beyond the specified expiry date of the fit note, which was 25th October 2020. (see issue 35). It was during this absence period that there was the first of the relevant referrals to OH.
32. There was then no further involvement with the GP until 10th May 2021, when a further prescription for propranolol is recorded, and, as already noted, shortly after this the frequency of taking that medication is reduced to only “as required”.
33. On 21st May 2021, when the Claimant attended an investigation meeting with Rachel Budgen he said that he was only there because he had been forced to attend and was not fit to do so. He had, however, been in contact with his GP two days before when there was no indication that he was not able to attend a meeting, and he was not signed off work at this point.
34. In the grievance dated 8th June 2021 the Claimant alleged disability discrimination in having been refused reasonable adjustments to attend the investigatory meeting.
35. The day before the meeting scheduled with Rachel Saliba on 21st June 2021 the Claimant had self-certified sick and said that he would provide further information on 28th May, presumably meaning 28th June, eight days later. The Claimant did not ever provide a GP’s fit note at this period.
36. Immediately before the disciplinary type meeting with Lewis King scheduled for 28th June 2021 the Claimant obtained a GP’s note signing him off work from 25th June to 7th July 2021 with “anxiety and depression”.

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37. The Claimant therefore had just one significant seven week period of absence suffering from anxiety and depression between 6th July and 27th August 2020. He did then return to work, and stated to OH that he was happy with the support plan then put in place, although subsequent lack of continuity in management had led to worsening symptoms of worry up to January 2021, even if he was able to remain in work. The second OH report and the psychologist's report also both record that the Claimant had then successfully attended a course of CBT in August September 2020, from which he was discharged as he was deemed recovered.
38. Although primarily only concerned with the effects of the assault in March 2019 and any development of or exacerbation of psychological symptoms as a result of that incident Dr Stockton's report does conclude that by September 2020 the Claimant had fallen below any relevant diagnostic threshold for clinical disorder, and that at the date of assessment in February 2021 he was not exhibiting symptoms of any significant distress or impairment. Dr Stockton does, however, express the somewhat vague opinion that the Claimant would benefit from psychological therapy for symptoms not related to the index incident with which he was concerned.
39. Although the Claimant's underlying level of anxiety is, as accepted in the earlier OH report, a "long-term condition", that is in that it has lasted more than 12 months, we are not satisfied on this evidence that the Claimant has also proved that his condition at the material times had resulted in a long-term and substantial adverse effect upon his ability to carry out normal day-to-day activities. That is an effect which was not minor or trivial. Whilst actually off work with anxiety the Claimant would clearly have met the definition of disability in all respects save that it would not necessarily have been a long-term adverse effect. We are not, however, satisfied that in the period after his return to work from the seven week absence, when he successfully resumed work and was apparently reporting no continuing adverse effects either there or at home, he was in fact still "disabled" as he had been up to 27th August. Nor are we satisfied that it was likely that he would again become so "disabled" in circumstances which could then aggregate with the 7 week absence so as to extend over a 12 month period. The legal processes with which the Claimant was concerned, both internal at work and external in the tribunal, would no doubt have been stressful, but not so as to in fact bring him within the definition of disability. Although declaring himself unfit to attend particular meetings we note that the Claimant was not at about the same time prevented from preparing lengthy documents. Whilst we are aware that the Claimant was prescribed medication we have no sufficient evidence from which we could conclude that discounting the effects of propranolol and, at the very end of the period in question, sertraline would have led to a different conclusion on the issue of disability.

Knowledge of disability

40. Even if we were wrong in concluding that the Claimant was not in fact disabled at the material times, the Respondent did not know and could not reasonably have been expected to know that he was. The Respondent must have had actual or constructive

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knowledge of the constituent elements that go to satisfy the section 6 test: **Gallagher v Abellio Scotrail Ltd.** UKEATS/0027/19.

41. All that the Respondent knew was that the Claimant had been absent for 7 weeks, but had effected an apparently successful return after that time. And he had not been absent sick again until he claimed, some nine months later, to be too anxious to attend the investigative and disciplinary type meetings which did indeed ultimately lead to his dismissal. Although the Claimant had stated that he believed himself to be disabled, that was contrary to the view of OH. It was also inconsistent with the ET1 claim forms issued in his first four Tribunal claims. It was not until claim 5, issued on 21st June 2021, that, at the same time as first claiming disability discrimination, he ticked the relevant part of the form to indicate that he believed himself to be disabled for the purposes of obtaining adjustments to the tribunal process. Claims 3 and 4, presented on 31st August 2020 and 17th February 2021 respectively, were however issued within the time frame when the Claimant now says that he was actually subjected to disability discrimination, and the two earlier claims were after 2017 when the Claimant is saying that he first became disabled.
42. This is not enough to fix the Respondent with knowledge of an underlying mental impairment of anxiety or depression, nor that any such condition was long term, nor that it had subsisting adverse effect upon his ability to carry out normal day-to-day activities.

The specific issues under the Equality Act

Additional Workload Health and Beauty

- 1.1. Was the claimant directly racially discriminated from 18th August 2017 when he was given additional workload by Neal Killoran (senior manager) and Ben Goss (senior manager)?
 - 1.2. Was the claimant treated less favourably than the comparator Carol Stoyles (Night team manager) who had her workload reduced and transferred to the claimant?
 - 1.3. Was the claimant harassed by Neal Killoran and Ben Goss when he was given additional workload which belonged to his fellow manager Carol Stoyles from 18th August 2017 when there was no business case to do so?
 - 1.4. Was the claimant victimised by Ron Smith (store manager) when he submitted an informal complaint on the 23rd August 2017 which was not resolved due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016?
43. Mr Goss and Mr Killoran took over responsibility for the night shift between Saddaq ("Sid") Parvez leaving and Nigel Green taking over. There were two night managers, the Claimant and Carol Stoyles. In that period they decided that the Claimant would take over managing the Health and Beauty department. This was, we find, a redistribution of work but not an increase in the Claimant's workload nor a decrease in that of Ms Stoyles.

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44. We accept that there was a business rationale for that decision, even if the Claimant disagreed with it. That was to enable Ms Stoyles to devote more of her energies to fresh foods. The decision had nothing whatsoever to do with the Claimant's race
45. The Claimant requested a meeting to discuss the change. It was expressly not a formal grievance. This was dealt with by Ron Smith the store manager, who taking into account the extent of Claimant's objection, reversed the decision notwithstanding that he accepted that there had been a good reason for it.
46. Although the request to Ron Smith referred to alleged "harassment" and "victimisation" it was not, as we have found, a protected act in itself. The immediate issue was resolved by the reversal of the original decision, and any alleged failure to address more general complaints was nothing whatsoever to do with the sending of the email of 17th March 2016, a year before, even if that had been a protected act

Nigel Green Discrimination

- 2.1. Was the claimant directly racially discriminated by Nigel Green (senior manager) between August 2017 and April 2018 as outlines in the ET1 — schedule of less favourable treatment?
- 2.2. Was the claimant treated less favourably than the comparator Carol Stoyles?
- 2.3. Was the claimant harassed by Nigel Green as a result of the acts listed in the ET1?
47. Nigel Green was a new manager. He no doubt made some questionable decisions and he accepts that was guilty of a degree of micro-management of all staff under him. We find, however that he did not in fact schedule the Claimant to fill aisles instead of management tasks, but that he expected him to perform these duties as necessary, which was the expectation on all managers. We also find that he did not deliberately leave the Claimant short-staffed. Nor did he force the Claimant to work through his breaks on Mondays when he was the only manager on shift. The Claimant has in submissions abandoned the argument that Nigel Green moved himself onto days deliberately in order to leave the Claimant in a position where he was unable to take his breaks. It was, however, a consequence of the Claimant being on his own that he did not take his required rest breaks: this was addressed in a successful grievance where the Claimant received compensation. The Claimant was not forced to stay at the end of his shift to undertake handovers except in accordance with his contract and the expectations on all managers, and was in fact, because of his family commitments, allowed to phone in from his car for the handover to be effected. The Claimant was not the recipient of more telephone calls from Nigel Green than any other of his line reports in similar circumstances, and Mr Green apologised to the Claimant for his propensity to micro-manage. "Let's Talk" meetings are an informal tool for recording communication between managers and their line reports, and there is nothing objectional in the tone or content of the note of a discussion on 23rd March 2018. When Nigel Green refused the Claimant's flexible working request to change his working pattern after several discussions which failed to find a resolution, it was for the perfectly valid reason that

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Fridays and Saturdays are the busiest days of the week. This decision was nonetheless reversed on appeal to allow the change for a trial period. None of these actions taken by Mr Green had anything whatsoever to do with the Claimant's race.

Nigel Green Complaint

- 3.1 Was the claimant directly racially discriminated by Ron Smith when he submitted a formal complaint against Nigel Green for discrimination on 7th March 2018 which was not investigated?
- 3.2. Was the claimant treated less favourably than the comparator Gareth Brook whose complaint for discrimination against the claimant was investigated?
- 3.3. Was the claimant victimised by Ron Smith when he submitted a formal complaint against Nigel Green for discrimination on 7th March 2018 which was not investigated, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and a racial discrimination complaint on 23rd August 2017?
- 3.4. Was the claimant harassed by Ron Smith by him allowing the discrimination to continue after he was notified on 7th March 2018?

48. The raising of issues at the Flexible Working Request appeal meeting on 7th March 2018 was not a formal grievance. The appeal was allowed and there was no reason to investigate further the generalised reference to discrimination, which was not in itself the doing of a protected act (see paragraph 21 above).

49. Gareth Brook did raise a formal grievance against the Claimant alleging that he had been "treated differently". This was investigated formally, as Mr Brook was entitled to have it treated if he wished, and it was not upheld. This is not any material comparison which could therefore amount to a difference in treatment.

50. Ron Smith did not deal with this issue, allowing the appeal or otherwise conducting the meeting because of the earlier emails from the Claimant, even if they had been protected acts. The Claimant had not in fact been discriminated against by Nigel Green, Ron Smith did not, viewed objectively, do anything related to race which could be construed as continuing a harassing environment where he in fact found in the Claimant's favour on the matter under consideration.

Nigel Green grievance

- 4.1. Was the claimant directly racially discriminated by Ron Smith when he submitted a formal grievance against Nigel Green on 22nd March 2018 which was not investigated?
- 4.2. Was the claimant directly racially discriminated by Ben Goss when he was called to an unannounced meeting on 27th March 2018 in which the claimant was offered no representation in line with Tesco policy?

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- 4.3. Was the claimant treated less favourably than the comparator Gareth Brook whose complaint for discrimination against the claimant was investigated?
- 4.4. Was the claimant victimised by Ron Smith when he failed to investigate the grievance against Nigel Green which was submitted on the 22nd March 2018, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017 and on 7th March 2018?
- 4.5. Was the claimant victimised by Ron Smith when he refused to allow the grievance against Nigel Green be investigated out of the store as stipulated in the grievance dated 22nd March 2018, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017 and on 7th March 2018?
- 4.6. Was the claimant victimised by Ben Goss as a result of a complaint made against him on the 23rd August 2017, in that he did not follow Tesco grievance policy when he called the claimant to a meeting on 27th March 2018, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017 and on 7th March 2018?
- 4.7. Was the claimant harassed by Ron Smith by him allowing the discrimination to continue after he was notified officially on 2 occasions (7th March 2018 & 22nd March 2018)?
- 4.8. Was the claimant harassed by Ben Goss by him allowing the discrimination as outlined in the complaint dated the 22nd March 2018 to continue and taking no steps to investigate the grievance?
51. The grievance of 22nd March 2018 was not a protected act (see paragraph 22 above). The substance of the complaints that the Claimant “felt” bullied are the matters addressed in paragraph 47 above. They were not in fact acts of discrimination. It was appropriately passed to Ben Goss to deal with as the Claimant’s lead manager.
52. The first stage of that investigation was an informal meeting between Ben Goss and the Claimant on 27th March 2018, which the Claimant consented to and where he signed the extensive notes taken by Mr Goss. At the end of that meeting the Claimant agreed that mediation with Nigel Green was the appropriate course to take, and that is why no formal process was then followed. Mr Brook is again not a relevant comparator.
53. Arrangements were put in place for that mediation meeting, as clearly evidenced by exchanges of messages and a reference to it at a “Let’s Talk” conversation between the Claimant and Ron Smith on 19th April 2018. We are satisfied that some form of mediation did then take place facilitated by Ben Goss and reported back to Ron Smith. The precise date is not material, and although there is no record in the disclosed documents we accept the Respondent’s evidence. That meeting was, as the Respondent’s witnesses remember it, by way of a “handshake”, upon an acknowledgement by Mr Green of mistaken micro-management by him. The reason why the matter was capable of being resolved, as we find that it indeed was, in this informal manner was that it coincided with the Claimant moving from nights to days so that there would be no continuing issues. It is significant that the Claimant did not at the time ever protest that his grievance had not in fact been dealt with and remained outstanding, which corroborates the finding that there had been some form of satisfactory resolution.

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54. Neither Ron Smith nor Ben Goss dealt with this issue, whether by arranging an apparently successful mediation or otherwise conducting the process, because of the earlier emails from or allegations by the Claimant, even if they had been protected acts. There is no reason whatsoever to suppose that Ben Goss was even aware of these matters. The Claimant had not in fact been discriminated against by Nigel Green, Neither Ron Smith nor Ben Goss, viewed objectively, did anything related to race which could be construed as continuing a harassing environment where the Claimant moved to a different shift after resolving his issues with Nigel Green.

TroubleCauser

- 5.1. Was the claimant directly racially discriminated by Ron Smith, Ben Goss and Neal Killoran by being labelled a trouble causer?
- 5.2. Was the claimant treated less favourably than the comparators, Dave Wilby, Justin George, Ron Smith and Ben Goss when using the management teams whatsapp?
- 5.3. Was the claimant harassed by being labelled a problem by Ben Goss, Neal Kiloran and Ron Smith?
- 5.4. Was the claimant victimised by being labelled a problem by Ben Goss, Neal Kiloran and Ron Smith, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd august 2017, 7th March 2018 and 22nd March 2018?

55. The only actual reference to the Claimant being perceived as a “trouble causer” came from a manager at Skipton who was reported as believing him to have this reputation when considering a possible secondment to their store. Ben Goss was however entirely supportive of the Claimant and insisted that he should be given the opportunity to demonstrate his abilities.

56. The WhatsApp messaging group for managers occasionally gave rise to concerns being raised as to whether comments were appropriately posted on that forum. Over the four year history of messages disclosed there is nothing objectional, either in substance or tone, about any of the management instructions to take certain operational discussions out of that group and address them elsewhere. The Claimant was in no way singled out.

57. The Claimant is hyper-sensitive to any suggestion that in any particular instance he might be better served by putting past matters behind him and moving forward. He interprets this as his somehow being criticised because he has a “history”, rather than it being simply a pragmatic approach. Objectively this does not constitute harassment and has nothing to do with his race. It certainly has nothing whatsoever to do with his having made previous complaints, even if these had been protected acts.

12 Weeks Training

- 7.1. Was the claimant directly racially discriminated by Neal Killoran on 25th July 2018 when he was pressurised to sign off 12 weeks' worth of managerial training which the claimant had not completed?

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- 7.2. Was the claimant treated less favourably to his comparator Dave Wilby who was given the time to complete his training correctly and was not pressurised into falsifying training records?
- 7.3. Was the claimant harassed by Neal Killoran by pressurising him to sign off training that had not been completed?
- 7.4. Was the claimant victimised by Neal Killoran by pressurising him to sign off training which he had not completed due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

58. The Claimant now accepts in closing submissions that he voluntarily signed to confirm that he had undertaken training, where the record of completion was required for audit purposes, on the assurance that he did not need to worry because he could in fact do it in the next few weeks. This is not good practice, but it has nothing to do with race or any earlier complaints, even if they had been protected acts.

Grocery Manager Job

- 8.1. Was the claimant victimised by Ron Smith when he was refused a salary increase when he took the position of grocery day manager in July 2018, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?
 - 8.2. Was the claimant treated less favourably to his comparators Hav Younis and Farrah Ishlaq when he requested a salary increase?
 - 8.3. Was the claimant harassed by Ron Smith when he was refused a salary increase even though Tesco policy permitted it?
59. Ron Smith, as store manager, did not in fact have any authority to award a salary increase to the Claimant at this time. Pay bandings are set by Head Office.
60. When the Claimant moved to grocery day manager he was still at the same level and within the same pay banding at the Bradford Peel store.
61. Whenever Hav Younis received a pay increase on moving jobs it was because the pay structure at the relevant time allowed for it and was not simply at the discretion of the store manager. When Farrah Ishtaq moved from a smaller store at Ilkley to Bradford Peel she moved into a different pay band.
62. In any event Hav Younis is of mixed heritage, with a Pakistani father, and Farrah Younis is of British Pakistani origin. They are not therefore appropriate material comparators.
63. The refusal of a salary increase was in accordance with company policy, was not the decision of Ron Smith and had nothing whatsoever to do with any previous complaint, even if it had been a protected act.

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Grocery Department Overtime Ban

- 9.1. Was the claimant directly racially discriminated by Ron Smith and Neal Killoran when the Grocery day department was given no overtime as soon as the claimant became the manager of said department in August 2018 even though the overtime was provided by Tesco head office?
- 9.2. Was the claimant treated less favourably to his comparator Niomi Hurst, Simon Jackson and Nigel Green, in that these managers obtained overtime on a weekly basis but the claimant was declined?
- 9.3. Was the claimant harassed by Ron Smith and Neal Killoran by not being given overtime for his grocery department as stipulated by Tesco head office, whereas every other department was?
- 9.4. Was the claimant victimised by Ron Smith and Neal Killoran by them not giving the grocery department overtime as stipulated by Tesco head office, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?
64. Total numbers of overtime hours available in a store are set by Head Office. The allocation of those hours between departments is an operational matter. At this time the system was that each department would make a request for overtime hours, and depending upon demand and other operational considerations they would receive that allocation or not as the case may be.
65. From the available records: in week 22 of 2018 (commencing 23rd July) Grocery requested 20 hours and received 18; in week 23 requested 20 hours and received 18; in week 24 requested 20 hours and received 20; in week 25 requested 45 hours and received 45, in week 32 requested 22 hours and received 22; in week 42 requested 20 hours and received 20; in week 44 requested 20 hours and received 20. In week 1 of 2019 requested 7 ½ hours and received 7 ½; in week 6 requested 8 hours and received 8.
66. In weeks 37, 38, 48, 49, 50 and 51 of 2018 and in weeks 3, 4, 7 and 8 of 2019 Grocery did not request any hours.
67. It was only between weeks 33 and 35 of 2018 that Grocery requested overtime but were not allocated any at all. In that same period other departments also did not receive their requested allocation.
68. On no occasion was the total store allocation of hours unused. The Claimant may have disagreed with the distribution, and the fact that his department was not perceived as a priority after week 33, when the pressure was most intense, may have led to his believing that it was not worth putting in a request in the weeks immediately following.
69. We are perfectly satisfied however that these were purely operational decisions, to do with an overview of the competing needs of the departments and nothing to do with the

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Claimant as an individual. It had nothing to do with his race or the fact that he had made earlier complaints, even if they had been protected acts.

