Case Number: 2204871/2019

Reserved Judgment

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondent**
Dr L Fenniche		**Government of the State of Kuwait**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 13-21 December 2022; 22 December 2022 (in chambers)**

BEFORE: Employment Judge A M Snelson **MEMBERS: Ms Z Darmas, Mr R Baber**

On hearing Mr J Platts-Mills, counsel, on behalf of the Claimant and Mr M Sethi KC, leading counsel, on behalf of the Respondents, the Tribunal determines that:

(1) The Claimant's complaints of harassment related to race, alternatively direct discrimination because of race, identified as Allegations (13), (15), (16), (19), (20) and (23) in the Reasons below are well-founded.
(2) The Claimant's complaint of direct discrimination because of race identified as Allegation (28) in the Reasons below is well-founded.
(3) The remainder of the Claimant's complaints of harassment related to race, alternatively direct discrimination because of race:
    (a) are not well-founded; and
    (b) were presented out of time and accordingly fall outside the Tribunal's jurisdiction in any event.

REASONS

Introduction

1 The Claimant, Lyazid Fenniche, is a medical doctor by profession now 60 years of age. He was employed by the Respondent at the Kuwait Health Office ('KHO') in London on 6 July 2004 under a one-year fixed-term contract in the

capacity of In-house Doctor. The contract was renewed repeatedly and without interruption thereafter until the Respondent terminated it on 6 July 2019 by means of a written notification dated 5 April 2019 and delivered to him on or about 2 May 2019.

2 By a claim form presented on 12 November 2019, the Claimant brought complaints against the KHO and the Respondent of direct race discrimination, race-related harassment, unfair dismissal, wrongful dismissal and failure to provide written reasons for dismissal, all of which the Respondent disputed.

3 Although it appears that he also holds British nationality, the Claimant identifies himself for the purposes of his discrimination and harassment claims as an Algerian national and a 'North African'. For him, the term 'North African' seems to mean the western part of northern Africa, corresponding (more or less) with, and certainly not extending east of, the French colonial area, *l'Afrique du nord* or the *Maghreb* (Mauritania, Morocco, Algeria, Tunisia and Libya). The African Union divides Africa into five Regions, one of which is North (or Northern) Africa, which extends as far south and west as Western Sahara and as far east as Egypt. Certainly for administrative purposes, the United Nations treats North Africa as covering the same territory as the corresponding Region of the Africa Union, with the addition of Sudan.

4 The KHO was and is part of diplomatic mission of the Respondent and the claim engaged questions of state immunity. At a preliminary hearing held in public on 22 January 2021 EJ Brown (a) dismissed the claim against the KHO on the ground that the Respondent was the only proper respondent and, and (b) dismissed on state immunity grounds all complaints against the Respondent other than those claiming personal injury damages for race discrimination and race-related harassment. EJ Brown's reasons should be read with these.

5 At a case management hearing on 21 April 2021 EJ Brown listed an eight-day final hearing to commence on 28 February 2022 and gave directions for the commissioning of joint medical evidence, clarification of the factual and legal issues and preparation of witness and documentary evidence and a chronology and cast list.

6 The February 2022 date was subsequently vacated and the final hearing re-listed to commence on 12 December 2022. The Respondent applied for that hearing too to be postponed because, it was said, the State of Kuwait (itself, as noted above, the only Respondent in the proceedings since 22 January 2021) had not given permission for its key witness, Dr Eid, to give evidence (by video link) from its territory. Dr Eid was indeed a key witness. He had retired from his post at the KHO in late 2019 and had returned to Kuwait to spend his retirement there. The postponement application was referred to EJ Brown who, on 12 October 2022, caused a letter to be sent to the Respondent in these terms:

> **Employment Judge Brown is not minded to grant the Respondent's application for postponement of the hearing. If Kuwait does not grant permission, the relevant witness ought to make arrangements for travel to the UK to give evidence, or to Qatar, which is much closer to Kuwait and has given permission for witness**

> **evidence to be given from its jurisdiction. Only if the witness can provide proof of the impossibility of such travel is a postponement likely to be considered.**

7 The Respondent renewed the postponement application on 31 October 2022, stating that it was "making enquiries with its Government to seek permission to cover the costs of travel and accommodation for the witness" but that it did not expect to get an answer in good time for the hearing. It did not say in terms that the request had actually been made. At a further case management hearing on 18 November 2022 EJ Brown heard additional argument on the postponement question. Her definitive ruling (para 45 of her document) was as follows.

> **I did not postpone the Hearing. The witness' stated inability to give evidence and to travel was entirely in the hands of the Respondent – the Government of the State of Kuwait. The Respondent had not given permission for its own witness to give evidence. The request for permission had been made in June 2022. Other countries had given permission in plenty of time for the hearing. The Respondent had also not undertaken to pay the costs of its own witness to travel a short distance to Qatar to give evidence. The matter was entirely within the control of the Respondent.**

8 At the same hearing, EJ Brown dealt with a litany of disputes concerning the scope of the pleaded claims, amendment and specific disclosure and gave consequential directions, which included provision for completion of a schedule of claims which had been put before her in draft.

9 The matter came before us in the form of a final 'face-to-face' liability-only hearing on 13 December 2022[1] with eight sitting days allocated. The Claimant was represented by Mr John Platts-Mills, counsel, and the Respondent by Mr Mohinderpal Sethi KC, leading counsel. Most regrettably, their long association as opponents in this litigation did not seem to have endeared them to one another and the hearing was not always conducted in a co-operative, adult and seemly fashion. In view of the apologies of both counsel at the end of the hearing, we prefer to say no more on that aspect other than to observe that, absent those apologies, this paragraph would have been a very great deal longer.

10 The hearing began with Mr Sethi making a fresh postponement application. He relied on two grounds. The first in effect repeated the application rejected by EJ Brown on 18 November 2022. Mr Sethi acknowledged that it was not open to him to make the application without demonstrating a change in circumstances but tentatively suggested that such a change was to be found in the fact that the Respondent had still not received a response from Kuwait on the question of permission for Dr Eid to give evidence from there or on the possibility of meeting his travel and accommodation costs if he was to give evidence from elsewhere. We are not sure that Mr Sethi ever stated in terms (a) that a request had actually been directed to the appropriate authority in Kuwait for permission for Dr Eid to give evidence from there or (b) that a request had actually been directed to the appropriate authority in Kuwait for the funds necessary to cover flights and accommodation costs to enable Dr Eid to give his evidence from some other suitable location (say Qatar). We were certainly never shown any documentary evidence to substantiate any request of either kind.

[1] The listing had been moved back by one day.

11 Mr Sethi's second ground related to two diplomats, the current and former Heads of the KHO, whom, we were told, the Respondent wished to call as witnesses. The former Head is Dr Faisal, who is an important figure in the events about which the Claimant complains. Mr Sethi drew attention to Article 31(2) of the Vienna Convention, citing it as authority for the proposition that a diplomat can give evidence with permission of the sending state. (The provision says only that a diplomatic agent is not obliged to give evidence but we accept that the practice is that the sending state's permission is sought before any diplomat is called as a witness.) Mr Sethi told us, no doubt on instructions, that the Respondent had been unable to secure the permission of the State of Kuwait to call the diplomatic witnesses. Asked when the permission had been sought, Mr Sethi was unable to help us. His instructing solicitor sat beside him. Members of KHO staff were present. Others, no doubt, could readily be contacted by telephone. We received no explanation for the elusiveness of this simple piece of information. No document substantiating any request for permission to call the diplomatic witnesses was ever shown to us. We found this part of the application all the more perplexing when it emerged that, apparently without difficulty, the Respondent had produced a diplomatic witness at the preliminary hearing before EJ Brown on 22 January 2021.

12 Sensing perhaps an adverse wind, Mr Sethi hurried on to draw attention to what he called a "new spanner in the works", namely a very short document dated 30 November 2022 bearing the seal of the Kuwaiti Ministry of Health, which, as translated, reads as follows:

> **Please be advised that diplomats working in the Overseas Health Offices may only appear before investigators or judicial authorities in the hosting country when the Ministry of Foreign Affairs of the host country notifies the Embassy of the State of Kuwait, by the official means adopted in such cases, and this is approved by the Kuwait Ministry of Foreign Affairs.**

This document had been produced in support of yet another pre-trial application to postpone made on behalf of the Respondent, dated 6 December. The Respondent's solicitors submitted that the effect of the document of 30 November 2022 was that it would not be possible to call the diplomatic witnesses because the Foreign, Commonwealth & Development Office ('FCDO') had not notified the Embassy of the State of Kuwait of the intention that they should give evidence. EJ Brown directed that a letter be sent to the FCDO asking urgently for clarification and in the meantime gave no definitive ruling on the 6 December application. One point of interest to her was whether there was a recognised process by which the FCDO was required to seek permission of a foreign state for its diplomats to give evidence before UK courts. As she observed, apart from anything else it is hard to see how such a system could work since, before a hearing, the FCDO would have no means of knowing which witnesses any particular party in any particular court would envisage producing. In essence, Mr Sethi repeated the application made on 6 December, arguing that the 'decree' of 30 November precluded the Respondent from calling the two diplomatic witnesses.

13 On the morning of 14 December (day two), following further argument, we refused the application to postpone and directed that the hearing must proceed.

We did, however, point out that the letter to the FCDO had yet to receive a reply and that, if one arrived in time, we would share it with the parties and, if need be, hear further argument upon it. We gave concise oral reasons for our decision. We held that it would be manifestly unjust and contrary to the overriding objective to postpone the hearing. In the case of Dr Eid, there was no tenable basis for re-visiting the application rejected by EJ Brown and we had no jurisdiction to do so. In any event, in so far as it was our place to say so, we entirely agreed with her ruling. As for the diplomatic witnesses, we noted the curious fact that the attempts prior to 6 December to get the case postponed had never been predicated on any suggestion of difficulty relating to diplomatic witnesses. There was no documentary evidence to substantiate any such difficulty. There had been no such difficulty in relation to the preliminary hearing in January 2021. Even in the letter of 6 December there was no mention of any unavailing prior requests for permission to call the witnesses. Moreover, as EJ Brown had pointed out in relation to Dr Eid, any supposed difficulty lay in the Respondent, the State of Kuwait, obtaining permission from itself, the State of Kuwait. The absurdity of what we were being asked to accept can be left to speak for itself. As for the 'decree', we were satisfied that it took the postponement application nowhere. Its timing was unexplained and peculiar to say the least. And its intended reach and juridical status were unfathomable. Was the Ministry of Health of Kuwait purporting to lay down rules about how foreign ministries and courts in other states must conduct themselves? If so, it had no standing to do so (to state the blindingly obvious). Or was it purporting to fetter the discretion of the Ministry of Foreign Affairs of the State of Kuwait (over which it had no apparent jurisdiction) to grant or refuse its diplomats working in overseas Health Offices permission to give evidence in foreign courts by making such permission conditional on the foreign ministries abiding by an apparently pointless procedure dictated by it (the Ministry of Health)? It was not for us to follow through these bizarre possibilities. We were not remotely persuaded that the 'decree' should bear on the question of postponement. It seemed to us that if (which we found exceedingly hard to credit) it was seen in Kuwait as having any legal or quasi-legal force, it was simply an obstacle which the Respondent had, for no apparent reason, placed in its own path.

14 Mr Sethi submitted that, if we were not minded to postpone the hearing, we should permit Dr Eid to participate as a witness by means of what he called a "Q&A process", apparently involving a form of slow-motion cross-examination by means of written questions from Mr Platts-Mills to which Dr Eid would be given time to deliver sworn written replies. We were not at all persuaded that that would be a reasonable or proportionate procedure. It would inevitably add to delay and expense on all sides. The countless practical difficulties would be obvious. If the witness could not be called (and, on day two of the six available days, we could see no reason why arrangements could not even then be made to call him), the Respondent remained free to tender his statement in evidence, for what it was worth. We saw no justification for the special measure proposed by Mr Sethi: if the Respondent was disadvantaged, it had only itself to blame.

15 In the course of the hearing we were required to deal with yet more procedural disputes. These included Mr Sethi's application to put in hitherto undisclosed Whatsapp messages while the cross-examination of the Claimant was

underway (refused on the ground that it was made much too late), Mr Platts-Mills's application to exclude the Respondent's witnesses before they gave evidence on the stated ground that they had come to the Tribunal to tell lies (refused as no good reason was shown for departing from normal practice) and Mr Platts-Mills's application to make a very minor, clarifying amendment to the claim form in relation to Allegation (23) (granted, because it would serve to avoid any doubt and entailed no risk of prejudice).

16 In the event, a response from the FCDO did arrive, in the evening of 20 December. It did not substantiate any recognised procedure of the sort referred to by the Respondent's solicitors in the application of 6 December. We shared it with the parties the following morning. Neither counsel wished to address us upon it.

17 We lost one day (Friday, 16 December) owing to one member of the Tribunal being unwell. Oral submissions, for which, by agreement, we allowed each advocate one hour, were completed at lunchtime on the sixth sitting day. We then reserved judgment, completing our private deliberations at the end of day seven.

The Claims

18 The case as finally pursued did not in all respects correspond with the schedule of claims, because some significant elements were withdrawn altogether and others were abandoned as claims although relied on as 'background'.[2] We hope that this table, which retains the numbering in the schedule of claims, fairly captures the essence of the 16 complaints which we were required to determine.