Colleagues Removed from Department

- 10.1. Was the claimant directly racially discriminated by Ron Smith and Neal Killoran from the 2nd January 2019 by them removing 82 hours from the grocery department and transferring the colleagues on to other over staffed departments?
- 10.2. Was the claimant treated less favourably to his comparator Carol Stoyles and Kevin Winters whose departments were significantly over manned but did not have colleagues taken from them?
- 10.3. Was the claimant harassed by Ron Smith and Neal Killoran by having his department under resourced by 82 hours?
- 10.4. Was the claimant victimised by Ron Smith and Neal Killoran by deliberately under resourcing the department due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

70. Staff are necessarily moved on occasion. The allocation of personnel will not always be perfect. We are again quite satisfied however that these were purely operational decisions, to do with an overview of the balancing needs of the departments and the individual requirements of employees, and nothing to do with the Claimant as an individual. It had nothing to do with his race or the fact that he had made earlier complaints, even if they had been protected.

Katie Lodge

- 11.1 Was the claimant directly racially discriminated by Ron Smith and Neal Killoran when they forced him to remove Katie Lodge from his department, even though there was no business case to do so?
- 11.2. Was the claimant treated less favourably to his comparator Jordan Parnell who was not made to move his colleagues even though there was a business case to do so?
- 11.3. Was the claimant harassed by Ron Smith and Neal Killoran by being forced to remove Katie Lodge off his department when there was no business case to do so?
- 11.4.–Was the claimant victimised by Ron Smith and Neal Killoran by being forced to remove Katie Lodge off his department without a business case, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

71. As part of the store wide exercise “Right Time Right Place” which was commenced in January 2019, Katie Lodge was identified to be moved from Wines and Spirits within the Grocery department to DotCom. This was clearly in part because of an assessment of the needs of the department and partly because of her wish to vary her hours.

72. The solution was not ideal, and Ms Lodge did consider that she had little option but to accept but it was her decision. She also accepted that at that time DotCom was

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struggling, so there clearly was in fact a business rationale for the decision. There is no reason to find, as the Claimant necessarily asserts, that Ms Lodge, who is white, was deliberately placed at a disadvantage in order to inconvenience him because of his race.

73. The Claimant was not singled out in this store wide exercise. We are again quite satisfied however that this was a purely operational decision, to do with an overview of the balancing needs of the departments and the individual requirements of the employee even if it was not the optimum outcome for Ms Lodge or for the Grocery Department. It had nothing to do with the Claimant as an individual. It had nothing to do with his race or the fact that he had made earlier complaints, even if they had been protected acts.

Recruitment

- 12.1. Was the claimant directly racially discriminated when Ron Smith refused to allow him to recruit even though Tesco head office had confirmed he was under resourced by 119.5 hours in March 2019 even though other departments were allowed to recruit?
- 12.2. Was the claimant treated less favourably to his comparators Matt Riley, Dave Wilby and Simon Jackson who were allowed to recruit colleagues in March 2019?
- 12.3. Was the claimant harassed by Ron Smith by being under resourced by 119.5 hours whereas all other departments were either resourced correctly or over resourced?
- 12.4. Was the claimant victimised by Ron Smith by being under resourced by 119.5 hours due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

74. At all material times Bradford Peel as a store was over contracted. Authorisation to recruit externally therefore had to come from Head Office. We are again quite satisfied however that external recruitment or internal reallocation of resources was a purely operational decision, to do with an overview of the balancing needs of the departments and the individual requirements of the employees. It had nothing to do with the Claimant as an individual. It had nothing to do with his race or the fact that he had made earlier complaints, even if they had been protected.

Bereavement

- 13.1. Was the claimant directly racially discriminated by Ron Smith in March 2019 when his request for compassionate paid leave after the death of his grandfather's brother was declined?
- 13.2. Was the claimant treated less favourably to his comparators Jade Barron and Rachel Coupe, who received compassionate paid leave in similar circumstances?
- 13.3. Was the claimant victimised by Ron Smith by not providing compassionate paid leave, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

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75. The Claimant accepts that he was not entitled to bereavement leave on the death of his great uncle, because he was not a sufficiently close relative. Compassionate leave is discretionary.
76. The Claimant requested leave the day before the funeral, it is unclear for how long. It is also unclear how that request was made as the Claimant refers to his speaking to both Lee Shannon and Ron Smith. Absent any record of leave in fact having been taken it is probable that Ron Smith is wrong when he says that he believes this did happen, However it is not possible out of this uncertainty to construct a situation where we can accept that the Claimant was indeed simply denied leave outright without any reason given.
77. Each application for compassionate leave will necessarily be different. Rachel Coupe was, as the Claimant recollects, granted leave on some weeks' notice to attend the funeral of her girlfriend's father, effectively her father-in law, but there is no record of this or as to how was in fact categorised. Jade Barron was granted leave upon the sudden and unexpected death of her mother. She was also thereafter off sick for a substantial period. Where a significant portion of that absence is recorded, upon her return to work, as the taking of compassionate leave that is for the purposes of excluding it from consideration when calculating whether the trigger points had been reached under the absence management policy. There can be little doubt therefore that as a result of this traumatic episode Ms Barron was in fact unfit to attend work for a substantial length of time, and it was not simply the exercise of a discretion to allow her time off.
78. Neither Ms Coupe nor Ms Barron are therefore appropriate comparators whose circumstances are either the same or not materially dissimilar to those of the Claimant apart from their race. Nor is there anything in these circumstances from which we could infer that the reason for the Claimant taking compassionate leave was that this was deliberately refused because of his race or because he had made an earlier complaints, even if these had been protected acts.

Personal Overtime Ban

- 15.1. Was the claimant directly racially discriminated by Lee Shannon (senior manager) and Neal Killoran when he was given a personal overtime ban in breach of Tesco policy on the 13th April 2019?
- 15.2. Was the claimant treated less favourably to his comparators Simon Jackson, Jordan Parnell and Carl Donegun, who were not given an overtime ban in similar circumstances?
- 15.3. Was the claimant harassed by Lee Shannon and Neal Killoran by being given an overtime ban, in full knowledge of the claimant's financial hardships?
- 15.4. Was the claimant victimised by Neal Killoran and Lee Shannon by being given an overtime ban, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

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Forced Reduced Hours

- 16.1. Was the claimant directly racially discriminated by Lee Shannon when he was forced to reduce his hours of work from 5 days to 3 on the 13th April 2019?
- 16.2. Was the claimant treated less favourably to his comparators Simon Jackson, Jordan Parnell and Matt Riley, Joe Deeks and Carl Donegan, all of whom were not made to reduce their hours in similar circumstances?
- 16.3. Was the claimant harassed by being forced to reduce his hours of work?

79. At a return to work interview on 11th April 2019 following the Claimant's absence with a groin strain, he was referred to an absence review meeting because he has reached the trigger point for taking further action. That meeting was on 13th April 2019. No sanction was in fact imposed nor any formal measures put in place, and within the form where Lee Shannon sets out his rationale for that decision, he states "for next 6 weeks I feel that you should just work your contracted shifts". Whilst that would have precluded the Claimant working Sunday overtime, the reason is clearly to prevent any recurrence of the injury which would therefore have led to further absence and no doubt then led to action having to be taken. The period of 6 weeks was evidently selected as being at the lowest end of the range of 6 to 12 weeks over which the Claimant had said that pain was expected to continue.

80. The Claimant then requested that he would like to work only 3 days a week until better. That this was his request and not something imposed upon him by Lee Shannon is expressly recorded in a note signed by both the Claimant and his union representative. Mr Shannon said that he would make enquiries, because it was unclear what the financial implications would be of going down to 3 days. In the event the Claimant then obtained a doctor's fit note dated 16th April 2019 certifying him only fit to work on adjusted duties, namely 3 days per week. That meant that he would be paid sick pay for the 2 days he was unable to work, so no further enquiries had to be made as to how this change might be effected. Working only part-time necessarily precluded his going in on Sunday, and the Claimant was never in fact prevented from doing overtime at any point when he was certified fit to do so.

81. This has nothing whatsoever to do with race of the making of any complaint.

Annual Review

- 17.1. Was the claimant directly racially discriminated by Ron Smith in May 2019, by being forced to do his annual performance review with Ben Goss who was not his direct manager and had not been working in the store for the totally of the review period?
- 17.2. Was the claimant treated less favourably to his comparators Dave Wilby, Simon Jackson and Niomi Hurst who all received annual reviews from their direct managers as per Tesco policy?
- 17.3. Was the claimant directly racially discriminated by Ben Goss when he refused to complete the claimant's annual review in line with Tesco policy?

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- 17.4. Was the claimant harassed by Ben Goss when he refused to complete the claimants review in May 2019 and failed to provide any objectives and guidance for the claimant?
- 17.5. Was the claimant victimised by Ron Smith by forcing him to conduct his annual review with Ben Goss who the claimant had previously lodged a complaint about and was not the claimant's direct manager. due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?
- 17.6. Was the claimant victimised by Ben Goss by his refusal to complete the claimants annual review in line with Tesco policy and provide him with objectives and guidance, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

82. The Claimant's annual review was due to be conducted by Lee Shannon, but he, being a new manager was not yet comfortable doing this on his own and therefore Ben Goss as lead manager was also to attend. The Claimant then requested that his union representative also be present as a counterbalance. Ron Smith considered, not unreasonably, that this level of total management involvement was disproportionate, so Ben Goss was then scheduled to conduct the appraisal alone.

83. The meeting itself lasted approximately two hours. Not all sections of the form however were filled in at the time, because Mr Goss was unable to set objectives without further input from Lee Shannon, who was the Claimant's actual manager. This process was delayed because of pressures of work on Mr Goss and when he did finally seek to access the form to complete it, it was no longer available to him online.

84. The conduct of this particular appraisal was less than ideal but the reason why it happened as it did had nothing whatsoever to do with race of the making of any complaint.

Holiday Request

18.1. Was the claimant directly racially discriminated by Neal Killoran when he was not permitted to book his annual leave on 24th May 2019?

18.2. Was the claimant treated less favourably to his comparator Nigel Green who was permitted to book similar annual leave without any issues?

18.3. Was the claimant harassed by Neal Killoran when he was not permitted to book his annual leave?

18.4. Was the claimant victimised by Neal Killoran when he was not permitted to book his annual leave due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

85. The Claimant, contrary to the Respondent's policy which states that holidays should be taken in week-long blocks, requested 9 Fridays and Saturdays. Fridays and Saturdays are the busiest days of the week. This request was therefore refused due to the

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disruption it would cause to the business, but the Claimant was permitted to take four weekends as leave.

86. Nigel Green is not an appropriate comparator. As night manager he had not worked Saturdays and would never therefore have had to take it as a leave day. Whilst he had regularly taken Fridays off to accommodate his son attending football academy, this had been taken as time in lieu rather than holiday. Even if this concession ought not to have been allowed, it was too late to do anything about it because Mr Green had left the business six months previously. Neal Killoran had not been Mr Green's manager at the time.

87. The decision to allow the holiday request only partially had nothing whatsoever to do with race of the making of any complaint, even if it had been a protected act.

General Merchandising Manager Job Offer

19.1. Was the claimant victimised by Ron Smith when he was refused a salary increase for taking the position of General Merchandising (GM) manager in June 2019, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

19.2. Was the claimant treated less favourably to his comparator Hav Younis and Farrah Ishlaq in that there were given pay increases in similar circumstances?

19.3. Was the claimant harassed by Ron Smith when he was refused a salary increase even though Tesco policy permitted it?

88. Ron Smith, as store manager, did not in fact have any authority to award a salary increase to the Claimant at this time. Pay bandings are set by Head Office.

89. When the Claimant moved to general merchandising he was still at the same level and within the same pay banding at the Bradford Peel store.

90. Whenever Hav Younis received a pay increase on moving jobs it was because the pay structure at the relevant time allowed for it and was not simply at the discretion of the store manager. When Farrah Ishtaq moved from a smaller store at Ilkley to Bradford Peel she moved into a different pay band.

91. In any event Hav Younis is of mixed heritage, with a Pakistani father, and Farrah Younis is of British Pakistani origin. They are not therefore appropriate material comparators.

92. The refusal of a salary increase was in accordance with company policy, was not the decision of Ron Smith and had nothing whatsoever to do with any previous complaint, even if it had been a protected act.

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Richard Parsons Replacement Grocery Manager

20.1. Was the claimant directly racially discriminated by Ron Smith and Neal Kiloran by them immediately increasing the Grocery departments resources and commencing recruitment as soon as the claimant left the department on 17th June 2019, which was now run by Richard Parsons?

20.2. Was the claimant directly racially discriminated by Ron Smith and Neal Kiloran by them immediately returning Katie Lodge back to the grocery department which was now run by Richard Parsons, as soon as the claimant left the department on the 17th June 2019?

20.3. Was the claimant harassed by Ron Smith and Neal Kiloran by them immediately increasing the grocery departments resources and commencing recruitment as soon as the claimant left the department?

20.4. Was the claimant victimised by Ron Smith and Neal Kiloran by them immediately increasing the grocery departments resources and commencing recruitment as soon as the claimant left the department, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

93. As we have stated external recruitment requires the authorisation of Head Office. Shortly after the Claimant left Grocery two new staff were recruited on temporary 3 month contracts. In the event those fixed-term contracts were subsequently extended and they remained in post when the Claimant returned to that department.

94. The return of Katie Lodge to Grocery was because she had had a period of sick leave as a result of a back injury sustained when working in DotCom. She had not experienced a similar problem when working on Wines and Spirits. As was the case when she first moved we are again quite satisfied however that this was a purely operational decision, to do with an overview of the balancing needs of the departments and the individual requirements of the employee, which now also included adjustments to the working environment because of her health. This has nothing to do with the fact that the Claimant had temporarily moved out of that department.

95. These decisions had nothing whatsoever to do with race of the making of any complaint, even if it had been a protected act.

Non Food Put Backs

21.1. Was the claimant directly racially discriminated by Ron Smith, Ben Goss and Neal Killoran in August 2019 when he was given additional workload which was the non-food putbacks which are the responsibility of the checkout manager as outlined in Tesco policy?

21.2. Was the claimant treated less favourably to his comparators Simon Jackson and Richard Parson who were not given this additional task which formally resides with the checkout manager?

21.3. Was the claimant harassed by Ron Smith, Ben Goss and Neal Killoran when he was given additional workload which corporately resided with the checkout manager?

21.4. Was the claimant victimised by Ron Smith, Ben Goss and Neal Killoran when he was given additional workload which corporately resides with the checkout manager, due to the claimant carrying out a protected act in that he raised a

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sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

96. Non -food -putbacks, the return to the shelves of items left by customers either at the tills or in the wrong place was and is a problem at a large store like Bradford Peel. We accept the evidence of Ron Smith that it can result in between twelve and fifteen trolley loads accumulating near the tills. Whilst it is a shared responsibility, and whilst it may have been possible on occasions to isolate where any fault for the proliferation may have lain, it is a reasonable management decision to try various strategies to address the issue. Not all of these will necessarily have been ideal solutions.
97. The Claimant was not singled out personally to undertake any disproportionate responsibility for dealing with putbacks. It was in any event a team duty, and the general merchandising department at the material time was over-resourced by 36.5 hours per week, which ought to have meant that had greater capacity to absorb this work. When the Claimant, on behalf of his team, objected at the way the responsibility was being communicated and apportioned, Ben Goss was entirely supportive of his approach.
98. We are satisfied that these were purely operational decisions, to do with an overview of the competing resources needs of the departments when seeking to rectify a problem, and nothing to do with the Claimant as an individual. It had nothing to do with his race or the fact that he had made earlier complaints, even if they had been protected

Planned Operation

- 22.1. Was the claimant directly racially discriminated by Ben Goss in November 2019 when forced to use holidays for a planned operation instead of sick leave as stated in Tesco policy?
- 22.2. Was the claimant harassed by Ben Goss by being made to use annual leave instead of sick leave?
- 22.3. Was the claimant victimised by Ben Goss by being made to use annual leave instead of sick leave, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?
- 22.4. Was the claimant directly racially discriminated by Neal Kliloran on the 25th November 2019 during a return to work meeting which resulting in the claimant being referred to a disciplinary hearing even though Tesco policy does not permit this course of action?
- 22.5. Was the claimant victimised by Neal Kliloran when he was referred to a disciplinary hearing even though Tesco policy does not permit this course of action, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?
- 22.6. Was the claimant directly racially discriminated by Ben Goss when he was issued a formal written warning for sickness due to a planned operation on the 30th November 2019, which is not permitted under Tesco policy?
- 22.7. Was the claimant harassed by Ben Goss when he was issued a formal written warning even though Tesco policy does not allow a warning to be issued for planned operations and recovery time?

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- 22.8. Was the claimant victimised by Ben Goss when he was issued a formal written warning even though Tesco policy does not permit it, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?
- 22.9. Was the claimant directly racially discriminated by Ben Goss in November 2019 when he doctored signed documentation to facilitate giving the claimant a formal written warning?
- 22.10. Was the claimant harassed by Ben Goss when he doctored a signed document to facilitate giving the claimant a formal warning?
- 22.11. Was the claimant victimised by Ben Goss when he doctored a signed document to facilitate giving the claimant a formal warning, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?
- 22.12. Was the claimant treated less favourably to his comparators Simon Jackson, Matt Riley, Cecilia Huntly, Ange Elwood, Jordan Parnell, Dawn Bampton and Joe Deeks?
99. The Claimant underwent a rearranged planned operation on a Sunday, 10th October 2019. He had already booked a holiday immediately following, and we find did not ever request in advance to convert that to sick leave. In fact on 5th November it is recorded that during this holiday the Claimant would be able to rest and so recuperate from the operation. On that same date it is recorded that Ben Goss agreed to change the Claimant's usual day off from Wednesday to Saturday to allow him to prepare for the operation, there is no indication at the time that the Claimant ever considered that he should in fact have been enabled to take the Saturday off in any event as sick leave.
100. Unfortunately, the Claimant did not recover as quickly as had been anticipated and was therefore off sick in the week after his holiday. This length of recorded absence necessarily, on the face of it, passed the percentage threshold for days off sick which would trigger an absence review meeting. Previous time off for appointments in connection with the planned operation were however expressly discounted from the calculation.
101. The absence was not immediately contiguous with the operation and therefore appeared to be a separate occurrence. The consequent referral on the return to work interview to an absence management meeting was therefore entirely in accordance with the policy. So too was the imposition of a warning. The later insertion of the figures used to calculate the percentage of days off was not a falsification of the form but merely the recording of the relevant data relied upon in coming to that decision.
102. The Claimant appealed on the basis that the sickness absence was in connection with a planned operation, even though not initially anticipated, and that it should therefore have been discounted. That appeal to Pam Taylor was unsuccessful. She upheld Mr Goss's application of the policy. The Claimant appealed further and this time Richard Wareham upheld the appeal, refunding the week's holiday,

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discounting the total two week recovery period for the purposes of the absence management policy and rescinding the warning.