Number	Date/period	Perpetrator[3]	Gist of allegation
(1)	Jan-Apr 2017	Dr Eid	Shouting etc at C
(3)	Feb 2017	Dr Faisal	Denial of time off after care; threats
(4)	2017	Dr Faisal	Repeated refusal of leave requests
(5)	Apr 2017	Dr Eid	Change of C's role to completing BLOGs[4]
(7)	Apr 2017	Dr Eid	Transfer of C to basement office
(8)[5]	Dec 2018	Mr El Ramley	Warning to avoid female colleague
(10)	Dec 2018	Dr Eid	Confronted re seminar; seminars ban
(13)	Dec 2018	Dr Eid	"You're not worthy to represent Kuwait"
(14)	Jan 2019	Dr Eid	Confronted re sister's visit to office
(15)	Jan 2019	Dr Eid	Told could no longer work overtime
(16)	Early 2019	Dr Eid	Desk move to corridor (second floor)
(19)	Mar 2019	Dr Eid	Overloading with excessive BLOG quota
(20)	Mar 2019	Dr Eid	Warning for not meeting BLOG quota
(21)	Mar 2019	Dr Faisal	Leave request mostly refused
(23)	Aug 2018-Apr 2019	Dr Eid	Pay deductions for late attendance
(28)	May 2019	Dr Faisal	Dismissal

We will retain the numbering in our findings and conclusions below, referring to the claims as 'Allegation (1)', Allegation (2)' and so on.

[2] Allegation (22) was withdrawn during closing submissions; many others were dropped on day two.
[3] In some instances, the complaint is against a named individual and 'management'.
[4] Backdated letters of guarantee
[5] In so far as the Claimant complained separately of a failure to investigate the female colleague's complaint (originally Allegation (9)), we address that as part of Allegation (8).

The Legal Framework

19 The Equality Act 2010 protects employees and applicants for employment from discrimination based on or related to a number of 'protected characteristics'. These include race (s9), which includes nationality and ethnic and national origins.

20 Chapter 2 of the Act lists a number of forms of 'prohibited conduct'. These include direct discrimination, which is defined by s13 in (so far as material) these terms:

> **(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.**

By s23(1) and (2)(a) it is provided that there must be no material difference between the circumstances of the claimant's case and that of his or her comparator and that (for these purposes) the 'circumstances' include the claimant's and comparator's abilities.

21 In *Nagarajan*-v-*London Regional Transport* [1999] IRLR 572 Lord Nicholls construed the phrase 'on racial grounds' in the Race Relations Act 1976, s1(1)(a), in these words:

> **If racial grounds … had a significant influence on the outcome, discrimination is made out.**

It is not in question that introduction of the 'because of' formulation under the 2010 Act (replacing 'on racial grounds', 'on grounds of age' etc in the pre-2010 legislation) effected no material change to the law.[6]

22 The 2010 Act defines harassment in s26, the material subsections being the following:

> **(1) A person (A) harasses another (B) if –**
>
> **(a) A engages in unwanted conduct related to a relevant protected characteristic, and**
> **(b) the conduct has the purpose or effect of –**
> **(i) violating B's dignity, or**
> **(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.**
>
> **…**
>
> **(3) In deciding whether conduct has the effect referred to in sub-section (1)(b), each of the following must be taken into account –**
>
> **(a) the perception of B;**
> **(b) the other circumstances of the case;**
> **(c) whether it is reasonable for the conduct to have that effect.**

[6] See *eg Onu v Akwiwu* [2014] EWCA Civ 279 CA.

23 In *R (Equal Opportunities Commission) v Secretary of State for Trade & Industry* [2007] ICR 1234 HC, it was accepted on behalf of the Secretary of State that, for the purposes of the 'related to' wording (in the Sex Discrimination Act 1975), an 'associative' connection was all that was required. Burton J did not question the concession. The EHRC Code of Practice on Employment (2011), deals with the 'related to' link at paras 7.9 to 7.11. It states that the words bear a broad meaning and that the conduct under consideration need not be 'because of' the protected characteristic. The Code does not claim to be an authoritative statement of the law (see para 1.13), but we accept its guidance here as correct and direct ourselves accordingly.

24 Despite the ample 'related to' formulation, sensible limits on the scope of the harassment protection are, we think, ensured by the other elements of the statutory definition. Two points in particular can be made. First, the claimant must show that the conduct was unwanted. Second, the requirement for the Tribunal to take account of all the circumstances of the case and in particular whether it is reasonable for the conduct to have the stated effect (subsection (4)(b) and (c)) connotes an objective approach, albeit entailing one subjective factor, the perception of the complainant (s26(4)(a)). Here the Tribunal is equipped with the means of weighing all relevant considerations to achieve a just solution.

25 Central to the objective test is the question of gravity. Statutory protection from harassment is intended to create an important jurisdiction. Successful claims may result in very large awards and produce serious consequences for wrongdoers. Some complaints will inevitably fall short of the standard required. To quote from the judgment of Elias LJ in *Land Registry v Grant* [2011] ICR 1390 CA (para 47):

> **… even if in fact the [act complained of] was unwanted, and the Claimant was upset by it, the effect cannot amount to a violation of dignity, nor can it properly be described as creating an intimidating, hostile, degrading, humiliating or offensive environment. Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.**

26 Discrimination is prohibited in the employment field by s39 which, so far as relevant, states:

> **(2) An employer (A) must not discriminate against an employee of A's (B) –**
>
> **…**
> **(c) by dismissing B;**
> **(d) by subjecting B to any other detriment.**

A 'detriment' arises in the employment law context where, by reason of the act(s) complained of a reasonable worker would or might take the view that he or she has been disadvantaged in the workplace. An unjustified sense of grievance cannot amount to a detriment: see *Shamoon v Chief Constable of the RUC* [2003] IRLR 285 HL.

27 Employees enjoy parallel protection against harassment by the 2010 Act,

s40(1)(a).

28 To prevent double-claiming, the 2010 Act, s212(1) provides that (save in circumstances not relevant here) a 'detriment' does not include conduct which amounts to harassment.

29 2010 Act, by s136, provides:

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

30 On the reversal of the burden of proof we have reminded ourselves of the case-law decided under the pre-2010 legislation, including *Igen Ltd v Wong* [2005] IRLR 258 CA, *Laing v Manchester City Council* [2006] IRLR 748 EAT, *Madarassy v Nomura International plc* [2007] IRLR 246 CA and *Hewage v Grampian Health Board* [2012] IRLR 870 SC. Recently, in *Efobi v Royal Mail Group Ltd* [2021] 1 WLR 3863, the Supreme Court held that the changes in the wording of the burden of proof provisions introduced by the 2010 Act, s123 did not bring about any change in the law. Dealing with the proper approach to the drawing of inferences, Lord Leggatt, who gave the only substantial judgment, commented (para 41):

> **I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or decline to draw, inferences from the facts of the case before them without the need to consult law books before doing so.**

31 In *Hewage*, Lord Hope warned that it is possible to exaggerate the importance of the burden of proof provisions, observing (judgment, para 32) that they have "nothing to offer" where the Tribunal is in a position to make positive findings on the evidence. His remark is salutary, but it is as well to remember that it follows immediately upon this: "[The provisions] will require careful attention where there is room for doubt as to the facts necessary to establish discrimination."

32 For present purposes, the key points to be drawn from the case-law on the burden of proof seem to be these. First, where the provisions are applied, a two-stage reasoning process must be followed. Second, at the first stage, it is for the claimant to establish a *prima facie* case of discrimination, which entails establishing facts from which an inference of unlawful discrimination *could* be drawn. If a *prima facie* case is not made out, the claim fails. Third, such a case is not shown by demonstrating only a difference in treatment and a difference in a relevant personal characteristic: there must be 'something more'. Fourth, unreasonable treatment by itself will not constitute the 'something more' because discrimination is directed to *different* treatment, not unreasonable treatment. Fifth, in determining whether a *prima facie* case is made out, the Tribunal may take account of undisputed facts and evidence adduced by both parties. Sixth, the

material contributed by the respondent at the first stage may include facts which argue against an inference of discrimination, provided that they do not amount to the reason or explanation for the treatment complained of; the reason or explanation can only be considered at the second stage. (The distinction between relevant facts or evidence admissible at stage one and a reason or explanation, only admissible at stage two, may be a fine one.) Seventh, if a *prima facie* case is made out, the legal burden passes to the employer, who, at the second stage of the analysis, must prove that the treatment complained of did not entail discrimination. If the employer fails to discharge the burden, the claim must be upheld. Eighth, the burdens under the first and second stages are the same: to prove what must be proved on a balance of probabilities.

33 By the 2010 Act, s123(1) it is provided that proceedings may not be brought after the end of the period of three months ending with the date of the act to which the complaint relates, or such other period as the Tribunal thinks just and equitable. Now, under the Early Conciliation ('EC') provisions, the period is further extended by the time taken up by the conciliation process. The time limit is jurisdictional. "Conduct extending over a period" is to be treated as done at the end of the period (s123(3)(a)). Where the claim has not been presented within the primary three-month period (as extended by EC), it is for the Claimant to justify on evidence the substitution (under s123(1)) of a longer period.

The Evidence and Documents

34 We heard oral evidence from the Claimant and his supporting witness, Dr Mohamed Samir and, on behalf of the Respondent, Dr Naher Habib, Dr Waffa El-Sankary, Mrs Eman Hamoud, Mr Mir Ahmed Ali, Mr Said Othman and Dr Zeinab Khalil. We also read statements in the names of Dr Mohamed Idris Khair on behalf of the Claimant and Dr Eid Aladwani (Dr Eid) on behalf of the Respondent.

35 In addition to witness evidence we also read the documents to which we were referred in the main bundle of over 700 pages and the smaller 'procedural bundle' produced on behalf of the Claimant.

36 On the morning of day six, Mr Platts-Mills produced detailed written submissions, which were useful and much fuller than the 'speaking note' we had been given to expect. (By contrast, Mr Sethi produced nothing in writing, despite having left us the night before with the expectation that (as one would expect in a case of this weight) at least a skeleton argument or note of some kind would be supplied in support of his oral argument.)

The Primary Facts

37 The evidence was extensive. We have had regard to all of it. Nonetheless, it is not our function to recite an exhaustive history. The facts essential to our decision we find as follows.

Setting the scene

38 As we have said, the KHO forms part of the Kuwaiti diplomatic mission in London. It is led by a Director, a Health Attaché, a Finance Attaché and an Administration Attaché. The holders of these posts, often collectively referred to as 'the Administration', are diplomats. Dr Faisal was Health Attaché until about 2016, when he became Director and the role of Health Attaché was taken up by Dr Adulaziz Al Rasheed.[7] Dr Eid was Finance Attaché from 2015 until his retirement around the end of 2019. Mr El Ramley was at all relevant times acting Administration Attaché.

39 The Health Attaché was responsible for, among other things, the Medical Department. From 2008 until September 2019, Dr Khalil was Head of that Department, which consisted of about 10 In-house Doctors, three Medical Auditors and five Medical Secretaries. Dr Khalil reported to the Health Attaché.

40 The Claimant was a member of the Medical Department. His line manager from 2008 onwards was Dr Khalil although, like other staff, he would on occasion receive instructions directly from members of the Administration.

41 The Claimant's duties as an In-house Doctor were varied. They included arranging treatments for patients, conducting follow-up appointments and providing letters of guarantee to hospitals (confirmation that particular treatments were consistent with the patient's authorised care plan). The work required a broad range of medical training, attention to detail, sound record-keeping skills and effective communication, oral and written. It entailed dealing directly with patients, other medical practitioners and non-medical hospital staff. Much of it involved communication by telephone.

The claims in turn

42 Beginning with Allegation (1), we are not persuaded on the evidence presented that Dr Eid shouted at the Claimant in January to April 2017 as was claimed. Nor did he use the pronoun 'you' in an offensive or disrespectful way. The assertion that Dr Eid never called him by his first name was withdrawn on mid-hearing, on 19 December. There may have been some uncomfortable exchanges between the Claimant and Dr Eid in early 2017, owing to the change in the Claimant's duties (see further under Allegation (5) below), which he greatly resented.

43 As to Allegation (3), the Claimant underwent a minor medical procedure by appointment as an outpatient, apparently on 3 May 2017. His absence was not notified to the KHO in advance. Dr Faisal asked Dr Khalil to make inquiries, commenting to the effect that unauthorised absence from work could lead to disciplinary action. She contacted the Claimant by telephone and passed on what

[7] We get this date from Dr Khalil's evidence. Other material before us suggests Dr Faisal's promotion to Director occurred later. Unfortunately, we were not favoured with the chronology ordered by EJ Brown. It seems that Dr Faisal left the KHO in late 2019 (after the Claimant's dismissal) and was replaced as Director by Dr Al-Rasheed.

Dr Faisal had said. He explained that he had had the procedure. She told him that he would have to produce a certificate, which he did the following day. On the strength of the certificate, he was excused from working. He was not disciplined.

44 Allegation (4) complains that Dr Faisal refused the Claimant's requests for permission to take annual leave and time off for appointments but granted such requests by other doctors. No specific dates or instances are pleaded. Having been shown documentary evidence of his requests for time off being granted, he abandoned his pleaded complaint that his requests were "always" refused, accepting that they were sometimes granted and sometimes refused. On the material before us we are not persuaded that there is any basis for the assertion that the Claimant's requests were treated less favourably than those of other doctors. What does emerge from the evidence is the unsurprising fact that late requests, by the Claimant and others, were liable to be refused on the ground that they were made too late.

45 As to Allegation (5), the central fact, namely that a radical change was made to the Claimant's role in early 2017, is not in question. But it is necessary to add some context. On appointment and for many years thereafter the Claimant sat in the doctors' office, along with a number of other In-house Doctors. We accept Dr Khalil's evidence that there were many problems with his work. He frequently made mistakes. He relied a great deal on the assistance of colleagues. His telephone conversations were unnecessarily lengthy and loud, which was distracting and frustrating to those working around him. There were many complaints, in particular from hospitals and colleagues. The Claimant was spoken to on a number of occasions about his performance by Dr Faisal, Mr El Ramley and Dr Khalil. No improvement was made and we strongly doubt that he ever acknowledged any need for improvement. Eventually, in early 2017, the Administration took the decision to remove his patient-facing duties and assign to him fresh responsibilities dealing with backdated letters of guarantee ('BLOGs'). These were letters of guarantee issued after a hospital had rendered an invoice and, typically, after the patient's treatment had ended. Without a BLOG, the invoice could not be paid. Contrary to the Claimant's case[8] and the supporting evidence on which he relied, this was not menial administrative or secretarial work. It required medical insight to follow the clinical story, assess the care delivered and measure it against the agreed treatment package.