103. The circumstances were somewhat unusual, and this was clearly not a straightforward matter of interpretation. Mr Wareham indeed found that the Claimant as well as Mr Goss and Ms Taylor had not in fact understood the policy correctly.
104. We are satisfied however that Mr Killoran and Mr Goss (and for that matter Ms Taylor) applied the policy in accordance with their genuine understanding as to how it should be interpreted, and that their decisions had nothing to do with his race or the fact that he had made earlier complaints, even if they had been protected.

Training

- 23.1. Was the claimant directly racially discriminated by Ron Smith, Ben Goss and Neal Killoran when they failed to provide the claimant with the training as stipulated by Tesco Stores Limited to complete his job role?
- 23.2. Was the claimant treated less favourably to his comparator Dave Wilby
- 23.3. Was the claimant harassed by Ron Smith, Ben Goss and Neal Killoran when they failed to provide the claimant with the training to do his job role even though the claimant made numerous requests?
- 23.4. Was the claimant victimised by Ron Smith, Ben Goss and Neal Killoran when they failed to provide the claimant with training, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?
105. It is the responsibility of every manager to complete their own training. Others are therefore, if necessary, prepared to undertake this in their own time.
106. The Claimant has never had a good record of keeping up to date with his training. At the point that Ron Smith took over as store manager he observed that the Claimant's training record was deficient, this problem dating from the time when Mr Parvez had been his manager. It is apparent that the Claimant has never found it easy to manage his time at work so as to fit in training during the working day, irrespective of what duties he may have been assigned at any period. However, even on subsequent occasions when the Claimant was self-isolating at home during the pandemic it is noticeable that he did not readily avail himself of the obvious opportunity to update his training. There is abundant evidence of the Claimant having been reminded by his various managers of the need to keep on top of his training, but he has never been subjected to any form of sanction as a result of his failing to do so.
107. It is not the case that any manager "failed to provide" the Claimant with necessary training. Despite being prompted by the Employment Judge on many occasions during this hearing to identify any particular training module which he did not complete and the circumstances in which he says he was denied this opportunity, as

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well as seeking to explain why this was a detriment to him, the Claimant has not been able to do so.

108. The way in which managers addressed the apparent deficiencies in the Claimant keeping up to date with training requirements had nothing to do with his race or the fact that he had made earlier complaints, even if they had been protected acts.

Performance Reviews and Career Progression

- 24.1. Was the claimant directly racially discriminated by Ron Smith, Ben Goss and Neal Killoran when he was not provided his annual performance reviews and career discussion meetings in line with Tesco policy?
- 24.2. Was the claimant treated less favourably than his comparators Dave Wilby and Niomi Hurst?
- 24.3. Was the claimant harassed by Ron Smith, Ben Goss and Neal Killoran when he was not provided his annual performance reviews and career discussion meetings?
- 24.4. Was the claimant victimised by Ron Smith, Ben Goss and Neal Killoran when he was not provided his annual performance reviews and career discussion meetings, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?

109. Inevitably some performance reviews or similar discussion will be missed or be held late for various reasons. We are quite satisfied that if and when this happened in the Claimant's case he was no different to any other the manager in similar circumstances and that there will have been an explanation.
110. The only period where it can be identified that the Claimant did not receive a review at all was in 2018. There is no evidence as to why this was, but there is no reason whatsoever to suppose that it had anything to do with his race or the fact that he had made earlier complaints, even if they had been protected acts.

Salary

- 25.1. Was the claimant victimised by Ron Smith by having his salary progression held back due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?
- 25.2. Was the claimant treated less favourably to his comparator Hav Younis?
111. Ron Smith as store manager, did not in fact have any authority to award a salary increase to the Claimant at this time. Pay bandings are set by Head Office. He was made aware of annual salary awards to his reports, and where notified by Head

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Office of any annual increase he may have also been told that this put a particular employee at a certain point in the relevant pay band, but he did not even know the parameters of that band. The only information that could be passed on to an employee was therefore what Ron Smith was himself told, and he had no discretion himself to progress anyone or to award a salary increase.

112. Whenever Hav Younis received a pay increase on moving jobs it was because the pay structure at the relevant time allowed for it and was not simply at the discretion of the store manager.
113. In any event Hav Younis is of mixed heritage, with a Pakistani father. He is not therefore an appropriate material comparator.
114. The refusal of any additional salary progression was in accordance with company policy, was not the decision of Ron Smith and had nothing whatsoever to do with any previous complaint, even if it had been a protect act.

Collective Grievance Against the Claimant

27.1 Did Ben Goss, Neal Killoran, Les Shannon and Ron Smith victimise the Claimant by submitting a collective grievance against the Claimant alleging that the Claimant's grievances for race discrimination were false, malicious and/or baseless?

27.2 Were Ben Goss, Neal Killoran, Les Shannon and Ron Smith entitled to submit a grievance against the Claimant and was that grievance submitted for a reason other than the Claimant's race (i.e. was the reason for submission of the grievance unrelated to the Claimant's race?). If so, why was the collective grievance submitted?

27.3 Did Ben Goss, Neal Killoran, Les Shannon and Ron Smith victimise the Claimant by submitting a collective grievance against the Claimant in retaliation for the claimant having submitted a grievance against them alleging discrimination?

27.4 Was the claimant harassed (race) by Neal Killoran, Ben Goss and Lee Shannon when they submitted a retaliatory collective grievance against him after he submitted a grievance against them in October 2019?

115. Only Ben Goss, Neil Killoran and Lee Shannon were in fact parties to the collective grievance raised against the Claimant on 24th February 2020.
116. Throughout the grievance investigation meetings with Ryan Billington following the Claimant confirming his allegations of discrimination against them on 17th December 2019, all three expressed their distress at the type of allegation that was being made against them. In particular Lee Shannon is himself of mixed heritage and had first-hand experience of racial discrimination, yet he was now being accused of racism solely in respect to his handling of an apparently uncontroversial sickness absence review meeting where he had not imposed any sanction on the Claimant (issue 15).
117. When Mr Billington held meetings with them on 31st January 2022 to inform the that the Claimant's grievances had not been upheld, all three again articulated their distress and expressed concerns as to how the matter would be taken forward. Under the Respondent's grievance policy, at section 13, the raising of a false and

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malicious grievance may lead to disciplinary action being taken. This matter was specifically raised by Ben Goss at his outcome meeting but was not in fact directly addressed by Mr Bllington, who stated that it was something which would have to be determined elsewhere.

118. The collective grievance put in some three weeks later, after reflection, was therefore an entirely appropriate mechanism for having their concerns addressed. It alleged that the allegations made had been false and malicious and with the intent to harm reputations, careers and employment with Tesco, and that they were in breach of policies, which language clearly reflects the wording of section 13.
119. Although the Claimant doing of a protected act was part of the background circumstances but for which the collective grievance would never have been raised it was, we accept from the evidence of the Respondent's witnesses, not the reason why they initiated the inquiry into whether there was in fact a case to answer that the Claimant was in breach of section 13.
120. We are quite satisfied that this is properly a situation where we can and do draw a distinction between the fact of the grievance and the way it was advanced against these three individuals, and the effect it had upon them. In so doing we apply the principle in **Martin v Devonshire Solicitors** [2011] ICR 352, in which it was noted per Underhill P at paragraph 22:
- “it is neither artificial nor contrary to the policy of the anti-discrimination provisions for the employer to say “I am taking action against you not because you have complained of discrimination but because of the way in which you did it”. Indeed, it would be extraordinary if those provisions gave employees absolute immunity in respect of anything said or done in the context of a protected complaint.”
121. The decision to raise this grievance had nothing whatsoever to do with the Claimant's race.

Annual Review

28.1 Did the Respondent victimise the Claimant in the manner in which the Claimant's annual performance review grading was carried out in May 2020. Specifically, did the Respondent victimise the Claimant by providing the Claimant with a lower grade? Was the Claimant given a genuine and fair grading based upon performance?

28.2 Did Ben Goss victimise the claimant by refusing to conduct his annual review and by providing false, malicious and vexatious evidence to downgrade the claimants grading?

28.3 Did Ron Smith victimise and or harass (race) the claimant in the manner in which he conducted the claimant's annual performance review, specifically, by pre-determining the claimant's grade, refusal to complete the review document and refusal to discuss the claimant's performance?

28.4 Did Ron Smith racially discriminate against the claimant in the manner in which he conducted the claimant's annual performance review, specifically, by pre-determining the claimant's grade, refusal to complete the review document and refusal to discuss the claimant's performance?

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28.5 Was the claimant treated differently to Niomi Hurst, Dave Wilby, Lee Shannon and Khav Younis?

122. Unfortunately, by this time the relationships of trust and confidence between the Claimant and senior managers were starting to break down. It is perfectly understandable that in the context of the collective grievance being pursued, and the impact of the Claimant's behaviours upon his mental well-being which had his moving to a different store, that Ben Goss was uncomfortable conducting the Claimant's annual review.
123. In these exceptional circumstances an alternative work-around solution had to be found, which was that Ben Goss would provide a written evaluation that Ron Smith would communicate in person to the Claimant. The Claimant was notified of this on 30th March 2020 and the meeting was conducted on 7th May 2022. The Claimant had already been notified on 4th May 2020 of the grade which Mr Goss had awarded him, and the explanations for this were gone through at the subsequent meeting, though Mr Smith was not therefore in a position to discuss performance further.
124. We are satisfied, however that the performance evaluation by Mr Goss was genuine and objectively justified. On appeal it was varied by Clare Findlay from a "met" to an "exceed" but we accept her evidence that this was intended as a supportive measure for the Claimant, who was transferring to her line management, reflecting his personal conviction that he merited a higher grade and did not in fact impute any malice to Mr Goss's rationale.
125. The fact that the appraisal was conducted in this way was not because of the Claimant having done a protected act but the way he had done so and the consequential effects upon the management arrangements. The decision as to grading had nothing to do with his race, nor the raising of his grievance.

Jason Chester

29.1 Was the Claimant victimised as a result of the grievance outcome delivered by Jason Chester in which Jason Chester found no evidence of race discrimination?

28.2 Was the claimant victimised by Jason Chester when he refused to interview the claimant's witnesses as part of the grievance appeal process in accordance with the respondent's grievance policy, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

29.3 Was the claimant victimised by Jason Chester when he refused to hear new evidence as part of the claimant's grievance appeal in accordance with the respondent's grievance policy, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

126. The Claimant appealed the outcome of Ryan Billington's rejection of his grievance. Jason Chester was appointed to hear that appeal.

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127. The Claimant had not identified any witnesses to be heard before Mr Billington. He subsequently “drip-fed” names to Mr Chester, culminating in a final list only on 21st March 2020. The non-contractual grievance policy, which applies equally to appeals provides that the manager will usually speak to people who have been named. Apart from Katie Lodge Mr Chester did not in fact interview the potential witnesses identified by the Claimant.
128. Nor did Mr Chester inform the Claimant when asked as to his rationale for not having spoken to all the people named. In that he was wrong.
129. He did not however act in this way because the Claimant had done a protected act, but because he genuinely considered that the witnesses were not in fact material to the issue on appeal, which was the motivation of managers, not the witnesses, in reaching operational decisions and whether those particular decisions were tainted by discrimination.
130. The alleged “new evidence” in fact related to the separate complaint about the attendance warning , which was ultimately dealt with by Mr Wareham (issue 22) and formed no part of the original grievance before Mr Billington , nor this appeal.

Rachel Holmes

30.1 Was the claimant victimised by Rachel Holmes when she imposed a 5-day deadline for the claimant to submit a grievance in breach of the respondent’s grievance policy, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

30.2 Was the claimant victimised by Rachel Holmes when she refused to allow the claimant to submit a grievance in accordance with the respondent’s grievance policy, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

Karen Vincent

31 Was the claimant victimised by Karen Vincent when she refused to investigate a grievance against Rachel Holmes in accordance with the respondent’s grievance policy which was submitted by the claimant, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

131. The Claimant now accept that his seeking to raise a grievance against Dave Lewis, the CEO for the Respondent, was inappropriate.
132. At the time the Claimant was already pursuing a grievance against Jason Chester, which necessarily tied in with the substantive original grievance heard by Ryan Billington and effectively therefore served by way of a further appeal against that outcome. This was assigned to Darren Bowey to hear.
133. In seeking therefore to impose time restraints and by limiting the raising of any concerns to the context of the ongoing Bowey investigation, so as to avoid duplication or delay, Rachel Holmes was acting entirely proportionately.

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134. Similarly in declining to entertain a grievance against Miss Holmes arising out of this decision, Karen Vincent, was also acting perfectly properly.
135. Neither of these pragmatic decisions had anything to do with the doing of a protected act.

Cara Wilson

32.1 Was the Claimant victimised by Cara Wilson as a result of Cara Wilson upholding a collective grievance submitted against the Claimant and referring the Claimant for disciplinary action?

32.2 Was the claimant victimised by Cara Wilson when she refused to investigate the claimant's complaints as part of the respondent's grievance policy, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

32.3 Was the claimant victimised by Cara Wilson when she referred the claimant to a disciplinary hearing for gross misconduct for raising a malicious grievance even though she could not provide any evidence of any malicious act, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

Verity Garside

33.1 Was the claimant victimised by Verity Garside when she failed to provide the claimant with details of the specific alleged allegations which formed the basis of the disciplinary hearing for gross misconduct, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

33.2 Was the claimant victimised by Verity Garside when she failed to provide the claimant with the supporting evidence she intended to use as part of disciplinary the claimant was referred to, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

136. Cara Wilson upheld the collective grievance (issue 27) and therefore concluded that there was disciplinary case to answer. Verity Garside was the manager assigned to hear that disciplinary case, although it never in fact took place. This was initially because the Claimant was self-isolating and then because proceedings were suspended awaiting the outcome of Claimant's grievance against Ms Wilson, and Ms Garside was relieved of her responsibilities.
137. The reasons for Cara Wilson's decision are carefully set out in her outcome letter and investigation report of 30th May 2020. She is at pains to seek to draw a distinction between the substance of the Claimant's own grievance, which amounted to the doing of a protected act, and the manner in which it was brought which was the subject of the collective grievance. We are again quite satisfied that this is properly a situation where we can and do draw a distinction between the fact of the grievance and the way it was advanced against these three individuals, and the effect it had upon them.
138. In particular Ms Wilson had clear evidence of the adverse impact of the unsubstantiated complaints upon the three people accused, and she was perfectly entitled to find that the circumstances in which these allegations were brought, months after the trigger incident itself, and where the core facts of that incident had not even been properly addressed by the Claimant as a complaint to the

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manager concerned in advance of it now being framed as an act of discrimination, amounted to a "false and malicious" grievance within section 13.

139. It would have been inappropriate for Ms Wilson to hear a counterclaim that the collective grievance itself was "false and malicious". That would have led to a never-ending spiral of allegation and counter allegation, and in any event the decision to uphold the collective grievance necessarily dealt with that issue in favour of the their complaints. The decision to refer to a disciplinary hearing in the circumstances as entirely appropriate.
140. It is, we are sorry to have to say, disingenuous of the Claimant to allege that, having been provided with all the paperwork from her investigation and knowing Ryan Billington's decision, he was unaware of the reasons for Ms Wilson's conclusion that there was a case to answer, or that Ms Garside was therefore required to provide further information.

Darren Bowey

Was the Claimant victimised as a result of the manner in which Darren Bowey investigated the Claimant's grievance against Jason Chester?

What were the alleged acts of victimisation committed by Darren Bowey?

Did the Respondent apply its grievance policy in a fair and reasonable manner?

Did Darren Bowey follow the Respondent's grievance policy in his management of the Claimant's grievance?

34.1 Was the claimant victimised by Darren Bowey when he failed to follow the respondent's grievance policy in relation to interviewing witnesses and due to him refusing to ask the witnesses any questions in relation to the points in the claimant's grievance appeal, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

141. The Claimant, as he was entitled to do given the lack of explanation, raised concerns that Jason Chester had not followed the policy in declining to speak to all the people he had named. This was not, however, a breach of contract, and the Claimant also chose to make accusations of bias against Mr Chester, both of which allegations served to escalate the matter further.
142. Darren Bowey on hearing that grievance interviewed all the witnesses who were available in order to ascertain if their evidence would in fact materially have affected the outcome of Mr Chester's appeal. He concluded that it would not.
143. Mr Bowey chose to ask entirely open questions of the witnesses. That may not have been the most appropriate course in that it led to a lack of direction in the investigation. However, we are perfectly satisfied that Mr Bowey did it because he genuinely believed that it was in fact the proper approach in the circumstances. His decision had nothing whatsoever to do with the fact that the Claimant had done a protected act. On a further complaint to Imran Rashid the witnesses were interviewed again, and this time were asked closed questions, approved in advance

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by the Claimant. Mr Rashid also concluded that the weight of the evidence so obtained would not have affected the outcome of the decision. We repeat that the investigation was only and specifically into whether the particular operational decisions of managers as they affected the Claimant or his department were in fact tainted by discrimination directed against him, as he had alleged.

Support Plan and Stress Risk Assessment

35.1 Was the Claimant's support plan stopped in December 2020 and was the Claimant subject to direct discrimination, victimisation and/or harassment as a result of the support plan being stopped (the Claimant compares himself to Peter Webb)?

Did the Respondent adhere to the Support Plan at all times?

Was the support plan stopped?

Can the Respondent demonstrate that the Support Plan remained in place and active at all times?

Can the Respondent demonstrate the actions taken to support the Claimant?

Was the claimant directly racially discriminated by Clare Findlay, Verity Garside and Rachel Holmes when his support plan was terminated for the month of December 2020 when other none- Asian colleagues were permitted to remain on their support plans throughout that period?