46 Allegation (7) is concerned with the Claimant's move in or around April 2017 from the doctors' office to another office, which was located in the basement. The transfer was the natural and necessary consequence of his change in responsibilities. It was no longer appropriate for him to sit in the doctors' office, since he was no longer undertaking patient-facing work. Moreover, his desk in that office needed to be made available for the doctor appointed to replace him. It was entirely appropriate that he should join the Medical Audit team, which was located in the basement. He told us that he did not like the basement office. It seems to

[8] On this as on other matters, his case was contradictory. On the one hand he dismissed the work as insulting and beneath him as a medical professional; on the other, he complained, for the purposes of Allegation (19) ('overloading') that, despite his medical expertise, it would take him as long as 2-3 days to complete each BLOG.

have been quite cramped. Behind his desk was a window which gave on to a courtyard. It seems that people sometimes smoked there. Off the courtyard was a toilet. Some in the office, including Dr Khalil, felt that the atmosphere was airless, certainly in the warmer months, but the Claimant resisted requests to open the window because, he said, of unpleasant smells from the courtyard. Disagreements about ventilation were a source of some tension at times.

47 The decisions on which Allegations (5) and (7) were collectively taken by the Administration. Dr Faisal and Dr Eid seem to have been the prime movers.

48 The Claimant bitterly resented the change in duties and transfer to the basement office. The sense of grievance which he harboured thereafter did not soften with time. On the contrary, during the remainder of his employment at the KHO he seems to have become ever more convinced that his superiors, and Dr Faisal and Dr Eid and in particular, were determined to do him down at every opportunity. This mindset may have caused him on occasions to make unwarranted assumptions, misread events or misconstrue comments. That said, we are in little doubt that, by the beginning of 2017 at the latest, Dr Faisal and Dr Eid had formed a strongly negative view of his abilities and performance and in their dealings with him they may not have succeeded in disguising their perceptions.[9] All in all, relations between the Claimant and the members of the Administration, and in particular Dr Eid (with whom he had most relevant contact) were notably strained over the last two-and-a-half years of his employment.

49 We turn to Allegation (8). On 17 October 2018 a female member of KHO staff who had quite recently been appointed wrote to Dr Eid complaining about the Claimant's "creepy" behaviour towards her in the office. She referred to "stalking" and unspecified "indecent acts". The note was passed to Mr El Ramley. He spoke to the Claimant, who denied any improper conduct. Mr El Ramley then warned him that he must avoid contact with the woman from then on so as to ensure that there was no further misunderstanding that could lead to difficulties between them. A note was made of the conversation, with a direction that it should be archived. Although no finding was made against the Claimant and the episode seems to have been dealt with entirely confidentially, he took offence at the warning, regarding it as a slight upon his honour and integrity, but when he asked for the issue to be "escalated" (meaning, as we understood him, formally investigated) Mr El Ramley declined the request.

50 As to Allegations (10) and (11), we find that, on a date in late 2018[10], the Claimant attended a medical seminar at the Royal Marsden Hospital and sat next to a Dr Mehar, who had been employed by the KHO at some earlier time. The Claimant told us that he had told Dr Mehar about the seminar but had not accompanied him to it. Subsequently, and probably soon thereafter, there was a conversation in which Dr Eid asked the Claimant who had accompanied him to the seminar. It seems that the Claimant replied that he had met Dr Mehar there but they had not gone together. The conversation may have become uncomfortable: by then, the relationship between Dr Eid and the Claimant was less than cordial.

[9] They were not alone in these perceptions, which Dr Khalil wholeheartedly shared.
[10] The Claimant variously dated the seminar as 22 November 2018 and "December 2018".

But we are not persuaded that Dr Eid said anything about CCTV records or about the Claimant resigning. We are also unable to accept that he forbade him to attend any further medical seminars. We were given no coherent or rational evidential basis for making such findings. We do not, however, exclude the possibility that the Claimant (on whose 'listening skills' we comment on below) may have misinterpreted some of Dr Eid's remarks.

51 Allegation (13) was ultimately confined to the complaint that, in a conversation in December 2018, Dr Eid told the Claimant that he was not worthy to represent Kuwait. We find this claim substantiated in fact. We return to this matter below to explain our primary finding and the significance we attach to the comment.

52 As to Allegation (14), we find that, one early evening in January 2019, when the Claimant was working overtime, his sister visited the KHO to pick up some keys from him. She had not visited before. We think it more likely than not that, by one means or another, perhaps in his company, perhaps not, she was allowed past the security point and went as far as his office. She later left without incident. It came to Dr Eid's knowledge that he had received an unknown female visitor and the two men spoke soon afterwards. Dr Eid wanted to know who the visitor was, to which the Claimant replied it was his sister, explaining the reason for her visit. Dr Eid stressed that unauthorised visitors could not be admitted (to the secure parts of the building). The Claimant was later asked to provide formal confirmation of his sister's identity. Although the rule was as stated by Dr Eid, it was not applied rigidly. In practice, it was not uncommon for KHO staff to be visited by family members and we think it more likely than not that such visitors were readily waved through if they were known by the security staff. In addition, patients were sometime seen by In-house Doctors on KHO premises, but such visitors, we have no doubt, would not be admitted without suitable checks being carried out.

53 Allegation (15) arises out of the same conversation as Allegation (14). We find that Dr Eid passed a comment about the fact that the Claimant was visited at an hour when he was supposed to be working overtime. For want of evidence we can rely on, we cannot recreate the exchanges which followed save to say that we are persuaded that Dr Eid made a statement which the Claimant took as meaning that he was not free to work overtime from then on, except in Ramadan. We further find that, although the Claimant received overtime payments up to his dismissal, the documentary evidence makes good his case that he did not work overtime after January 2019, except during Ramadan. We are satisfied that this represented a clear change to his usual working pattern and is explained only by what was said to him. That leaves the question whether, perhaps not for the first time, the Claimant misheard or misinterpreted Dr Eid's remarks. On balance, we are satisfied that the overtime was important to him and he would not have ceased to avail himself of it if he had not been clear that he could no longer do so. We find that, if he was not explicit, Dr Eid said something needlessly ambiguous which the Claimant reasonably interpreted as he did.

54 Allegation (16) is concerned with the undisputed fact that the Claimant was transferred from the basement office to the second floor. We find that the move

happened in early March 2019. Initially he was placed in what he called a corridor. This space was not particularly narrow, as many corridors are, and might be better described as a lobby or landing, but we will stick with the terminology used by the parties. Not far from his desk were three doors (at least) and the stairs to the floor below. Two of the doors opened into offices. The third led to a toilet. There was a dispute about how long the Claimant's desk stood in the corridor. We find that it was a matter of some weeks – more than the fortnight suggested by the Respondent and much less than the five months for which the Claimant contended. The thinking behind the move was that the Claimant was unhappy in the basement office and members of the Medical Audit team had complained that he distracted them from their work. It was said on behalf of the Respondent that he was first located where he was because there was no room in either of the adjoining offices and that he was moved into one of the offices as soon as a desk there became free. We do not accept that version of events. We find that, from the start, there were two desks in one of the two offices which were not allocated to any staff member, although on occasions drivers would sit there between assignments. We find that there was no obstacle to his being placed in that office from the outset.

55 We turn to Allegation (19). It is common ground that, in March 2019, Dr Eid gave the Claimant an instruction to complete 150 BLOGs in a week. The disagreement was as to whether the requirement was reasonable, as the Respondent maintained, or utterly unachievable, as the Claimant told us. The parties agreed that issuing ordinary letters of guarantee was straightforward and all or most could be completed in a matter of a few minutes each. They also agreed that BLOGs were more complex and took longer. The difference was as to how much longer. In his witness statement (para 29) the Claimant estimated that the task he was set would have taken three weeks to complete. By contrast, he said in his oral evidence that each one required 2-3 days' work. If that was right, he would have needed about 18 months to complete 150. Dr Eid's evidence was that no more than 10-15 minutes was needed per BLOG. Dr Khalil told us that BLOGs could be completed quite quickly if all relevant documents (in particular, medical notes and reports) were submitted together. She told us that she tried to arrange for this to be done but certainly did not say that the paperwork actually provided to the Claimant was so prepared. We saw and heard no evidence of the productivity of other staff members performing BLOG work. The Claimant worked a 30-hour week. To achieve the task set, he would have needed to *average* 12 minutes per BLOG. Allowing for hitches and glitches, that would mean that trouble-free BLOGs would have had to be dispatched in, we hazard, 10 minutes per item or perhaps considerably less. It seems to us on the material presented that the requirement to process BLOGs at this rate (involving reading and absorbing medical notes and reports, studying the treatment plan and making a considered judgment as to whether the care was in conformity with the plan) was clearly unrealistic and unachievable, even if the documentation was prepared as Dr Khalil said it should be. (This is not to imply acceptance or rejection on our part of the Claimant's written evidence that he was given only a third of the time reasonably required to complete the BLOG work. We are simply not in a position to make a precise assessment. What we can say with confidence is that his oral evidence on the same subject was ludicrously exaggerated.)

56 As to Allegation (20), it is an undisputed fact that the Claimant failed to complete the 150 BLOGs asked of him and, for that reason, received a warning.

57 Allegation (21) arises out of the Claimant's request in April 2019 for permission to take an extended period of leave. On 8 April 2019 he booked flights to and from Algeria, outbound on 14 April and returning four weeks later on 11 May. We find that he planned to take four weeks' leave from work but disingenuously and very belatedly applied for permission to take three with a view to overstaying (as he had on an earlier occasion) by one week. When that application was refused, he applied, on 12 April, for two weeks. Dr Faisal's decision was to grant one week. The Claimant had no right to have either application granted. Given the lateness of the applications, there is nothing to suggest that Dr Faisal's decisions were in any way out of the ordinary. We were shown several documents evidencing a number of instances of late leave applications being turned down. The Claimant told us that his reason for travelling in April 2019 was that his mother, resident in Algeria, was "poorly". He also said that he had shown Dr Faisal evidence of his mother's condition. We were not told anything more about that. Mr Platts-Mills did not put the case on the footing that Dr Faisal had been presented with a leave request based on a medical emergency.

58 As to Allegation (23), the Claimant's pleaded case (particulars of claim, para 27) was that he was the only doctor whose pay was the subject of deductions for lateness. The working day was 09:00 to 16:00 with an hour for lunch. Under their published terms of employment, the KHO tolerated late attendance at the start of the day up to a limit of 105 minutes per month but employees exceeding that limit were liable to face deductions from their pay. Mr Platts-Mills relied only on deductions made on 24 August 2018, 9 November 2018 and 8 April 2019, although there was documentary evidence of earlier deductions from his pay made many years before Dr Eid joined the KHO. There was no dispute about his late attendance or the fact that, under KHO rules,[11] the deductions were permitted. Nor were the relevant deductions disputed on the 'pleadings', although under cross-examination the Claimant made Mr Platts-Mills's task more difficult than it needed to be by dismissing the documents purporting to substantiate the deductions of 9 November 2018 and 8 April 2019 as fabrications. In his favour, we reject his absurd evidence on that point. In very late disclosure, the Respondent produced documents evidencing deductions for lateness applied to three or perhaps four individuals[12] in 2019, after the end of the Claimant's employment. One of these was a doctor. It is not clear whether these deductions were made during, or after, the departures from the KHO of doctors Eid and/or Faisal. The documents certainly do not appear to evidence the approval, or even involvement, of either of those individuals. This is in contrast to the documents evidencing the three deductions on which the Claimant relies, on which Dr Eid's signature can be seen. Generally, the evidence points to a completely haphazard application of the 105 minutes rule in relation to the Claimant. In many months he exceeded the limit but escaped any penalty. That inconsistency is not explained in the Respondent's evidence. The

[11] Of course, the legality of the deductions under Part II of the Employment Rights Act 1996 was not in issue before us.
[12] There was some duplication in the documentation.

Claimant's evidence was that the other doctors were routinely late for work, just as he was, but suffered no pay penalties. On the meagre material before us, that evidence seems plausible and we accept it. The Respondent put forward no positive case (in 'pleadings' or in oral or documentary evidence) that the Claimant was unique or even unusual among the doctors in exceeding the 105 minutes. No such case was put to him in cross-examination. Their disclosure does not evidence *any* deductions from pay for lateness applied to any doctor other then the Claimant from 2015 onwards.

59 Finally, we turn to Allegation (28), the dismissal. It is an undisputed fact that, on 2 May 2019, the Claimant was handed a document, signed by Dr Faisal and dated 5 April 2019, giving notice to terminate his latest fixed-term contract on 6 July 2019, the date of its expiry. No reason was given. We further find that, on 24 May 2019, he was asked to leave work and that he did not work for the Respondent thereafter. On 7 June 2019 he sent a request to the KHO for an explanation for his dismissal, but received no reply.

Miscellaneous and 'background' matters

60 The KHO employed an Algerian Medical Secretary in 2003 and that individual remained a member of staff throughout the period of the Claimant's employment (which began the following year). It was not suggested that that person suffered any harassment or discrimination. Nor was there anything to suggest that her work entailed significant (or any) contact with Dr Eid or Dr Faisal.

61 The Claimant's bald assertion (witness statement, para (6)) that the Respondent operated a hierarchical system within the KHO with Kuwaitis at the top, those from the Middle East (including Egyptians, Syrians, Sudanese and Eritreans) in the middle, and 'North Africans' (as he defines that term) at the bottom, was not established in evidence and we do not place any reliance upon it.

62 During his employment the Claimant was the only In-house Doctor with Algerian nationality employed by the Respondent at the KHO.