1. Was the claimant treated less favourably to his comparator Peter Webb?

35.2 Was the claimant victimised by Clare Findlay when she failed to adhere to the support plan agreement, which she put in place with the claimant due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

35.3 Was the claimant victimised by Rachel Holmes and Natasha Adams when they failed to take action to ensure the claimants support plan was being adhered to after they were notified of the issues due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

35.4 Was the claimant victimised by Verity Garside when she attempted to force the claimant to work 2 late shifts per week in breach of his support plan due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

35.5 Was the claimant victimised by Verity Garside and Clare Findlay when his support plan was terminated for the month of December 2020 due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

35.6 Was the claimant victimised by Rachel Holmes when she failed to intervene to stop the claimants support plan being terminated for the month of December 2020 due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

35.7 Was the claimant harassed by Clare Findlay when she knowingly and wilfully failed to adhere to the claimants support plan, knowing the psychological impact this would have on the claimant?

35.8 Was the claimant harassed by Verity Garside when she repeatedly threatened the claimant with disciplinary action for not working 2 late shifts per week even though she was fully aware the claimant was under a support plan?

35.9 Was the claimant harassed by Rachel Holmes when she took no action to ensure the claimants support plan was being adhered to, even though she was aware of the psychological impact this was having on the claimant?

35.10 Was the claimant harassed by Clare Findlay and Verity Garside when they terminated the claimants support plan for the month of December 2020 knowing the psychological impact this would have on the claimant's health?

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35.11 Was the claimant harassed by Rachel Holmes when she failed to intervene when the claimant's support plan was terminated and when she failed to clarify the respondent's policy in relation to support plans, knowing that the respondent's policy does not permit the termination of support plans for festive periods?

144. The term "support plan" simply refers to any measures that are put in place from time to time to assist an employee. It does not relate to any procedure to which a specific company policy applies.
145. When the Claimant returned to work on 27th August 2020 his fit note simply stated that he should be on unspecified amended duties for two months until 25th October 2020. The OH report of 17th August 2020 did not recommend any phased return to work plan or other similar restrictions on what he could do.
146. The manager, Aaron Carr, at the return to work interview, however agreed that for two weeks the Claimant would only work his scheduled day time hours, with no late shifts, and that this would be reviewed. As at 26th September 2020 the Claimant agreed to work one late shift from 12th October 2020. This arrangement continued beyond the 25th October date and there was no further fit note nor any other evidence to suggest that he could not then return to full duties. Subsequently the Claimant acknowledged that he could do additional late shifts but when his name was put on the rota to work two lates he would cross it out, the reason apparently being that he objected to being given these duties when other managers, such as Ben Goss were not.
147. In December 2020, the busiest time of the year leading up to Christmas, and by now some three months after his return to work, Verity Garside requested that the Claimant now commence working two late shifts. This was not a breach of a "support plan" and nor was there any requirement for any formal process by which the ad hoc arrangements upon his return to work were to be periodically reviewed. The request from Ms Garside was entirely reasonable. We do not accept that the Claimant was inappropriately threatened with disciplinary action, and none was in fact taken, even if he was no doubt properly reminded in the circumstances that failure to comply with a reasonable management instruction was potentially a disciplinary offence. The Claimant did not in fact ever work more than one late shift in this period.
148. The handling of this matter had nothing whatsoever to do with the Claimant's race or his having done a protected act.

2 Hour Training Limit

36.1 Did the Respondent limit the Claimant's training to 2 hours per week during October – December 2020?

Did the Respondent directly discriminate, victimise, or harass the Claimant in limiting the Claimant's training time to 2 hours per working week.

Was any such alleged limit to the Claimant's weekly training time imposed because of the Claimant's race?

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Did the Respondent treat the Claimant consistently with colleagues that did not share the Claimant's protected characteristic?

If the Claimant's training time was subject to a 2 hour limit per week, can the Respondent demonstrate a legitimate reason for the limit? Was the limit related to the Respondent's need to manage seasonal (Christmas) demand?

Was the claimant directly racially discriminated when a 2-hour limit was imposed on his training when other none-Asian colleagues were permitted to train in excess of 2 hours per week?

1. Was the claimant treated less favourably to his comparators, Simon Jackson, Lee Shannon, Peter Webb, James Shimbles and Ben Gross?

36.2 Was the claimant victimised by Clare Findlay when she imposed a 2-hour limit on the claimants training per week due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

36.3 Was the claimant victimised by Rachel Holmes & Nina Tomlinson when they failed to take action to resolve the claimants concerns in relation to the 2-hour limit imposed on him due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

36.4 was the claimant victimised by Natasha Adams, Jaime Reason, Rachel Bushby, Emma Taylor and Ken Murphy when they took no actions to investigate the claimant's grievances raised to them formally on 1 January 2021 due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

36.5 was the claimant harassed by Clare Findlay when she imposed a 2-hour limit on training per week on the claimant, whilst knowing that the claimant was suffering from anxiety and stress linked to a lack of training?

36.6 Was the claimant harassed by Rachel Holmes and Nina Tomlinson when they failed to address the claimant's grievances in relation to the 2-hour limit imposed on his training?

149. The OH report of 17th August 2020 had recommended the carrying out of a stress risk assessment on the Claimant's return to work. This was duly completed by Clare Findlay on 1st September 2020.
150. Because one of the perceived stressors for the Claimant was his non-completion of training (though see also issue 23 for the context) he was specifically allowed to block out 2 hours training a week to ensure that he was able to keep up to date, and therefore reduce the stress caused by his falling behind. This was not a concession granted to other managers who were expected to be able to manage their own training, in or out of working hours, as and when time became available. It was not a maximum limit
151. The way in which training was addressed whether by reference to the stress-risk assessment or otherwise, had nothing whatsoever to do with the Claimant's race or his having done a protected act.
152. In particular the complaint addressed to the executive board members was, properly and understandably, never in fact brought to their attention, as it was already being appropriately managed within the existing arrangements at local level.

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Training Ban

Did the Respondent implement a training ban on the Claimant during the Christmas Shopping period in December 2020?

Can the Respondent demonstrate a legitimate reason for implementing the alleged training ban?

Did the Respondent subject the Claimant to direct race discrimination, victimisation or harassment as a result of implementing an alleged training ban?

Was the claimant directly racially discriminated by Rachel Holmes, Clare Findley and Verity Garside when he was not permitted to carry out any training during December 2020?

1. Was the claimant treated less favourably to his comparators, Simon Jackson, Lee Shannon, Ben Gross, Clare Findlay and Carol Stoyles?

37.1 Was the claimant victimised by Clare Findlay, Rachel Holmes and Verity Garside when they stopped the claimant from carry out his training for the month of December 2020 in breach of his agreed support plan and stress risk assessment due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

37.2 Was the claimant victimised by Rachel Holmes when she advised the claimant that Tesco does not permit training over the festive period even though there is no such policy due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

37.3 Was the claimant victimised by Rachel Holmes when she deliberately misled the claimant by stating that Simon Jackson had not conducted any training during the month of December 2020 even though the digital training records show that he did, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

37.4 Was the claimant harassed by Clare Findlay, Rachel Holmes and Verity Garside when they stopped the claimant from conducting his training for the month of December 2020 in breach of the claimant's support plan and Stress risk assessment and occupational health assessment?

153. The Respondent did operate a policy of not permitting non-critical training to be undertaken during working shifts over the busy Christmas period.
154. The Claimant was informed of this by Verity Garside in early December. It did not apply to the Claimant alone, and it was not a ban but merely a suspension until the new year. In January the Claimant did not however, even though he was then at home self-isolating, resume his training so as to catch up. Throughout December he was not expected to train and would have been subject to no sanction for failing to do so.
155. No other manager was expressly authorised to carry out training which was not business critical throughout this period. If any other manager did in fact undertake non-critical training at this time, and many did none at all, it was either in ignorance or contravention of the policy or was in fact done in their own time.
156. The way in which this temporary training restriction was implemented in respect to the Claimant had nothing whatsoever to do with his race or his having done a protected act.

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Ben Goss and Neal Killoran

38.1 Did Ben Goss and/or the Claimant breach an agreement when the Claimant and Ben Goss came in contact with each in the same room in **November 2020**.*

38.2 Did Neal Killoran breach an agreement to have no contact with the Claimant by requesting that the Claimant assisted within replenishment tasks in **October 2020**.*

Did Neal Killoran have a legitimate reason to talk with the Claimant during October 2020?*

If these acts did take place, were they because of the Claimant's race? Can the Respondent demonstrate that they were related to a reason other than the Claimant's race?*

38.3 Was the claimant victimised by Rachel Holmes and Clare Findlay when they refused to take action when Ben Goss and Neal Killoran continuously breached the respondent's agreement, which was that they would not have any direct contact with the claimant due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?

38.4 Was the claimant harassed by Ben Goss and Neal Killoran when they continuously breached the respondent's agreement to have no contact with the claimant?

38.5 Was the claimant harassed by Rachel Holmes and Clare Findlay when they took no action to stop Ben Goss and Neal Killoran from breaching the respondent's agreement which was to have no contact with the claimant?

38.6 Was the claimant harassed by Neal Killoran when he rung the claimant on his day off, from his home even though he is not the claimant's direct manager and is not to have any direct contact with the claimant?

157. This allegation is only now pursued in respect to Neil Killoran.

158. Although agreed measures were in place to seek to minimise contact between the Claimant and Ben Goss and Neil Killoran, primarily at their instigation they being managers who were themselves particularly adversely affected by the breaking down in trust and confidence, some operational contact with Mr Killoran was necessary and inevitable. This single particular interaction was mediated through Dave Wilby and not directly initiated by Mr Killoran.

159. This had nothing whatsoever to do with the Claimant's race or his having done a protected act.

Occupational Health Assessment

39.1 Did the Respondent implement reasonable adjustments following the Claimant's Occupational Health Assessment that took place in August 2020?

If so, what were those reasonable adjustments?

Were the reasonable adjustments sufficient to provide the Claimant with support?

Was the claimant discriminated against by the Respondent due to his disability when they refused to make reasonable adjustments as recommended by the Respondents occupation health assessment?

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39.2 Was the claimant discriminated against by the Respondent due to his disability when they refused to make reasonable adjustments as agreed in their Stress Risk assessment?

39.3 Was the claimant discriminated against by the Respondent due to his disability when they refused to provide him with the training to conduct his job role?

39.4 Was the claimant discriminated against due to his disability when he was limited to 2 hours training per week?

- a. Was the claimant treated less favourably to his comparators, Simon Jackson, Lee Shannon, Peter Webb, James Shimbles and Ben Goss?

39.5 Was the claimant discriminated against due to his disability when he was given a training ban?

- b. Was the claimant treated less favourably to his comparators, Simon Jackson, Lee Shannon, Ben Gross, Clare Findlay and Carol Stoyles?

39.6 Was the claimant discriminated against due to his disability when his support plan was stopped?

- c. Was the claimant treated less favourably to his comparator Peter Webb and Ben Goss?

160. Even if the Claimant were in fact disabled or the Respondent ought reasonably to have known that he was, he has not identified any relevant criterion or practice which placed him as a putatively disabled person at any actual disadvantage. Nor therefore can the Respondent reasonably have known that he was placed at any such disadvantage.

161. There are no recommended reasonable adjustments in respect of any duty arising under the Equality Act, because OH did not consider the Claimant to be disabled. The general recommendations in the report are solely and specifically in order to facilitate a return to work, which of course did take place. No issue ever arose as to higher tolerance of sickness absence, as the Claimant was not again off sick with anxiety until June 2021, and the absence management policy was never invoked.

162. This is essentially a “rehash” of earlier complaints under other heads of discrimination (see issues 35, 36 and 37). The Claimant was not in fact limited to 2 hours training, nor “banned” from training, nor was he on any formal “support plan” and nor was any such arrangement “stopped”.

Suspension From Work

Was the Claimant's suspension from work in May 2021 because of the Claimant's race and/or alleged disability?*

Can the Respondent demonstrate that the Claimant was suspended for a reason unrelated to race and/or an alleged disability? If so, what was the reason for the Claimant's suspension?

Was the Claimant suspended from work on the basis of legitimate allegations against him as part of an ongoing internal investigation?*

Can the Respondent demonstrate that suspension was reasonable and reasonably required and proportionate based upon the allegations against the Claimant.

Was the claimant victimised by the Respondent when he was suspended in breach of the Respondents disciplinary policy?

40.1 Was the claimant harassed when he was suspended on his return to work by Richard Turner?

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Was the claimant harassed when his colleagues were informed that he was suspended from work?

163. No allegation save victimisation is now pursued.
164. Whilst the Claimant was absent from work for various reasons, (self-isolation, paternity leave, holiday) from January until 14th May 2021, and subsequent to the second appeal against Cara Wilson's findings having been determined by Mike Davies on 13th February 2021 so that the disciplinary process might have been resumed, the Respondent through Rachel Holmes had instead instigated an investigation into the effect that the Claimant was having on colleagues and whether that amounted to a breakdown in trust and confidence.
165. The collation of that evidence up to 15th March 2021 by Rachel Budgen gave rise to a clear presumption that there would be a case to answer in respect of possible dismissal for "some other substantial reason". It would however be necessary to invite the Claimant to attend a form of preliminary investigatory meeting before any disciplinary type hearing were conducted.
166. That investigation meeting was scheduled for 17th May 2021 after the Claimant had returned to work. Richard Turner, being a manager at the appropriate level, was assigned to consider suspension pending the investigation meeting, which he duly authorised on full pay, initially of course to cover the short period up to 17th May 2021.
167. Given the nature of the allegations which related to the detrimental impact upon his colleagues of the Claimant's continued attendance at work, although this did not fall within the ambit of the more common situation of an allegation of gross misconduct, suspension was clearly proportionate in the circumstances.
168. The reason for the suspension was that there were substantial grounds to consider there to have been a breakdown in trust and confidence quite independently of the actual nature of the Claimant's grievance of November 2019, the substance of which we accept Mr Turner was in fact unaware of. The suspension and the circumstances around it were not, therefore, anything that was done because the Claimant had done a protected act

Investigation Meeting

41.1 Did the Respondent fail to implement reasonable adjustments when it requested the Claimant to attend an investigation meeting in May 2021.

If the Respondent did implement reasonable adjustments, what were these reasonable adjustments, and did they benefit the Claimant?

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Was the Claimant provided with reasonable notice of the investigation meeting and did the Respondent comply with its internal policies?

Was the Claimant subject to direct race discrimination, victimisation and/or harassment during an investigation meeting held by Rachel Budgen.

Was the Claimant given an opportunity to understand the allegations in full during the investigation meeting and to make any points of contention that he considered necessary?

Was the Claimant provided with all relevant evidence so as to allow him to understand the specific detail of the allegations against him and the evidence underpinning these allegations?

41.2 Was the claimant discriminated against by the Respondent due to his disability when they refused to make the following reasonable adjustments in order to attend the investigation meeting?

- a. Refusal to allow him reasonable time to prepare
- b. Refusal to allow reasonable time to allow him to get representation
- c. Refusal to adjourn the hearing when he stated he was unfit to attend
- d. Failure to state each allegation one by one and ensure his understanding
- e. Refusal to allow him to ask questions and understand the allegations against him

41.3 Was the claimant racially discriminated by Rachel Budgen when she treated the claimant less favourably to Ben Goss in relation to the handling to the claimants and Bens investigation meetings?

Was the claimant victimised by being sent to a disciplinary for carrying out a protected act, in the form of raising a grievance for discrimination?

41.4 Was the claimant victimised when he was forced to liaise through Rachel Holmes whilst having submitted a tribunal claim against her for discrimination, even though Tesco's disciplinary policy states he should be contacted by the investigating manager directly?

41.5 Was the claimant victimised due to the Respondents refusal to allow reasonable time for his representative to attend the hearing even though a 3-week period was provided to Imran Khan from the same store?

41.6 Was the claimant victimised by being forced to attend an investigation hearing scheduled for his day off under the threat that the meeting would continue in his absence in breach of Tesco policy?

41.7 Was the claimant victimised by being forced to continue during the investigation meeting even though he made clear he was not fit and able to do so?

41.8 Was the claimant victimised by Rachel Budgen when she refusal to clearly outline the allegations against him and the specific supporting evidence?

41.9 Was the claimant victimised by Rachel Budgen when she refused to allow him to state his defence in relation to the allegations against him?

41.10 Was the claimant victimised by Rachel Budgen when she refused to allow him to ask questions even though she stated she would at the meeting and in the invitation letters?

41.11 Was the claimant victimised by Rachel Budgen when she refused to allow him to state witnesses that could support his case?

Was the claimant victimised by Rachel Budgen when she refused to allow him to respond to each allegation raised?

41.12 Was the claimant victimised when he was suspended from work in breach of Tesco's disciplinary policy by Rachel Budgen?

- a. Suspended even though he had not been alleged to have potentially carried out an act of gross misconduct
- b. Suspended when there was no impartial evidence (or any evidence at all) of an act of gross misconduct.
- c. Suspended even though he posed no risk to the business or the investigation

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41.13 Was the claimant victimised as the investigation meeting was premediated with the disciplinary letter having already been produced in breach of Tesco policy?

41.14 Was the claimant victimised by Rachel Saliba by her providing him with a disciplinary letter before the investigation meeting had taken place?

Was the claimant victimised by the Respondent due to their refusal to allow him time to read the evidence against him and respond accordingly in accordance with the disciplinary policy?

Was the claimant victimised by Rachel Budgen when she failed to follow Tesco's investigation checklist?

Was the claimant victimised by Rachel Budgen due to her refusal to allow him to participate in the investigation meeting?

41.15 Was the claimant victimised by Rachel Budgen due to her refusal to provide her rationale for her decision to send the claimant to a formal meeting?

41.16 Was the claimant harassed when he was forced to attend the investigation hearing at his store when he had requested another local store?

Was the claimant harassed when he was forced to communicate through Rachel Holmes when he had submitted a tribunal claim against her for discrimination in breach of the Respondents disciplinary policy?