63 He was also the only In-house Doctor at any material time employed at the KHO whom he would classify as North African. According to a schedule produced by the Respondent (which was not challenged before us), the others were predominantly British nationals (one was Bulgarian and one Greek)[13] and classified as ethnic Arabs originating from Sudan, Egypt or Syria.

64 It was common ground that Dr Eid and Dr Faisal are Kuwaiti and that they were at all material times conscious of the difference between their nationalities and national origins and the Claimant's.

65 Several witnesses called by the Respondent readily admitted in cross-examination that it had no formal policies or procedures to protect staff from harassment, discrimination and the like. They seemed to regard the line of

[13] The schedule shows the Claimant as a British national.

questioning as surprising, explaining to us that the KHO had no need for such documents.

66 Likewise, the Respondent did not operate any programme for the training of managers and staff on harassment, discrimination and related matters. Again, the prevailing view of the Respondent's witnesses questioned on the point seemed to be that measures of this sort were unnecessary.

67 Finally, we agree with Mr Platts-Mills that the Respondent has clearly and grievously failed to honour its duty of disclosure. It has produced no documents relating to the fundamental decisions to make a material change to the Claimant's duties (Allegation (5)) and to dismiss him after 15 years' service (Allegation (28)). We simply do not believe that it does not have within its power or control *any* document relevant to either decision. The disclosure relating to deductions from the Claimant's pay on account of lateness between 2015 and 2019 is also manifestly defective. The logic of the Respondent's case (expressed as a bare denial of Allegation (23)) was that the treatment of the Claimant was not materially different from the treatment of his peers. That case required them to disclose documents demonstrating either that the behaviour (timekeeping) of the peers was materially different to his or that their behaviour was not materially different and neither was the treatment (in the form of pay penalties) meted out to them. No disclosure supporting, or bearing upon, either proposition has been given. It is plain and obvious that documents relevant to Allegation (23) exist and have not been disclosed. As if this were not enough, we have also noted the Respondent's disclosure of a batch of documents on the eve of the trial and the further attempt, mid-trial, to introduce further undisclosed material. The Respondent is a sovereign state not lacking in financial and administrative resources. It has been represented throughout by a substantial firm of solicitors.

Rationale for primary findings

68 We have offered brief explanations above for some of our primary findings. We supplement those with this rather fuller account of our thinking.

69 In arriving at our primary findings we have had careful regard to all the evidence put before us. We have considered the coherence, internal consistency and general plausibility of the witness evidence. We have also attached particular importance to contemporary documents and, in some instances, the absence of such documents.

70 We did not find the Claimant an altogether satisfactory witness. He was hindered to a degree by his limited command of English. But in addition it seemed to us that his ardent and unwavering belief in the validity of his claims distracted him from focussing on the questions put to him. And even without these distractions, he did not come across as someone generously endowed with what some call 'listening skills'. He also struck us as lacking in self-awareness to the extent of being more or less incapable of acknowledging even the possibility of any failing or deficiency in his own performance or conduct. Hence his routine dismissal of unwelcome questions as simple "lies", sometimes without even

grasping what was being put to him. All in all, he was at times an exasperating witness. Much of his evidence was wildly exaggerated. Some was internally contradictory. Some made little sense.

71 At the resumption of his cross-examination by Mr Sethi on the morning of Monday, 19 December, following an interval of three days (we had not sat on 16 December), the Claimant asked to correct significant parts of his evidence given on 14 and 15 December, withdrawing allegations that he had been mocked by colleagues offering him a coin when passing his desk on the way to the toilet and by calling him "Dr Plus" after he ceased to deal directly with patients, and, most significantly, claims that he was mocked by Dr Eid for his spoken Arabic (his dialect or accent or both). This dramatic adjustment was the subject of clarifying questions from the Tribunal and additional cross-examination. Eventually, two points emerged clearly. First, the Claimant abandoned all assertions in his pleaded case and in his witness statement that Dr Eid had ever subjected him to overtly race-based treatment in any form.[14] Second, he was nonetheless unshakeable in his insistence that Dr Eid had told him in or around December 2018 that he was not worthy to represent Kuwait.

72 We have given anxious reflection to the fact that the Claimant was prepared to make serious, detailed allegations in his claim form and witness statement and oral evidence which, after reflection, he felt compelled to withdraw. To say the least, such inconsistency does not inspire confidence, but in the end we have concluded that he was, as he said, driven by his conscience to withdraw so much of his case as he could not sustain. The corrections were volunteered and not (with due respect to Mr Sethi) forced from him by skilful questioning. And he was, we are sure, alive to the fact that abandoning all allegations of overtly race-based treatment must leave him in a much weakened position. If we are right to conclude that the corrections were sincere and conscience-driven, what are we to make of the Claimant's adamant refusal to concede an inch on the "not worthy" comment? The allegation is not, in our view, intrinsically implausible. All that stands against it is the untested bare denial in Dr Eid's witness statement. The Claimant says that the remark was made in the presence of Dr Faisal but (as already explained) we have no evidence from him, oral or written. In all the circumstances, we think it improbable that the Claimant would have persisted with the "not worthy" allegation had it been false. We see no reason to suppose that his conscience would have barred him from maintaining one deception but tolerated another. Accordingly, and not without hesitation, we have upheld this allegation despite the fact that it stands somewhat unsteadily on the evidence of the Claimant alone.

73 Such other findings of primary fact as we have made that favour the Claimant have firmer foundations: in some instances they rest on undisputed events (such as warnings and the dismissal), in others they are established or at least supported by documentary evidence (*eg* overtime records) or by admissions of witnesses called for the Respondent (*eg* regarding the availability of a desk in an office on the second floor when the Claimant was required to work in the corridor).

[14] Notwithstanding the heroic efforts of Mr Platts-Mills in his closing submissions, these allegations *were* completely and unequivocally abandoned.

74 The Claimant's supporting witnesses did not impress us. Dr Samir Mohamed had an obvious interest in the case, being himself involved in pending litigation against the Respondent based on his own dismissal and other matters. In his witness statement he purported to corroborate a number of important allegations which the Claimant had withdrawn in the course of his own evidence. We could attach even less weight to Dr Mohamed Idris Khair's evidence since he did not attend the hearing. His statement (tendered for what it was worth) also contained passages which were, in important respects, incompatible with the Claimant's evidence as corrected.

75 So far as it went, the evidence of the Respondent's witnesses was, on the whole, more satisfactory than that given on the Claimant's side, tending to be clearer and more coherent. But the trouble was that it did not go very far. To our minds, of much greater significance than the witnesses called on behalf of the Respondent were those not called. As will be explained, the case succeeds on the basis of our findings of primary and secondary fact concerning a series of events which occurred between December 2018 and May 2019. As to secondary fact, the critical question is whether the putative harasser(s) or discriminator(s) was or were materially influenced by the fact that the Claimant was Algerian and/or North African. The persons alleged to have committed the acts of harassment or discrimination were Dr Eid, Dr Faisal and 'Management'. Dr Faisal refused the Claimant's latest leave application (Allegation (21)) and was alleged to have taken the decision to dismiss in company with 'Management'. 'Management' was also held responsible for issuing one warning. All other complaints were laid at the door of Dr Eid alone. And when the concept of 'Management' was probed, it was clear that the term was not intended to include the Claimant's line manager, Dr Khalil, who gave evidence before us; rather, it was more or less synonymous with the 'Administration', being reserved for the tier of diplomatic officers superior to her, namely the Finance Attaché, the Health Attaché, the Administration Attaché and the Director of the KHO. No holder or former holder of any of these roles was a witness before us. Rightly no doubt, no suggestion of harassment or discrimination was put to Dr Khalil or any other witness called on behalf of the Respondent. In short, we were not favoured with oral evidence from any actor or decision-maker responsible for any of the acts relied on as founding the Claimant's claims.