Was the claimant harassed in relation to the investigation meeting for the following reasons;

- a. Not given adequate time to prepare for the investigation meeting
- b. Forced to attend a hearing on his scheduled day off work
- c. Forced to continue a meeting when he made clear he was unfit to do so
- d. Not permitted his right to ask questions
- e. The decision to send him to a disciplinary hearing was premediated before the investigation meeting

169. The meeting originally scheduled for 17th May, as at the date of suspension on 14th May, was postponed to 21st May 2021. This was a reasonable time to allow for the Claimant to prepare for the hearing in so far as he could at that stage, and also for him to secure Trade Union assistance, though in the event he was unable to do so. The Claimant was given the only specific adjustments he had, in the end, requested by way of regular breaks, a later start time and the facility for a breakout room.
170. The Claimant was not in fact medically unfit to attend as he asserted; he did so and participated in a meeting lasting some 3½ hours in circumstances where his GP, knowing that the meeting was scheduled, had expressly not given any reason why he should not have taken part.
171. The Claimant has therefore also failed to identify any provision, criterion or practice which might in fact have placed him as a putatively disabled person at any substantial disadvantage.
172. We find that Rachel Budgen was an entirely honest witness. She was dealing with an extraordinary situation, where she had never previously had to hold an investigative meeting into an allegation that there had been a breakdown of trust and confidence, without there necessarily also being a specific charge of misconduct. She accepts that the meeting may have been better handled, but faced with the Claimant's evident wish to control the agenda as if it were in fact a disciplinary investigation and therefore to re-run his arguments on the allegations

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in the already exhausted grievance hearings, her decision simply to concentrate on the presentation of the investigatory findings to date and postpone any substantive challenge by the Claimant to a further hearing was perfectly understandable and proper. We find that the Claimant was given all proper opportunity to understand and to engage with the substance matter of the investigation as then fully communicated to him , which was the volume of the “impact statements” taken from his colleagues.

173. We accept that Ms Budgen had not inappropriately predetermined the outcome, but that she realistically could envisage no alternative given the substance of what she describes as her “250 page investigation”. She was not herself actually determining the ultimate issue. She was an experienced and independent manager who we are satisfied, notwithstanding the fact that she had not previously been involved in proceedings of this precise nature, succeeded in negotiating a difficult situation with reasonable fairness. The threshold for determining that there was a case to answer at a meeting to consider possible dismissal is not particularly high, and it was clearly met in this case. That is the context in which an invitation letter in the name of the designated potential hearing manager had already been pre-drafted to be given to the Claimant, if in fact appropriate, at the end of the investigation. The continuation of suspension, pending a further hearing, was in the circumstances still entirely appropriate.
174. The management of the investigation meeting, by Rachel Holmes as the single point of HR contact, and by Rachel Budgen as an appropriately designated manager, had nothing to do with the fact that the Claimant had done a protected act, nor with his race, nor was it because of his alleged disability, but were because of the impact he had had and was having on his colleagues and which raised a clear inference that the relationship between him and the Respondent had therefore broken down.

Performance Review

48.1 Was the claimant racially discriminated against by being given a ‘miss’ performance review whilst being forced to isolate when other none Asian colleagues such as Niomi Hurst who were also isolating were given ‘met’ performance reviews?

48.2 Was the claimant discriminated due to his disability when he was given a ‘miss’ performance review grading as a result of the Respondent failing to make reasonable adjustments as outlined the occupational health reports and stress risk assessments?

48.3-7 Was the claimant victimised by Clare Findley in relation to his annual performance review for the following reasons;

- Sending the claimants performance grading having not conducted his annual review
- Failing to set clear objectives
- Grading the claimant as a ‘miss’ performing manager having not given him any prior notice or given him the opportunity to improve
- Failing to provide any rationale for her decision to grade the claimant as a ‘miss’
- Grading the claimant as a ‘miss’ as a result of him making complaints of discrimination against her and others

175. Although the Claimant had been absent for a substantial part of the assessment year, including periods where he was self-isolating, we accept Clare Findley’s evidence that she nonetheless considered that there was a sufficient time actually

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spent at work over which she could properly assess the Claimant's performance. Had there not in fact been anything to review a default grading of "met" would have been awarded, which appears to have been what happened in the case of Ms Hirst. An annual review meeting with the Claimant was not, however, practicable, because of their respective absences from the store.

176. It is also, of course, the case that whilst self-isolating the Claimant, who was doing no other work at this time, might have sought proactively to catch up on any missed training, which he had not done. Ms Findlay herself had experience of her having reminded the Claimant of the need to keep up with training in November 2020 (when she had advised him of the need to set up a suitable rota, because had said he was having difficulty in sharing access to the family computer) and again on three occasions in January and February 2021, to all of which she had received no response. In contrast Ms Hirst was assessed as still having proactively engaged with her team whilst self-isolating throughout her pregnancy.
177. We accept that Ms Findlay had a perfectly valid rationale for her grading of the Claimant as a "miss" on this occasion, and that it had nothing whatsoever to do with his race or his having done any protected act.
178. Nor was the grading awarded because of the Claimant's alleged disability, his anxiety, or because there had been any failure to make any relevant adjustments, either to the assessment process, or to his working arrangements such that his performance might have been better at the material times.

Formal Grievance

49.1-2 Was the Claimant victimised (protected act being grievance of 8th June 2021) or harassed (race) in doing the following:

- a. Dealing with the grievance of 8th June 2021 at the formal hearing;
- b. Failing to investigate the grievance of 8th June 2021 at all.

179. This admitted protected act (see paragraph 14) was a grievance alleging that the disciplinary type proceedings alleging a breakdown in trust and confidence were an act of discrimination or victimisation.
180. These allegations were properly addressed in the course of that disciplinary process itself, and they could not in fact have been dealt with separately as the two matters were so intrinsically interconnected.
181. The decision to deal with the new grievance in this way had nothing whatsoever to do with the Claimant's race or with his having done this, nor indeed the earlier, protected act.

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Rachel Budgen

50.1 Was the claimant victimised and or harassed by Rachel Budgen when she took impact statements from senior management which had no relevance to the matters relating to the disciplinary action being taken against the claimant?

50.2 Was the claimant victimised and or harassed by Rachel Budgen when she failed to notify the claimant that a serious investigation had been launched against him in February 2021?

182. Whilst the original disciplinary proceedings arising from the collective grievance against the Claimant were on hold (which they were pending the final decision on the second appeal against Cara Wilson's decision that there was a case to answer), Rachel Holmes was aware of new matters which indicated that the Claimant's interactions with and his effect upon his colleagues was such that there had in fact been a breakdown in trust and confidence.
183. Rachel Budgen, who as we have said was an experienced and independent manager, was therefore commissioned by Mrs Holmes to carry out a thorough review of the situation at Bradford Peel in relation to the Claimant.
184. That initial inquiry commenced with those who had brought the collective grievance, but expanded to include others who had past or present experience of relevant dealings with the Claimant, and whose names were brought to Rachel Budgen's attention.
185. Given the nature and context of the investigation there was no requirement that it be necessarily limited in time. Nor was it required that the Claimant, who was absent at the time, be informed in advance of this enquiry.
186. The conduct of Ms Budgen's investigation had nothing to do with the Claimant's race.
187. We also accept that her focus was upon the impact upon colleagues, and that she would have identified the same concerns had the Claimant's allegations not amounted to the doing of a protected act, or indeed referred to "discrimination" at all, but had otherwise had the same actual effect upon people. The manner of her inquiry is not therefore an act of victimisation, even where it relates to the impact upon those accused of discrimination in the "Ryan Billington grievance". Many of the relevant statements taken had of course no direct connection to the collective grievance, and it is not apparent how they might therefore be said to have been because of the doing of the protected act which had been the context of that grievance.

Rachel Saliba

Did the Respondent act reasonably in offering the Claimant an adjournment on 28 May 2021 for the reasons specified in the Claimant's request?*

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Did Rachel Saliba remain impartial throughout when she was the chair for the formal hearing? Did Rachel Saliba prejudge the outcome of the investigation meeting and/or formal hearing as alleged?*

Was it reasonable and appropriate for Rachel to hear the Claimant's grievance dated 8 June 2021 at the scheduled formal hearing?*

Did Rachel Saliba harass the Claimant by requiring the Claimant to attend a formal hearing?

Did the Respondent act reasonably in further postponing the formal hearing on 11 June 2021 due to the Claimant having to self-isolate?*

Did the Claimant act unreasonably in his repeated refusal to attend the formal hearing?

Did the Respondent act reasonably in postponing the formal hearing on multiple occasions to provide the Claimant with an opportunity to attend the formal hearing?*

Did Rachel Saliba harass, victimise, or threaten the Claimant by way of her correspondence requiring the Claimant to attend the formal hearing?

Disability Discrimination

51.1 Was the claimant directly discriminated due to his disability by Rachel Saliba when she refused to adjourn the disciplinary hearing against the claimant which was scheduled to take place on 21 June 2021 when she was notified the claimant was medically unfit to attend?

1. Would the claimant have been treated differently to a hypothetical comparator?

51.2 Did Rachel Saliba discriminate against the claimant due to his disability by failing to make reasonable adjustments to allow the claimant to attend a disciplinary hearing, by arranging the hearing to take place on 24 June 2021 even though she was aware the claimant was medically unfit to attend?

Victimisation / Harassment

51.3 Was the claimant victimised and or harassed by Rachel Saliba when she formally invited the claimant to a disciplinary hearing before the investigation meeting was conducted? (Due to the claimant having raised complaints in relation to protected acts)

51.4 Was the claimant victimised and or harassed by Rachel Saliba when she refused to remove herself as the chair of the claimants disciplinary hearing after he had submitted a grievance against her?

51.5 Was the claimant victimised and or harassed by Rachel Saliba when she refused to postpone the claimants disciplinary hearing in accordance with the respondent's disciplinary policy when he notified her that he was medically unfit to attend the hearing?

51.6 Was the claimant victimised and or harassed by Rachel Saliba when she sent repeated email correspondences to the claimant in breach of the respondent's disciplinary policy, after the claimant had notified her that he was medical unfit to attend work and that he wished not to have further contact with her?

51.7 Was the claimant victimised and or harassed by Rachel Saliba when she rescheduled the disciplinary hearing to take place on 24 June 2021 even though she was notified the claimant would not be able to attend as he was medically unfit?

Rachel Holmes

Victimisation/ Harassment

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52 Was the claimant victimised and or harassed by Rachel Holmes when she refused to remove Rachel Saliba as the disciplinary manager for the claimants hearing even though the claimant had submitted a grievance against her?

188. Rachel Saliba was properly nominated as an appropriate manager to hear the disciplinary type formal meeting. That is why her electronic signature was affixed to the invitation letter given to the Claimant by Rachel Budgen, once she had in fact determined that there was a case to answer. Although it might have been more clearly expressed as to how this letter had come to be drafted, the Claimant was told that it was not in fact Rachel Saliba's letter and did not, therefore demonstrate any inappropriate predetermination of the issues by her. There was no good reason for Ms Saliba to step down as the hearing manager at this stage, because all the Claimant's concerns as to procedure (he was also asserting that he was not contractually bound to attend a "formal" meeting as opposed to a "disciplinary meeting") could and should have been addressed at the hearing itself, and he was informed of this.
189. The hearing was initially postponed from 28th May to accommodate the Claimant's trade union representative. The hearing rearranged for 12th June 2021 was then again rescheduled on 11th June to 21st June, after the date when the Claimant then notified that he was required to self-isolate until. On 20th June the Claimant asserted that he was too unwell to attend due to his mental health issues, but he was not certified as unfit by his GP.
190. In actual fact we are satisfied that the Claimant would have been fit to attend had he in fact prioritised this meeting over the preparation of his latest Tribunal claim. The 81 paragraph grounds of complain are dated 20th June 2021, and the claim (1803307/2021) was submitted on 21st June 2021.
191. Rachel Salliba did not immediately postpone the hearing for 21st June 2021, simply upon the Claimant's assertion that he could not attend. During the course of the morning of 21st June, Ms Saliba did then contact the Claimant on four occasions, Firstly at 9.03 am she reminded him that he hearing was scheduled to take place at 9.00am ,that he was required to and should make every effort to attend, and that if he did not it would take place in his absence. At 10.30am she emailed again to repeat the invitation to the Claimant to attend to put his case forward in detail. At 10.46 am she further requested the Claimant's contact telephone number so that she could speak to him. Finally at 11.30 am she repeated that she was "reaching out to" the Claimant and encouraged him again to attend so that he could put his case forward.
192. The meeting did not in fact go ahead in the Claimant's absence, but at 4.41pm was further postponed to 24th June 2021. At 6 .03pm the Claimant then complained that Ms Saliba was harassing and threatening him. Ms Saliba then stood down.

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193. The arrangements for and the conduct of the postponement of the formal meeting were not carried out as they were because of or related to the Claimant's race, or because he had done a protected act, or because of his alleged disability. We are satisfied that the reason for matters being conducted in this manner was appropriately to facilitate an expeditious hearing with the Claimant being able to present his case.

Lewis King

Did the Respondent act reasonably in appointing Lewis King as the Formal Hearing manager following the Claimant's correspondence with Rachel Saliba.

Did Lewis King act reasonably in the manner in which he considered the Claimant's fit note and fitness to attend a formal hearing? Specifically, did Lewis King act unreasonably in finding that the Claimant was fit to attend a formal hearing?

Did Lewis King offer the Claimant reasonable adjustments in an effort to assist the Claimant to attend the formal hearing? If so, what were those reasonable adjustments?

Did Lewis King act reasonably in taking the decision to dismiss the Claimant and did the Claimant's dismissal fall within the band of reasonable responses?*

Did Lewis King act reasonably in addressing the Claimant's grievance dated 8 June 2021 as part of the formal hearing outcome?

Disability Discrimination

53.1 Was the claimant discriminated due to his disability when Lewis King minimised the claimant's mental health issues in a letter dated 24 June 2021?

Was the claimant treated less favourably to Ben Goss, Neal Killoran and Lee Shannon?

53.2 Was the claimant discriminated due to his disability by Lewis King when he refused to make a reasonable adjustment which was to refer the claimant to occupation health in relation to the claimant's inability to attend the disciplinary hearing in accordance with the respondent's disciplinary policy?

53.3 Was the claimant discriminated due to his disability by Lewis King when he refused to make reasonable adjustments for the claimant by postponing the disciplinary hearing scheduled for 28 June 2021?

53.4 Was the claimant discriminated against due to his disability by Lewis King when he conducted the claimant's disciplinary hearing in his absence even though he was aware the claimant was medically unfit to attend?

Victimisation/ Harassment

53.5 Was the claimant victimised and or harassed by Lewis King when he refused to refer the claimant to occupation health in accordance with the respondent's disciplinary policy?

53.6 Was the claimant victimised and or harassed by Lewis King when he conducted the claimant's disciplinary hearing in his absence even though he was aware that the claimant was medically unfit to attend, in breach of the respondent's disciplinary policy?

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53.7 Was the claimant victimised and or harassed by Lewis King when he used the claimants protected grievance lodged on 8 June 2021 as evidence to dismiss him even though the claimant was given assurances that he would not be subjected to any detriment for submitting the protected grievance?

53.8 Was the claimant victimised and or harassed by Lewis King when he used the claimant's grievances from 2019 onwards, which are protected under the Equalities Act 2010 as the basis for dismissing him?

53.9 Was the claimant victimised and or harassed by Lewis King when he refused to accept the claimants 'fit note' dated 25 June 2021 which stated that the claimant was unfit to attend the disciplinary hearing?

53.10 Was the claimant victimised and or harassed by Lewis King when he forced the claimant to get an amended 'fit note' stating he was unable to attend meeting even though he had no intention of postponing the hearing?

Was the claimant victimised and or harassed by Lewis King when he minimised the claimant's mental health issues in a letter dated 24 June 2021?

Was the claimant victimised and or harassed by Lewis King when he was dismissed as a result of carrying out a protected act in accordance with the Equalities Act 2010, specifically alleging discrimination?

53.11 Was the claimant victimised and or harassed by Lewis King when he failed to undertake a reasonable investigation into the claimant's grievance lodged on 8 June 2021?

53.12 Was the claimant victimised and or harassed by Lewis King when he failed to undertake a reasonable and fair investigation in relation to the claimant's dismissal?

194. Lewis King was appointed in place of Ms Saliba. The hearing for 24th June 2021 was again postponed to 28th June 2021. In his letter to the Claimant dated 24th June 2021 Mr King set out fully the scope of the meeting, including dealing with the Claimant's concerns raised about the process and about Ms Saliba's involvement in particular. It discussed possible adjustments. Mr King also pointed out that as there was no doctor's fit note, but only self-certification, a referral to OH was not in fact required to be considered at that stage,. He also observed that in any event as it was understood that by ensuring that Ms Saliba would have no further involvement contact the primary identified cause of stress and anxiety and depression had been removed, such a referral was also not indicated as appropriate on the facts.
195. That specific reference to the Claimant's anxiety about the process was not, in context, a minimising of his mental health condition, and cannot reasonably be interpreted as any detriment to the Claimant.
196. When the Claimant did subsequently obtain a doctor's fit note dated 26th June 2021, stating he was unfit for work, Mr King observed that it did not expressly declare him to be unfit to attend a formal hearing.

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197. The Claimant did then obtain confirmation from his doctor that the statement of unfitness was intended to encompass work-related meetings also, and this text message was copied to Mr King at 2.18pm, shortly after the meeting had in fact commenced in the Claimant's absence at 2.00pm. Mr King was certainly aware of that clarification when he proceeded to issue a written decision dated 2nd July 2021, having delayed until 1st July 2021 to allow for any written submissions.
198. The Claimant was dismissed by Mr King for the reasons clearly set out in his letter of 2nd July 2021 and the accompanying report. That is because there had been a breakdown in the relationship of trust and confidence, not because of the Claimant's race, nor because he had done a protected act, nor because of his alleged disability.
199. Nor were the decisions taken by Mr King as to how he should conduct these proceedings in any way influenced by the Claimant's race, nor because he had done a protected act, nor because of his alleged disability. Nor was the conduct of proceedings in this one instance the application of any general provision, criterion or practice which would have disadvantaged the Claimant in comparison to a non-disabled person had he in fact been disabled. The Claimant was in the same position as would have been any person, who after numerous postponements and who had been reluctant to engage fully with the process up to that point (for whatever reason) was refused a further adjournment on medical grounds

Witness Statements

Was the Respondent entitled to consider the 15 witness statements that were provided during the investigation?

Was it reasonable for Lewis King to have considered the witness statements as part of his findings in respect of the allegations against the Claimant?

Was it reasonable for witness evidence to have been provided by Sarita Pasha, Carl Foster, Justine George and Aaron Carr?

Was the Respondent reasonable in considering the witness statements to have been provided honestly by all of the witnesses?

Race Discrimination

54.2 Was the claimant racially discriminated by Sarita Pasha when she made the remark in her witness impact statement 'don't play the race card'?

- a) Would the claimant have been treated differently to a hypothetical comparator?

54.3 Was the claimant racially discriminated by Sarita Pasha when she made the remarks in her witness statement that the claimant did not have issues with his manager as they were from the same culture?

- a. Would the claimant have been treated differently to a hypothetical comparator?

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Victimisation

54.4 Was the claimant victimised and or harassed by Carl Foster, Sarita Pasha, Justin George, Aaron Carr, Verity Garside, Clare Findlay, Nina Tomlinson, Cara Wilson, Neal Killoran, Ben Goss, Jason Chester, Ron Smith, Lee Shannon and Darren Bowey when they made false, malicious and misleading impact statements against the claimant as a result of the claimant having raised protected grievances?

200. These allegations are only now pursued as claims of victimisation, and no longer against Aaron Carr or Darren Bowey.
201. It was perfectly proper for all these statements to have been taken into account in considering whether there had been a breakdown in trust and confidence sufficient to constitute some other substantial reason justifying dismissal in all the circumstances. Although the Claimant's doing of a protected act was part of the background circumstances but for which the collective grievance would never have been raised, and which then served to identify the first tranche of potential witnesses to be interviewed by Rachel Budgen, it was, we accept from the evidence of the Respondent's witnesses, not the reason why the impact statements were then made. At least three of the people interviewed were in fact wholly unaware of the substance of the "Ryan Billington grievance". None of the statements were, as alleged, malicious or misleading, but were a genuine reflection of the perceived effect of the Claimant's conduct and behaviours upon his colleagues.
202. The evidence of Sarita Pasha, we find, is to be preferred over that of the Claimant when she says that the conversation in 2015 when she told the Claimant "not to play the race card" did take place. She has no reason to make this up. Her recollection of this event in her impact statement is therefore simple recounting of the fact of something that had happened, and which had not been objected to at the time. Its inclusion in her statement does not amount to any detriment to the Claimant.
203. Similarly her observation that the Claimant and Mr Parvez are from the same cultural background is an uncontroversial statement. It does not amount to any detriment to the Claimant, and was not in fact treated by Mr King as significant: where he does set store on observations of Ms Pasha it is not in respect of any comments which even potentially have anything to do with the Claimant's race. Ms Pasha is, of course, herself Asian.

Unfair dismissal

Unfair Dismissal

56. Was the dismissal for a fair reason?

Did the respondent follow a fair procedure?

Did the respondent act reasonably in treating the reason as a sufficient reason for dismissal?

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Did the respondent's decision to dismiss the claimant fall within the range of reasonable responses that a reasonable employer in those circumstances would have adopted?

204. Under section 98 of the Employment Rights Act 1996 it is for the Respondent employer to show what was the reason for dismissal. We are quite satisfied that it has demonstrated that this was that the relationship of mutual trust and confidence between it and the Claimant, had irreparably broken down. That is under section 98 (1) (b) a potentially fair reason for dismissal ("some other substantial reason").
205. We are alive to the distinction, as was the Respondent, between ascribing blame for that breakdown and therefore considering the conduct of the Claimant, and addressing the existing state of affairs. However they had got there the Respondent was entitled to, and did conclude that the end result was that the relationship of trust between the Claimant and his colleagues had indeed been so eroded that it could not be allowed to continue.
206. Given the history of the Claimant's repeated grievances, at the time of Mr King's report these numbered on his count 11 since November 2019, and the disciplinary process itself had then generated two further grievances against Ms Holmes and Ms Saliba, there was clear evidence of a substantial level of mistrust on the part of the Claimant. He had repeatedly and routinely made allegations not only of discrimination, harassment, and victimisation (whether properly identifiable as complaints under the Equality Act or not) but also of bias, malice, dishonesty, intimidation and fabrication of evidence as well as breach of contract. These accusations were not only made against his immediate managers, but also against the independent managers and appeal managers who were brought in from elsewhere to investigate his complaints.
207. The effects of this environment upon the other people immediately involved is fully documented in the impact statements taken, and set in a wider context of previous interactions. This included significant detrimental consequences for the mental health of a number of people, as well as requiring a disproportionate amount of management time to deal with the issues surrounding the Claimant.
208. In all the circumstances, and reminding ourselves that we must not substitute our own view for that of reasonable employer, we are satisfied that the decision to dismiss fell squarely within the band of reasonable responses. The Respondent could not reasonably have been expected to allow this situation to continue, and dismissal as opposed to any other sanction was clearly by this stage an available option.
209. Procedurally, the ACAS code of practice does not apply and nor is the internal disciplinary policy directly relevant. We are satisfied however that the procedure was substantively fair in affording the Claimant full opportunity to understand the basis of the assertion that trust and confidence had broken down and the evidence for it.

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210. The only failing is that the hearing was not adjourned in the light of a current doctor's note where there was no clear evidence that the Claimant was "pulling the wool over his own doctor's eyes", so depriving him of the opportunity to put his side of the matter in person at that stage. This was, however, fully rectified by allowing the Claimant to appeal, which he did by submitting a 34 page grounds of appeal in writing and then attending a full day's hearing before Kate Forth

Time limits

211. Although it is highly artificial to consider the effect of time limits (section 123 Equality Act 2010) in circumstances where we have held there to have been no actual discrimination, we do consider that once the first two claims had been presented (13th January 2020 and 13th May 2020) there is no good reason why those acts in subsequent claims which are outside the relevant 3 month limit applicable to those later proceedings themselves should not have been brought in time. Once the process of bringing tribunal proceedings in claim 1 (for alleged conduct extending over a period ending on 30th November 2019) had commenced and the subsequent allegations in claim 2 had also then all been brought in time, there is no explanation as to why further allegations, as and when they occurred, should not have been added before the expiry of 3 months from when they happened.
212. That would mean that it would not be just and equitable to extend time to allow the following allegations to proceed: 29.1 to 29.3; 36.1 to 36.6; 38.2 and 38.3; 39.1 to 39.6; 49.1 and 49.2; 50.1. and 50.2; 54.2 and 54.3 and 53.4

Philip Lancaster

EMPLOYMENT JUDGE LANCASTER

DATE 29th June 2022

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Appendix

The issues to be determined by the Tribunal at the substantive hearing are:

* if in doubt any allegation of harassment is on the ground of race

Claim 1 (Determined at First Preliminary Hearing) 1800205/2020		
NUMBER	ESTIMATED DATE	ALLEGATION
1	August 2017	<p>Additional Workload Health and Beauty</p> <p>1.1. Was the claimant directly racially discriminated from 18th August 2017 when he was given additional workload by Neal Kiloran (senior manager) and Ben Goss (senior manager)?</p> <p>1.2. Was the claimant treated less favourably than the comparator Carol Stoyles (Night team manager) who had her workload reduced and transferred to the claimant?</p> <p>1.3. Was the claimant harassed by Neal Kiloran and Ben Goss when he was given additional workload which belonged to his fellow manager Carol Stoyles from 18th August 2017 when there was no business case to do so?</p> <p>1.4. Was the claimant victimised by Ron Smith (store manager) when he submitted an informal complaint on the 23rd August 2017 which was not resolved due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016?</p>
2	August 2017 and April 2018	<p>Nigel Green Discrimination</p> <p>2.1. Was the claimant directly racially discriminated by Nigel Green (senior manager) between August 2017 and April 2018 as outlines in the ET1 — schedule of less favourable treatment?</p> <p>2.2. Was the claimant treated less favourably than the comparator Carol Stoyles?</p> <p>2.3. Was the claimant harassed by Nigel Green as a result of the acts listed in the ET1?</p>
3	March 2018	<p>Nigel Green Complaint</p> <p>3.1 Was the claimant directly racially discriminated by Ron Smith when he submitted a formal complaint against Nigel Green for discrimination on 7th March 2018 which was not investigated?</p> <p>3.2. Was the claimant treated less favourably than the comparator Gareth Brook whose complaint for discrimination against the claimant was investigated?</p>

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		<p>3.3. Was the claimant victimised by Ron Smith when he submitted a formal complaint against Nigel Green for discrimination on 7th March 2018 which was not investigated, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and a racial discrimination complaint on 23rd August 2017?</p> <p>3.4. Was the claimant harassed by Ron Smith by him allowing the discrimination to continue after he was notified on 7th March 2018?</p>
4	MARCH 2018	<p>NIGEL GREEN GRIEVANCE</p> <p>4.1. Was the claimant directly racially discriminated by Ron Smith when he submitted a formal grievance against Nigel Green on 22nd March 2018 which was not investigated?</p> <p>4.2. Was the claimant directly racially discriminated by Ben Goss when he was called to an unannounced meeting on 27th March 2018 in which the claimant was offered no representation in line with Tesco policy?</p> <p>4.3. Was the claimant treated less favourably than the comparator Gareth Brook whose complaint for discrimination against the claimant was investigated?</p> <p>4.4. Was the claimant victimised by Ron Smith when he failed to investigate the grievance against Nigel Green which was submitted on the 22nd March 2018, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017 and on 7th March 2018?</p> <p>4.5. Was the claimant victimised by Ron Smith when he refused to allow the grievance against Nigel Green be investigated out of the store as stipulated in the grievance dated 22nd March 2018, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017 and on 7th March 2018?</p> <p>4.6. Was the claimant victimised by Ben Goss as a result of a complaint made against him on the 23rd August 2017, in that he did not follow Tesco grievance policy when he called the claimant to a meeting on 27th March 2018, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017 and on 7th March 2018?</p> <p>4.7. Was the claimant harassed by Ron Smith by him allowing the discrimination to continue after he was notified officially on 2 occasions (7th March 2018 & 22nd March 2018)?</p> <p>4.8. Was the claimant harassed by Ben Goss by him allowing the discrimination as outlined in the complaint dated the 22nd March 2018 to continue and taking no steps to investigate the grievance?</p>
5	Not Specified	<p>TroubleCauser</p> <p>5.1. Was the claimant directly racially discriminated by Ron Smith, Ben Goss and Neal Kiloran by being labelled a trouble causer?</p>

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		<p>5.2. Was the claimant treated less favourably than the comparators, Dave Wilby, Justin George, Ron Smith and Ben Goss when using the management teams whatsapp?</p> <p>5.3. Was the claimant harassed by being labelled a problem by Ben Goss, Neal Kiloran and Ron Smith?</p> <p>5.4. Was the claimant victimised by being labelled a problem by Ben Goss, Neal Kiloran and Ron Smith, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
6	June 2018 and May 2019	<p>Shoplifter Assault</p> <p>6.1. Was the claimant directly racially discriminated by Ron Smith when he was not provided company issued training to handle personal safety in the workplace which resulted in him being assaulted in June 2018, 25th May 2019 & 31st May 2019?</p> <p>6.2. Was the claimant treated less favourably than the comparator Dave Wilby in that he was not provided personal safety training?</p> <p>6.3. Was the claimant harassed by Ron Smith when he failed to provide personal safety training after the assault in June 2018 even though Tesco's incident reporting system give a next step for the claimant to be trained, which led to the claimant being assaulted on 2 further occasions in May 2019, all of which were preventable if the training had been provided?</p> <p>6.4. Was the claimant victimised by Ron Smith when he failed to provide personal safety training after being given a next step by 'incident reporting' to ensure my training was completed, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
7	July 2018	<p>12 Weeks Training</p> <p>7.1. Was the claimant directly racially discriminated by Neal Kiloran on 25th July 2018 when he was pressurised to sign off 12 weeks' worth of managerial training which the claimant had not completed?</p> <p>7.2. Was the claimant treated less favourably to his comparator Dave Wilby who was given the time to complete his training correctly and was not pressurised into falsifying training records?</p> <p>7.3. Was the claimant harassed by Neal Kiloran by pressurising him to sign off training that had not been completed?</p> <p>7.4. Was the claimant victimised by Neal Kiloran by pressurising him to sign off training which he had not completed due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>

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8	July 2018	<p>Grocery Manager Job</p> <p>8.1. Was the claimant victimised by Ron Smith when he was refused a salary increase when he took the position of grocery day manager in July 2018, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p> <p>8.2. Was the claimant treated less favourably to his comparators Hav Younis and Farrah Ishlaq when he requested a salary increase?</p> <p>8.3. Was the claimant harassed by Ron Smith when he was refused a salary increase even though Tesco policy permitted it?</p>
9	August 2018 - onwards	<p>Grocery Department Overtime Ban</p> <p>9.1. Was the claimant directly racially discriminated by Ron Smith and Neal Kiloran when the Grocery day department was given no overtime as soon as the claimant became the manager of said department in August 2018 even though the overtime was provided by Tesco head office?</p> <p>9.2. Was the claimant treated less favourably to his comparator Niomi Hurst, Simon Jackson and Nigel Green, in that these managers obtained overtime on a weekly basis but the claimant was declined?</p> <p>9.3. Was the claimant harassed by Ron Smith and Neal Kiloran by not being given overtime for his grocery department as stipulated by Tesco head office, whereas every other department was?</p> <p>9.4. Was the claimant victimised by Ron Smith and Neal Kiloran by them not giving the grocery department overtime as stipulated by Tesco head office, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
10	January 2019 - onwards	<p>Colleagues Removed from Department</p> <p>10.1. Was the claimant directly racially discriminated by Ron Smith and Neal Kiloran from the 2nd January 2019 by them removing 82 hours from the grocery department and transferring the colleagues on to other over staffed departments?</p> <p>10.2. Was the claimant treated less favourably to his comparator Carol Stoyles and Kevin Winters whose departments were significantly over manned but did not have colleagues taken from them?</p> <p>10.3. Was the claimant harassed by Ron Smith and Neal Kiloran by having his department under resourced by 82 hours?</p> <p>10.4. Was the claimant victimised by Ron Smith and Neal Kiloran by deliberately under resourcing the department due to the claimant carrying out a protected act in that he</p>

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		raised a sexual discrimination allegation on 17 th March 2016 and racial discrimination complaints on 23 rd August 2017, 7 th March 2018 and 22 nd March 2018?
11	January 2019 - onwards	<p>Katie Lodge</p> <p>11.1 Was the claimant directly racially discriminated by Ron Smith and Neal Kiloran when they forced him to remove Katie Lodge from his department, even though there was no business case to do so?</p> <p>11.2. Was the claimant treated less favourably to his comparator Jordan Parnell who was not made to move his colleagues even though there was a business case to do so?</p> <p>11.3. Was the claimant harassed by Ron Smith and Neal Kiloran by being forced to remove Katie Lodge off his department when there was no business case to do so?</p> <p>11.4. Was the claimant victimised by Ron Smith and Neal Kiloran by being forced to remove Katie Lodge off his department without a business case, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
12	March 2019 - onwards	<p>Recruitment</p> <p>12.1. Was the claimant directly racially discriminated when Ron Smith refused to allow him to recruit even though Tesco head office had confirmed he was under resourced by 119.5 hours in March 2019 even though other departments were allowed to recruit?</p> <p>12.2. Was the claimant treated less favourably to his comparators Matt Riley, Dave Wilby and Simon Jackson who were allowed to recruit colleagues in March 2019?</p> <p>12.3. Was the claimant harassed by Ron Smith by being under resourced by 119.5 hours whereas all other departments were either resourced correctly or over resourced?</p> <p>12.4. Was the claimant victimised by Ron Smith by being under resourced by 119.5 hours due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
13	March 2019	<p>Bereavement</p> <p>13.1. Was the claimant directly racially discriminated by Ron Smith in March 2019 when his request for compassionate paid leave after the death of his grandfather's brother was declined?</p> <p>13.2. Was the claimant treated less favourably to his comparators Jade Barron and Rachel Coupe, who received compassionate paid leave in similar circumstances?</p> <p>13.3. Was the claimant victimised by Ron Smith by not providing compassionate paid leave, due to the claimant carrying out a protected act in that he raised a sexual discrimination</p>

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		allegation on 17 th March 2016 and racial discrimination complaints on 23 rd August 2017, 7 th March 2018 and 22 nd March 2018?
14	March 2019	<p>Performance Grade</p> <p>14.1. Was the claimant directly racially discriminated by Ron Smith when his annual performance grading was sent off to head office on 28th March 2019 as a 'miss' performer even though Ron was fully aware that the claimant had not done his annual review at that time?</p> <p>14.2. Was the claimant treated less favourably to his comparators Dave Wilby and Niomi Hurst who had their annual reviews and were graded correctly?</p> <p>14.3. Was the claimant harassed by Ron Smith by having his performance grading sent off as a 'miss' to reduce the claimants annual pay increase?</p> <p>14.4. Was the claimant victimised by Ron Smith by having his performance graded as a 'miss' due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
15	April 2019	<p>Personal Overtime Ban</p> <p>15.1. Was the claimant directly racially discriminated by Lee Shannon (senior manager) and Neal Kiloran when he was given a personal overtime ban in breach of Tesco policy on the 13th April 2019?</p> <p>15.2. Was the claimant treated less favourably to his comparators Simon Jackson, Jordan Parnell and Carl Donegan, who were not given an overtime ban in similar circumstances?</p> <p>15.3. Was the claimant harassed by Lee Shannon and Neal Kiloran by being given an overtime ban, in full knowledge of the claimant's financial hardships?</p> <p>15.4. Was the claimant victimised by Neal Kiloran and Lee Shannon by being given an overtime ban, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
16	April 2019	<p>Forced Reduced Hours</p> <p>16.1. Was the claimant directly racially discriminated by Lee Shannon when he was forced to reduce his hours of work from 5 days to 3 on the 13th April 2019?</p> <p>16.2. Was the claimant treated less favourably to his comparators Simon Jackson, Jordan Parnell and Matt Riley, Joe Deeks and Carl Donegan, all of whom were not made to reduce their hours in similar circumstances?</p> <p>16.3. Was the claimant harassed by being forced to reduce his hours of work?</p>

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17	May 2019	<p>Annual Review</p> <p>17.1. Was the claimant directly racially discriminated by Ron Smith in May 2019, by being forced to do his annual performance review with Ben Goss who was not his direct manager and had not been working in the store for the totally of the review period?</p> <p>17.2. Was the claimant treated less favourably to his comparators Dave Wilby, Simon Jackson and Niomi Hurst who all received annual reviews from their direct managers as per Tesco policy?</p> <p>17.3. Was the claimant directly racially discriminated by Ben Goss when he refused to complete the claimants annual review in line with Tesco policy?</p> <p>17.4. Was the claimant harassed by Ben Goss when he refused to complete the claimants review in May 2019 and failed to provide any objectives and guidance for the claimant?</p> <p>17.5. Was the claimant victimised by Ron Smith by forcing him to conduct his annual review with Ben Goss who the claimant had previously lodged a complaint about and was not the claimant's direct manager. due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p> <p>17.6. Was the claimant victimised by Ben Goss by his refusal to complete the claimants annual review in line with Tesco policy and provide him with objectives and guidance, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
18	May 2019	<p>Holiday Request</p> <p>18.1. Was the claimant directly racially discriminated by Neal Kiloran when he was not permitted to book his annual leave on 24th May 2019?</p> <p>18.2. Was the claimant treated less favourably to his comparator Nigel Green who was permitted to book similar annual leave without any issues?</p> <p>18.3. Was the claimant harassed by Neal Kiloran when he was not permitted to book his annual leave?</p> <p>18.4. Was the claimant victimised by Neal Kiloran when he was not permitted to book his annual leave due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
19	June 2019	<p>General Merchandising Manager Job Offer</p>

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		<p>19.1. Was the claimant victimised by Ron Smith when he was refused a salary increase for taking the position of General Merchandising (GM) manager in June 2019, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p> <p>19.2. Was the claimant treated less favourably to his comparator Hav Younis and Farrah Ishlaq in that there were given pay increases in similar circumstances?</p> <p>19.3. Was the claimant harassed by Ron Smith when he was refused a salary increase even though Tesco policy permitted it?</p>
20	June 2019 - onwards	<p>Richard Parsons Replacement Grocery Manager</p> <p>20.1. Was the claimant directly racially discriminated by Ron Smith and Neal Kiloran by them immediately increasing the Grocery departments resources and commencing recruitment as soon as the claimant left the department on 17th June 2019, which was now run by Richard Parsons?</p> <p>20.2. Was the claimant directly racially discriminated by Ron Smith and Neal Kiloran by them immediately returning Katie Lodge back to the grocery department which was now run by Richard Parsons, as soon as the claimant left the department on the 17th June 2019?</p> <p>20.3. Was the claimant harassed by Ron Smith and Neal Kiloran by them immediately increasing the grocery departments resources and commencing recruitment as soon as the claimant left the department?</p> <p>20.4. Was the claimant victimised by Ron Smith and Neal Kiloran by them immediately increasing the grocery departments resources and commencing recruitment as soon as the claimant left the department, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
21	August 2019 - onwards	<p>Non Food Put Backs</p> <p>21.1. Was the claimant directly racially discriminated by Ron Smith, Ben Goss and Neal Kiloran in August 2019 when he was given additional workload which was the non-food putbacks which are the responsibility of the checkout manager as outlined in Tesco policy?</p> <p>21.2. Was the claimant treated less favourably to his comparators Simon Jackson and Richard Parson who were not given this additional task which formally resides with the checkout manager?</p> <p>21.3. Was the claimant harassed by Ron Smith, Ben Goss and Neal Kiloran when he was given additional workload which corporately resides with the checkout manager?</p> <p>21.4. Was the claimant victimised by Ron Smith, Ben Goss and Neal Kiloran when he was given additional workload which corporately resides with the checkout manager, due to the claimant carrying out a protected act in that he raised a sexual discrimination</p>

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		allegation on 17 th March 2016 and racial discrimination complaints on 23 rd August 2017, 7 th March 2018 and 22 nd March 2018?
22	November 2019 - onwards	<p>Planned Operation</p> <p>22.1. Was the claimant directly racially discriminated by Ben Goss in November 2019 when forced to use holidays for a planned operation instead of sick leave as stated in Tesco policy?</p> <p>22.2. Was the claimant harassed by Ben Goss by being made to use annual leave instead of sick leave?</p> <p>22.3. Was the claimant victimised by Ben Goss by being made to use annual leave instead of sick leave, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p> <p>22.4. Was the claimant directly racially discriminated by Neal Kiloran on the 25th November 2019 during a return to work meeting which resulting in the claimant being referred to a disciplinary hearing even though Tesco policy does not permit this course of action?</p> <p>22.5. Was the claimant victimised by Neal Kiloran when he was referred to a disciplinary hearing even though Tesco policy does not permit this course of action, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p> <p>22.6. Was the claimant directly racially discriminated by Ben Goss when he was issued a formal written warning for sickness due to a planned operation on the 30th November 2019, which is not permitted under Tesco policy?</p> <p>22.7. Was the claimant harassed by Ben Goss when he was issued a formal written warning even though Tesco policy does not allow a warning to be issued for planned operations and recovery time?</p> <p>22.8. Was the claimant victimised by Ben Goss when he was issued a formal written warning even though Tesco policy does not permit it, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p> <p>22.9. Was the claimant directly racially discriminated by Ben Goss in November 2019 when he doctored signed documentation to facilitate giving the claimant a formal written warning?</p> <p>22.10. Was the claimant harassed by Ben Goss when he doctored a signed document to facilitate giving the claimant a formal warning?</p> <p>22.11. Was the claimant victimised by Ben Goss when he doctored a signed document to facilitate giving the claimant a formal warning, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>

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		<p>22.12. Was the claimant treated less favourably to his comparators Simon Jackson, Matt Riley, Cecila Huntly, Ange Elwood, Jordan Parnell, Dawn Bampton and Joe Deeks?</p>
23	Date Not Specified	<p>Training</p> <p>23.1. Was the claimant directly racially discriminated by Ron Smith, Ben Goss and Neal Kiloran when they failed to provide the claimant with the training as stipulated by Tesco stores limited to complete his job role?</p> <p>23.2. Was the claimant treated less favourably to his comparator Dave Wilby</p> <p>23.3. Was the claimant harassed by Ron Smith, Ben Goss and Neal Kiloran when they failed to provide the claimant with the training to do his job role even though the claimant made numerous requests?</p> <p>23.4. Was the claimant victimised by Ron Smith, Ben Goss and Neal Kiloran when they failed to provide the claimant with training, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
24	Date Not Specified	<p>Performance Reviews and Career Progression</p> <p>24.1. Was the claimant directly racially discriminated by Ron Smith, Ben Goss and Neal Kiloran when he was not provided his annual performance reviews and career discussion meetings in line with Tesco policy?</p> <p>24.2. Was the claimant treated less favourably than his comparators Dave Wilby and Niomi Hurst?</p> <p>24.3. Was the claimant harassed by Ron Smith, Ben Goss and Neal Kiloran when he was not provided his annual performance reviews and career discussion meetings?</p> <p>24.4. Was the claimant victimised by Ron Smith, Ben Goss and Neal Kiloran when he was not provided his annual performance reviews and career discussion meetings, due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p>
25	Date Not Specified	<p>Salary</p> <p>25.1- Was the claimant victimised by Ron Smith by having his salary progression held back due to the claimant carrying out a protected act in that he raised a sexual discrimination allegation on 17th March 2016 and racial discrimination complaints on 23rd August 2017, 7th March 2018 and 22nd March 2018?</p> <p>25.2. Was the claimant treated less favourably to his comparator Hav Younis?</p>

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Claim 2 – 1802647/2020		
1.	7 November 2019 - ongoing	<p>Grievance</p> <p>26. Following the submission of a grievance on 7 November 2019, was the Claimant victimised by Ben Goss, Neal Kiloran, Lee Shannon and Ron Smith.</p> <p>If so, what were those acts of victimisation? Did the Claimant carry out a protected act? If so, what was the protected act? Was the Claimant subject to a detriment because of that protected act?</p>
2.	February 2020 - onwards	<p>Collective Grievance Against the Claimant</p> <p>27.1 Did Ben Goss, Neal Kiloran, Les Shannon and Ron Smith victimise the Claimant by submitting a collective grievance against the Claimant alleging that the Claimant's grievances for race discrimination were false, malicious and/or baseless?</p> <p>27.2 Were Ben Goss, Neal Kiloran, Les Shannon and Ron Smith entitled to submit a grievance against the Claimant and was that grievance submitted for a reason other than the Claimant's race (i.e. was the reason for submission of the grievance unrelated to the Claimant's race?). If so, why was the collective grievance submitted?</p> <p>27.3 Did Ben Goss, Neal Kiloran, Les Shannon and Ron Smith victimise the Claimant by submitting a collective grievance against the Claimant in retaliation for the claimant having submitted a grievance against them alleging discrimination?</p> <p>27.4 Was the claimant harassed (race) by Neal Kiloran, Ben Goss and Lee Shannon when they submitted a retaliatory collective grievance against him after he submitted a grievance against them in October 2019?</p>
3.	March 2020 – May 2020	<p>Annual Review</p> <p>28.1 Did the Respondent victimise the Claimant in the manner in which the Claimant's annual performance review grading was carried out in May 2020. Specifically, did the Respondent victimise the Claimant by providing the Claimant with a lower grade? Was the Claimant given a genuine and fair grading based upon performance?</p> <p>28.2 Did Ben Goss victimise the claimant by refusing to conduct his annual review and by providing false, malicious and vexatious evidence to downgrade the claimants grading?</p> <p>28.3 Did Ron Smith victimise and or harass (race) the claimant in the manner in which he conducted the claimant's annual performance review, specifically, by pre-determining the claimant's grade, refusal to complete the review document and refusal to discuss the claimant's performance?</p> <p>28.4 Did Ron Smith racially discriminate against the claimant in the manner in which he conducted the claimant's annual performance review, specifically, by pre-determining the claimant's grade, refusal to complete the review document and refusal to discuss the claimant's performance?</p> <p>28.5 Was the claimant treated differently to Niomi Hurst, Dave Wilby, Lee Shannon and Khav Younis?</p>

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Claim 3 1804994/2020		
1.	February 2020 – onwards	<p>Jason Chester</p> <p>29.1 Was the Claimant victimised as a result of the grievance outcome delivered by Jason Chester in which Jason Chester found no evidence of race discrimination?</p> <p>28.2 Was the claimant victimised by Jason Chester when he refused to interview the claimant's witnesses as part of the grievance appeal process in accordance with the respondent's grievance policy, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>29.3 Was the claimant victimised by Jason Chester when he refused to hear new evidence as part of the claimant's grievance appeal in accordance with the respondent's grievance policy, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p>
2.	July 2020	<p>Rachel Holmes</p> <p>30.1 Was the claimant victimised by Rachel Holmes when she imposed a 5-day deadline for the claimant to submit a grievance in breach of the respondent's grievance policy, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>30.2 Was the claimant victimised by Rachel Holmes when she refused to allow the claimant to submit a grievance in accordance with the respondent's grievance policy, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p>
3.	July 2020	<p>Karen Vincent</p> <p>31 Was the claimant victimised by Karen Vincent when she refused to investigate a grievance against Rachel Holmes in accordance with the respondent's grievance policy which was submitted by the claimant, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p>
4.	February 2020 – June 2020	<p>Cara Wilson</p> <p>32.1 Was the Claimant victimised by Cara Wilson as a result of Cara Wilson upholding a collective grievance submitted against the Claimant and referring the Claimant for disciplinary action?</p> <p>32.2 Was the claimant victimised by Cara Wilson when she refused to investigate the claimant's complaints as part of the respondent's grievance policy, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>32.3 Was the claimant victimised by Cara Wilson when she referred the claimant to a disciplinary hearing for gross misconduct for raising a malicious grievance even though she could not provide any evidence of any malicious act, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p>
5.	May 2020 - onwards	<p>Varity Gariside</p> <p>33.1 Was the claimant victimised by Varity Garside when she failed to provide the claimant with details of the specific alleged allegations which formed the basis of the disciplinary hearing for gross misconduct, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p>

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		33.2 Was the claimant victimised by Verity Garside when she failed to provide the claimant with the supporting evidence she intended to use as part of disciplinary the claimant was referred to, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?
6.	April 2020 – August 2020	<p>Darren Bowey</p> <p>Was the Claimant victimised as a result of the manner in which Darren Bowey investigated the Claimant’s grievance against Jason Chester?</p> <p>What were the alleged acts of victimisation committed by Darren Bowey?</p> <p>Did the Respondent apply its grievance policy in a fair and reasonable manner?</p> <p>Did Darren Bowey follow the Respondent’s grievance policy in his management of the Claimant’s grievance?</p> <p>34.1 Was the claimant victimised by Darren Bowey when he failed to follow the respondent’s grievance policy in relation to interviewing witnesses and due to him refusing to ask the witnesses any questions in relation to the points in the claimant’s grievance appeal, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p>
Claim 4 1800911/2021		
1.	April 2018 - onwards	<p>Support Plan and Stress Risk Assessment</p> <p>35.1 Was the Claimant’s support plan stopped in December 2020 and was the Claimant subject to direct discrimination, victimisation and/or harassment as a result of the support plan being stopped (the Claimant compares himself to Peter Webb)?</p> <p>Did the Respondent adhere to the Support Plan at all times?</p> <p>Was the support plan stopped?</p> <p>Can the Respondent demonstrate that the Support Plan remained in place and active at all times?</p> <p>Can the Respondent demonstrate the actions taken to support the Claimant?</p> <p>Was the claimant directly racially discriminated by Clare Findlay, Verity Garside and Rachel Holmes when his support plan was terminated for the month of December 2020 when other none- Asian colleagues were permitted to remain on their support plans throughout that period?</p> <p>2. Was the claimant treated less favourably to his comparator Peter Webb?</p> <p>35.2 Was the claimant victimised by Clare Findlay when she failed to adhere to the support plan agreement, which she put in place with the claimant due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>35.3 Was the claimant victimised by Rachel Holmes and Natasha Adams when they failed to take action to ensure the claimants support plan was being adhered to after they were notified of the issues due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>35.4 Was the claimant victimised by Verity Garside when she attempted to force the claimant to</p>

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		<p>work 2 late shifts per week in breach of his support plan due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>35.5 Was the claimant victimised by Verity Garside and Clare Findlay when his support plan was terminated for the month of December 2020 due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>35.6 Was the claimant victimised by Rachel Holmes when she failed to intervene to stop the claimants support plan being terminated for the month of December 2020 due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>35.7 Was the claimant harassed by Clare Findlay when she knowingly and wilfully failed to adhere to the claimants support plan, knowing the psychological impact this would have on the claimant? (</p> <p>35.8 Was the claimant harassed by Verity Garside when she repeatedly threatened the claimant with disciplinary action for not working 2 late shifts per week even though she was fully aware the claimant was under a support plan?</p> <p>35.9 Was the claimant harassed by Rachel Holmes when she took no action to ensure the claimants support plan was being adhered to, even though she was aware of the psychological impact this was having on the claimant?</p> <p>35.10 Was the claimant harassed by Clare Findlay and Verity Garside when they terminated the claimants support plan for the month of December 2020 knowing the psychological impact this would have on the claimant's health?</p> <p>35.11 Was the claimant harassed by Rachel Holmes when she failed to intervene when the claimants support plan was terminated and when she failed to clarify the respondent's policy in relation to support plans, knowing that the respondent's policy does not permit the termination of support plans for festive periods?</p>
<p>2.</p>	<p>September 2020 - onwards</p>	<p>2 Hour Training Limit</p> <p>36.1 Did the Respondent limit the Claimant's training to 2 hours per week during October – December 2020?</p> <p>Did the Respondent directly discriminate, victimise, or harass the Claimant in limiting the Claimant's training time to 2 hours per working week.</p> <p>Was any such alleged limit to the Claimant's weekly training time imposed because of the Claimant's race?</p> <p>Did the Respondent treat the Claimant consistently with colleagues that did not share the Claimant's protected characteristic?</p> <p>If the Claimant's training time was subject to a 2 hour limit per week, can the Respondent demonstrate a legitimate reason for the limit? Was the limit related to the Respondent's need to manage seasonal (Christmas) demand?</p> <p>Was the claimant directly racially discriminated when a 2-hour limit was imposed on his training when other none-Asian colleagues were permitted to train in excess of 2 hours per week?</p> <p>2. Was the claimant treated less favourably to his comparators, Simon Jackson, Lee Shannon, Peter Webb, James Shimbles and Ben Gross?</p> <p>36.2 Was the claimant victimised by Clare Findlay when she imposed a 2-hour limit on the claimants training per week due to the claimant having carried out a protected act on 22 October</p>

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		<p>2019 when he submitted a grievance for discrimination?</p> <p>36.3 Was the claimant victimised by Rachel Holmes & Nina Tomlinson when they failed to take action to resolve the claimants concerns in relation to the 2-hour limit imposed on him due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>36.4 was the claimant victimised by Natasha Adams, Jaime Reason, Rachel Bushby, Emma Taylor and Ken Murphy when they took no actions to investigate the claimant's grievances raised to them formally on 1 January 2021 due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>36.5 was the claimant harassed by Clare Findlay when she imposed a 2-hour limit on training per week on the claimant, whilst knowing that the claimant was suffering from anxiety and stress linked to a lack of training?</p> <p>36.6 Was the claimant harassed by Rachel Holmes and Nina Tomlinson when they failed to address the claimant's grievances in relation to the 2-hour limit imposed on his training?</p>
3.	December 2020	<p>Training Ban</p> <p>Did the Respondent implement a training ban on the Claimant during the Christmas Shopping period in December 2020?</p> <p>Can the Respondent demonstrate a legitimate reason for implementing the alleged training ban?</p> <p>Did the Respondent subject the Claimant to direct race discrimination, victimisation or harassment as a result of implementing an alleged training ban?</p> <p>Was the claimant directly racially discriminated by Rachel Holmes, Clare Findley and Verity Garside when he was not permitted to carry out any training during December 2020?</p> <p>2. Was the claimant treated less favourably to his comparators, Simon Jackson, Lee Shannon, Ben Gross, Clare Findlay and Carol Stoyles?</p> <p>37.1 Was the claimant victimised by Clare Findlay, Rachel Holmes and Verity Garside when they stopped the claimant from carry out his training for the month of December 2020 in breach of his agreed support plan and stress risk assessment due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>37.2 Was the claimant victimised by Rachel Holmes when she advised the claimant that Tesco does not permit training over the festive period even though there is no such policy due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>37.3 Was the claimant victimised by Rachel Holmes when she deliberately mislead the claimant by stating that Simon Jackson had not conducted any training during the month of December 2020 even though the digital training records show that he did, due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>37.4 Was the claimant harassed by Clare Findlay, Rachel Holmes and Verity Garside when they stopped the claimant from conducting his training for the month of December 2020 in breach of the claimant's support plan and Stress risk assessment and occupational health assessment?</p>
4.	September 2020 -	<p>Ben Goss and Neal Kiloran</p>

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	<p>onwards</p>	<p>38.1 Did Ben Goss and/or the Claimant breach an agreement when the Claimant and Ben Goss came in contact with each in the same room in November 2020.*</p> <p>38.2 Did Neal Kiloran breach an agreement to have no contact with the Claimant by requesting that the Claimant assisted within replenishment tasks in October 2020.*</p> <p>Did Neal Kiloran have a legitimate reason to talk with the Claimant during October 2020?*</p> <p>If these acts did take place, were they because of the Claimant's race? Can the Respondent demonstrate that they were related to a reason other than the Claimant's race?*</p> <p>38.3 Was the claimant victimised by Rachel Holmes and Clare Findlay when they refused to take action when Ben Gross and Neal Killoran continuously breached the respondent's agreement, which was that they would not have any direct contact with the claimant due to the claimant having carried out a protected act on 22 October 2019 when he submitted a grievance for discrimination?</p> <p>38.4 Was the claimant harassed by Ben Gross and Neal Killoran when they continuously breached the respondent's agreement to have no contact with the claimant?</p> <p>38.5 Was the claimant harassed by Rachel Holmes and Clare Findlay when they took no action to stop Ben Gross and Neal Killoran from breaching the respondent's agreement which was to have no contact with the claimant?</p> <p>38.6 Was the claimant harassed by Neal Killoran when he rung the claimant on his day off, from his home even though he is not the claimant's direct manager and is not to have any direct contact with the claimant?</p>
<p>Claim 5 1803307/2021</p>		
<p>1.</p>	<p>August 2020 - onwards</p>	<p>Occupational Health Assessment</p> <p>39.1 Did the Respondent implement reasonable adjustments following the Claimant's Occupational Health Assessment that took place in August 2020?</p> <p>If so, what were those reasonable adjustments?</p> <p>Were the reasonable adjustments sufficient to provide the Claimant with support?</p> <p>Was the claimant discriminated against by the Respondent due to his disability when they refused to make reasonable adjustments as recommended by the Respondents occupation health assessment?</p> <p>39.2 Was the claimant discriminated against by the Respondent due to his disability when they refused to make reasonable adjustments as agreed in their Stress Risk assessment?</p> <p>39.3 Was the claimant discriminated against by the Respondent due to his disability when they refused to provide him with the training to conduct his job role?</p> <p>39.4 Was the claimant discriminated against due to his disability when he was limited to 2 hours training per week?</p> <p style="padding-left: 40px;">d. Was the claimant treated less favourably to his comparators, Simon Jackson, Lee Shannon, Peter Webb, James Shimbles and Ben Goss?</p> <p>39.5 Was the claimant discriminated against due to his disability when he was given a training</p>

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		<p>ban?</p> <p>e. Was the claimant treated less favourably to his comparators, Simon Jackson, Lee Shannon, Ben Gross, Clare Findlay and Carol Stoyles?</p> <p>39.6 Was the claimant discriminated against due to his disability when his support plan was stopped?</p> <p>f. Was the claimant treated less favourably to his comparator Peter Webb and Ben Goss?</p>
2.	May 2021	<p>Suspension From Work</p> <p>Was the Claimant's suspension from work in May 2021 because of the Claimant's race and/or alleged disability?*</p> <p>Can the Respondent demonstrate that the Claimant was suspended for a reason unrelated to race and/or an alleged disability? If so, what was the reason for the Claimant's suspension?*</p> <p>Was the Claimant suspended from work on the basis of legitimate allegations against him as part of an ongoing internal investigation?*</p> <p>Can the Respondent demonstrate that suspension was reasonable and reasonably required and proportionate based upon the allegations against the Claimant.*</p> <p>Was the claimant victimised by the Respondent when he was suspended in breach of the Respondents disciplinary policy?</p> <p>40.1 Was the claimant harassed when he was suspended on his return to work by Richard Turner?</p> <p>Was the claimant harassed when his colleagues were informed that he was suspended from work?</p>
3.	May 2021	<p>Investigation Meeting</p> <p>41.1 Did the Respondent fail to implement reasonable adjustments when it requested the Claimant to attend an investigation meeting in May 2021.</p> <p>If the Respondent did implement reasonable adjustments, what were these reasonable adjustments, and did they benefit the Claimant?</p> <p>Was the Claimant provided with reasonable notice of the investigation meeting and did the Respondent comply with its internal policies?</p> <p>Was the Claimant subject to direct race discrimination, victimisation and/or harassment during an investigation meeting held by Rachel Bugden.</p> <p>Was the Claimant given an opportunity to understand the allegations in full during the investigation meeting and to make any points of contention that he considered necessary?</p> <p>Was the Claimant provided with all relevant evidence so as to allow him to understand the specific detail of the allegations against him and the evidence underpinning these allegations?</p> <p>41.2 Was the claimant discriminated against by the Respondent due to his disability when they refused to make the following reasonable adjustments in order to attend the investigation meeting?</p> <p>f. Refusal to allow him reasonable time to prepare</p> <p>g. Refusal to allow reasonable time to allow him to get representation</p>

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		<ul style="list-style-type: none"> h. Refusal to adjourn the hearing when he stated he was unfit to attend i. Failure to state each allegation one by one and ensure his understanding j. Refusal to allow him to ask questions and understand the allegations against him <p>41.3 Was the claimant racially discriminated by Rachel Budgen when she treated the claimant less favourably to Ben Goss in relation to the handling to the claimant's and Ben's investigation meetings?</p> <p>Was the claimant victimised by being sent to a disciplinary for carrying out a protected act, in the form of raising a grievance for discrimination?</p> <p>41.4 Was the claimant victimised when he was forced to liaise through Rachel Holmes whilst having submitted a tribunal claim against her for discrimination, even though Tesco's disciplinary policy states he should be contacted by the investigating manager directly?</p> <p>41.5 Was the claimant victimised due to the Respondents refusal to allow reasonable time for his representative to attend the hearing even though a 3-week period was provided to Imran Khan from the same store?</p> <p>41.6 Was the claimant victimised by being forced to attend an investigation hearing scheduled for his day off under the threat that the meeting would continue in his absence in breach of Tesco policy?</p> <p>41.7 Was the claimant victimised by being forced to continue during the investigation meeting even though he made clear he was not fit and able to do so?</p> <p>41.8 Was the claimant victimised by Rachel Budgen when she refusal to clearly outline the allegations against him and the specific supporting evidence?</p> <p>41.9 Was the claimant victimised by Rachel Budgen when she refused to allow him to state his defence in relation to the allegations against him?</p> <p>41.10 Was the claimant victimised by Rachel Budgen when she refused to allow him to ask questions even though she stated she would at the meeting and in the invitation letters?</p> <p>41.11 Was the claimant victimised by Rachel Budgen when she refused to allow him to state witnesses that could support his case? Was the claimant victimised by Rachel Budgen when she refused to allow him to respond to each allegation raised?</p> <p>41.12 Was the claimant victimised when he was suspended from work in breach of Tesco's disciplinary policy by Rachel Budgen?</p> <ul style="list-style-type: none"> d. Suspended even though he had not been alleged to have potentially carried out an act of gross misconduct e. Suspended when there was no impartial evidence (or any evidence at all) of an act of gross misconduct. f. Suspended even though he posed no risk to the business or the investigation <p>41.13 Was the claimant victimised as the investigation meeting was premediated with the disciplinary letter having already been produced in breach of Tesco policy?</p> <p>41.14 Was the claimant victimised by Rachel Saliba by her providing him with a disciplinary letter before the investigation meeting had taken place? Was the claimant victimised by the Respondent due to their refusal to allow him time to read the evidence against him and respond accordingly in accordance with the disciplinary policy? Was the claimant victimised by Rachel Budgen when she failed to follow Tesco's investigation checklist?</p>
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		<p>Was the claimant victimised by Rachel Budgen due to her refusal to allow him to participate in the investigation meeting?</p> <p>41.15 Was the claimant victimised by Rachel Budgen due to her refusal to provide her rationale for her decision to send the claimant to a formal meeting?</p> <p>41.16 Was the claimant harassed when he was forced to attend the investigation hearing at his store when he had requested another local store?</p> <p>Was the claimant harassed when he was forced to communicate through Rachel Holmes when he had submitted a tribunal claim against her for discrimination in breach of the Respondents disciplinary policy?</p> <p>Was the claimant harassed in relation to the investigation meeting for the following reasons;</p> <ul style="list-style-type: none"> f. Not given adequate time to prepare for the investigation meeting g. Forced to attend a hearing on his scheduled day off work h. Forced to continue a meeting when he made clear he was unfit to do so i. Not permitted his right to ask questions j. The decision to send him to a disciplinary hearing was premediated before the investigation meeting
4.	March 2021 - onwards	<p>Performance Review</p> <p>48.1 Was the claimant racially discriminated against by being given a 'miss' performance review whilst being forced to isolate when other none Asian colleagues such as Niomi Hurst who were also isolating were given 'met' performance reviews?</p> <p>48.2 Was the claimant discriminated due to his disability when he was given a 'miss' performance review grading as a result of the Respondent failing to make reasonable adjustments as outlined the occupational health reports and stress risk assessments?</p> <p>48.3-7 Was the claimant victimised by Clare Findley in relation to his annual performance review for the following reasons;</p> <ul style="list-style-type: none"> f. Sending the claimants performance grading having not conducted his annual review g. Failing to set clear objectives h. Grading the claimant as a 'miss' performing manager having not given him any prior notice or given him the opportunity to improve i. Failing to provide any rationale for her decision to grade the claimant as a 'miss' j. Grading the claimant as a 'miss' as a result of him making complaints of discrimination against her and others
Claim 6 1804353/2021		
1.	May 2021 - onwards	<p>Formal Grievance</p> <p>49.1-2 Was the Claimant victimised (protected act being grievance of 8th June 2021) or harassed (race) in doing the following:</p> <ul style="list-style-type: none"> a. Dealing with the grievance of 8th June 2021 at the formal hearing; b. Failing to investigate the grievance of 8th June 2021 at all.
2.	February 2021-	Rachel Budgen

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	onwards	<p>50.1 Was the claimant victimised and or harassed by Rachel Budgen when she took impact statements from senior management which had no relevance to the matters relating to the disciplinary action being taken against the claimant?</p> <p>50.2 Was the claimant victimised and or harassed by Rachel Budgen when she failed to notify the claimant that a serious investigation had been launched against him in February 2021?</p>
3.	May/June 2021	<p>Rachel Saliba</p> <p>Did the Respondent act reasonably in offering the Claimant an adjournment on 28 May 2021 for the reasons specified in the Claimant's request?*</p> <p>Did Rachel Saliba remain impartial throughout when she was the chair for the formal hearing? Did Rachel Saliba prejudge the outcome of the investigation meeting and/or formal hearing as alleged?*</p> <p>Was it reasonable and appropriate for Rachel to hear the Claimant's grievance dated 8 June 2021 at the scheduled formal hearing?*</p> <p>Did Rachel Saliba harass the Claimant by requiring the Claimant to attend a formal hearing? *</p> <p>Did the Respondent act reasonably in further postponing the formal hearing on 11 June 2021 due to the Claimant having to self-isolate?*</p> <p>Did the Claimant act unreasonably in his repeated refusal to attend the formal hearing? *</p> <p>Did the Respondent act reasonably in postponing the formal hearing on multiple occasions to provide the Claimant with an opportunity to attend the formal hearing?*</p> <p>Did Rachel Saliba harass, victimise, or threaten the Claimant by way of her correspondence requiring the Claimant to attend the formal hearing?</p> <p><i>Disability Discrimination</i></p> <p>51.1 Was the claimant directly discriminated due to his disability by Rachel Saliba when she refused to adjourn the disciplinary hearing against the claimant which was scheduled to take place on 21 June 2021 when she was notified the claimant was medically unfit to attend?</p> <p>2. Would the claimant have been treated differently to a hypothetical comparator?</p> <p>51.2 Did Rachel Saliba discriminate against the claimant due to his disability by failing to make reasonable adjustments to allow the claimant to attend a disciplinary hearing, by arranging the hearing to take place on 24 June 2021 even though she was aware the claimant was medically unfit to attend?</p> <p><i>Victimisation / Harassment</i></p> <p>51.3 Was the claimant victimised and or harassed by Rachel Saliba when she formally invited the claimant to a disciplinary hearing before the investigation meeting was conducted? (Due to the claimant having raised complaints in relation to protected acts)</p> <p>51.4 Was the claimant victimised and or harassed by Rachel Saliba when she refused to remove herself as the chair of the claimants disciplinary hearing after he had submitted a grievance against her?</p>

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		<p>51.5 Was the claimant victimised and or harassed by Rachel Saliba when she refused to postpone the claimants disciplinary hearing in accordance with the respondent's disciplinary policy when he notified her that he was medically unfit to attend the hearing?</p> <p>51.6 Was the claimant victimised and or harassed by Rachel Saliba when she sent repeated email correspondences to the claimant in breach of the respondent's disciplinary policy, after the claimant had notified her that he was medical unfit to attend work and that he wished not to have further contact with her?</p> <p>51.7 Was the claimant victimised and or harassed by Rachel Saliba when she rescheduled the disciplinary hearing to take place on 24 June 2021 even though she was notified the claimant would not be able to attend as he was medically unfit?</p>
3.	May 2021 – June 2021	<p>Rachel Holmes</p> <p><i>Victimisation/ Harassment</i></p> <p>52 Was the claimant victimised and or harassed by Rachel Holmes when she refused to remove Rachel Saliba as the disciplinary manager for the claimants hearing even though the claimant had submitted a grievance against her?</p>
4.	June/July 2021	<p>Lewis King</p> <p>Did the Respondent act reasonably in appointing Lewis King as the Formal Hearing manager following the Claimant's correspondence with Rachel Saliba. *</p> <p>Did Lewis King act reasonably in the manner in which he considered the Claimant's fit note and fitness to attend a formal hearing? Specifically, did Lewis King act unreasonably in finding that the Claimant was fit to attend a formal hearing? *</p> <p>Did Lewis King offer the Claimant reasonable adjustments in an effort to assist the Claimant to attend the formal hearing? If so, what were those reasonable adjustments? *</p> <p>Did Lewis King act reasonably in taking the decision to dismiss the Claimant and did the Claimant's dismissal fall within the band of reasonable responses?*</p> <p>Did Lewis King act reasonably in addressing the Claimant's grievance dated 8 June 2021 as part of the formal hearing outcome? *</p> <p><i>Disability Discrimination</i></p> <p>53.1 Was the claimant discriminated due to his disability when Lewis King minimised the claimant's mental health issues in a letter dated 24 June 2021?</p> <p>Was the claimant treated less favourably to Ben Goss, Neal Killoran and Lee Shannon?</p> <p>53.2 Was the claimant discriminated due to his disability by Lewis King when he refused to make a reasonable adjustment which was to refer the claimant to occupation health in relation to the claimant's inability to attend the disciplinary hearing in accordance with the respondent's</p>

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		<p>disciplinary policy?</p> <p>53.3 Was the claimant discriminated due to his disability by Lewis King when he refused to make reasonable adjustments for the claimant by postponing the disciplinary hearing scheduled for 28 June 2021?</p> <p>53.4 Was the claimant discriminated against due to his disability by Lewis King when he conducted the claimants disciplinary in his absence even though he was aware the claimant was medically unfit to attend?</p> <p><i>Victimisation/ Harassment</i></p> <p>53.5 Was the claimant victimised and or harassed by Lewis King when he refused to refer the claimant to occupation health in accordance with the respondent's disciplinary policy?</p> <p>53.6 Was the claimant victimised and or harassed by Lewis King when he conducted the claimants disciplinary hearing in his absence even though he was aware that the claimant was medically unfit to attend, in breach of the respondent's disciplinary policy?</p> <p>53.7 Was the claimant victimised and or harassed by Lewis King when he used the claimants protected grievance lodged on 8 June 2021 as evidence to dismiss him even though the claimant was given assurances that he would not be subjected to any detriment for submitting the protected grievance?</p> <p>53.8 Was the claimant victimised and or harassed by Lewis King when he used the claimant's grievances from 2019 onwards, which are protected under the Equalities Act 2010 as the basis for dismissing him?</p> <p>53.9 Was the claimant victimised and or harassed by Lewis King when he refused to accept the claimants 'fit note' dated 25 June 2021 which stated that the claimant was unfit to attend the disciplinary hearing?</p> <p>53.10 Was the claimant victimised and or harassed by Lewis King when he forced the claimant to get an amended 'fit note' stating he was unable to attend meeting even though he had no intention of postponing the hearing?</p> <p>Was the claimant victimised and or harassed by Lewis King when he minimised the claimant's mental health issues in a letter dated 24 June 2021?</p> <p>Was the claimant victimised and or harassed by Lewis King when he was dismissed as a result of carrying out a protected act in accordance with the Equalities Act 2010, specifically alleging discrimination?</p> <p>53.11 Was the claimant victimised and or harassed by Lewis King when he failed to undertake a reasonable investigation into the claimant's grievance lodged on 8 June 2021?</p> <p>53.12 Was the claimant victimised and or harassed by Lewis King when he failed to undertake a reasonable and fair investigation in relation to the claimant's dismissal?</p>
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5.	February 2021 - onwards	<p>Witness Statements</p> <p>Was the Respondent entitled to consider the 15 witness statements that were provided during the investigation? *</p> <p>Was it reasonable for Lewis King to have considered the witness statements as part of his findings in respect of the allegations against the Claimant?</p> <p>Was it reasonable for witness evidence to have been provided by Sarita Pasha, Carl Foster, Justine George and Aaron Carr?</p> <p>Was the Respondent reasonable in considering the witness statements to have been provided honestly by all of the witnesses?</p> <p><i>Religious Discrimination</i></p> <p>54.1 Was the claimant Religiously discriminated by Aaron Carr when he implied that the claimant would have submitted a grievance against him had his wife not have been a Muslim like the claimant.</p> <p>Would the claimant have been treated differently to a hypothetical comparator?</p> <p><i>Race Discrimination</i></p> <p>54.2 Was the claimant racially discriminated by Sarita Pasha when she made the remark in her witness impact statement 'don't play the race card'?</p> <p>b) Would the claimant have been treated differently to a hypothetical comparator?</p> <p>54.3 Was the claimant racially discriminated by Sarita Pasha when she made the remarks in her witness statement that the claimant did not have issues with his manager as they were from the same culture?</p> <p>b. Would the claimant have been treated differently to a hypothetical comparator?</p> <p><i>Victimisation/ Harassment</i></p> <p>54.4 Was the claimant victimised and or harassed by Carl Foster, Sarita Pasha, Justin George, Aaron Carr, Verity Garside, Clare Findlay, Nina Tomlinson, Cara Wilson, Neal Killoran, Ben Goss, Jason Chester, Ron Smith, Lee Shannon and Darren Bowey when they made false, malicious and misleading impact statements against the claimant as a result of the claimant having raised protected grievances?</p>
6.	July 2021	<p>Notice Pay</p> <p>Did the Respondent delay in paying the Claimant his notice pay?</p> <p>55. Was the claimant victimised (all previous protected acts are relevant) and or harassed</p>

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		(race) by Rachel Holmes when she withheld the claimants notice payment even though it could have been paid within 24hours?
7.	July 2021	<p>Unfair Dismissal</p> <p>56. Was the dismissal for a fair reason?</p> <p>Did the respondent follow a fair procedure?</p> <p>Did the respondent act reasonably in treating the reason as a sufficient reason for dismissal?</p> <p>Did the respondent's decision to dismiss the claimant fall within the range of reasonable responses that a reasonable employer in those circumstances would have adopted?</p>