76 We did, of course, have the witness statement of Dr Eid, which we read with care. But since he was not produced as a 'live' witness and so could not be tested in cross-examination, we could attach only limited weight to his evidence.

Secondary Findings and Conclusions

Our analytical process in outline

77 We will determine these claims by asking four questions. The first question is whether the Claimant has identified treatment which, if the necessary link to race were also shown, could sustain a complaint of harassment or direct discrimination? The second question is whether the burden of proof provisions have a bearing on the case and, if so, in relation to each claim which survives the first question, where the burden of proof lies. The third question is whether, in so far as the

burden of proof matters, the party bearing it has discharged it. The fourth question is whether any claims (whether or not they survive the analysis so far) were presented out of time and so fall outside the Tribunal's jurisdiction in any event.

(1) Treatment capable in principle of grounding a legal claim?

78 A number of claims must be eliminated at once because the Claimant does not establish treatment which, even assuming that the necessary link to race existed, could amount to harassment or detrimental treatment. In most instances, nothing is shown about which any sensible complaint could be made.

79 Allegation (1) falls at the first hurdle. Dr Eid did not shout at the Claimant in early 2017 and no treatment capable of grounding a legal claim is established.

80 There is nothing in Allegation (3). The Claimant was absent from the office without permission. Dr Faisal wanted to know why and properly conveyed through Dr Khalil the fact that absence without good cause might result in disciplinary action.

81 Allegation (4) fails: it is not shown that the Claimant was routinely refused leave requests or that there was anything unreasonable or unusual about the way in which his requests were decided.

82 Allegation (7) cannot found a legal claim. The Claimant may have disliked the basement office but that is not a basis for finding an actionable detriment or an arguable act of harassment. It was appropriate that he should be moved there to sit with the Medical Audit Team when he ceased to deal directly with patients. The fact that there seems to have been some tension between him and his colleagues (resulting at least in part from his insistence on keeping the window shut) was unfortunate for all concerned but again, not a consequence that had any legal significance.

83 Allegations (10) and (11) also fail because they raise no matter about which any reasonable complaint could be made. Dr Eid asked an unobjectionable question about the person the Claimant was believed to have accompanied to a seminar. There was no ban on attending further seminars.

84 As to Allegation (14), the Claimant again has no ground for complaint. Dr Eid appears to have had good reason to understand that the Claimant had caused or permitted a personal guest unknown to the KHO to attend his office or at least to pass beyond the security point, and properly reminded him of the fact that doing so was not allowed. And there was nothing objectionable about requiring him formally to confirm the identity of his visitor.

85 As a result of our reasoning so far, 10 of the 16 claims pursued before us remain. These are: Allegations (5) (the change of duties), (8) (the warning to avoid a female colleague), (13) (the "not worthy" comment), (15) (the prohibition from working overtime), (16) (the desk move to the second floor), (19) (overloading with BLOGs), (20) (the warning for failing to meet the BLOG target), (21) (Dr Faisal's

refusal of leave), (23) (deductions from pay for lateness) and (28) (dismissal). The analysis which follows addresses only these ('the surviving claims').

86 Apart from the dismissal, the surviving claims are, we think, best seen in the first instance as complaints of harassment. By contrast, we treat the dismissal-based claim as alleging direct discrimination. It seems to us that this accords best with the language defining the two torts. (Mr Platts-Mills did not press any different approach, only stating that he wished to run all complaints as alternative claims, and Mr Sethi addressed no submission to us on this aspect.) In so far as we treat any claim as alleging harassment, we find that the Claimant has made out treatment which, if 'related to' race, satisfies the 2010 Act, s26(1)(b) in that it had an 'effect' within the reach of the statutory language. Alternatively, if we are wrong about that, we find in any event that he comfortably clears the lower hurdle of establishing a 'detriment' within the meaning of s39(2)(d), and that accordingly he is entitled to succeed in complaints of direct discrimination if the Tribunal finds that the acts relied on were done 'because of' race (see s13(1)). (As to the dismissal, the same reasoning in reverse is theoretically possible since there is now case-law to the effect that a dismissal may (of itself and regardless of the manner in which it is effected) amount to harassment. But we see no possible benefit in following this trail any further since we cannot conceive of any circumstance in which the Claimant could fail in a dismissal-based claim for direct discrimination but succeed in a dismissal-based claim for harassment.)[15]

(2) Burden of proof – application and effect

87 Does the burden of proof matter? Ordinarily, the employer fields appropriate witnesses to explain the acts or omissions on which the employee's claims rest. In such a case, the Tribunal can evaluate the evidence and decide, on a balance of probabilities, whether those acts or omissions (or any of them) occurred (if that is in dispute) and if so, whether they were motivated to any material extent by any unlawful factor, such as race. Accordingly, save in the exceptional situation where the competing evidence and arguments are permissibly judged to be perfectly balanced, the Tribunal's determination of the 'reason-why' question will not depend on whether one party or the other bears the burden of proof. But this is not the ordinary case. Mindful of the cautionary remarks of Lord Hope in *Hewage*, we are satisfied that, unusually, the incidence of the burden of proof is of central importance here because of the dirth of direct evidence on key matters in dispute.

88 Does the burden shift? We have reminded ourselves of the wording of the 2010 Act, s136(2). Are there facts from which the Tribunal *could* conclude, in the absence of any other explanation, that the Respondent contravened the provisions protecting the Claimant from harassment and/or direct discrimination based on his race? Before addressing the question we must pause to draw two distinctions.

89 The first is between the two torts under which the Claimant claims. We have found that adverse treatment capable in principle of founding both categories of

[15] This is because (a) the language of s26(1)(b) is demanding for claimants and proving a detriment is, by contrast, relatively easy, and (b) as we will shortly explain, there is, for present purposes, no practical distinction between the 'related to' (s26(1)(a)) and 'because of' (s13) tests.

claim has been shown. The only remaining question is whether the necessary link with the relevant protected characteristics is made out. For that purpose, the underlying logic of the harassment and discrimination claims is the same, namely that the treatment complained of was unlawful because it was materially influenced by the fact that the Claimant was Algerian and/or 'North African'. In other words, the statutory question may be read as simply asking whether there are facts from which it would be open to the Tribunal to infer a material degree of racial motivation (conscious or subconscious) behind the treatment of which the Claimant complains. In effect, this is to apply to *all* surviving claims the s13 test as interpreted in *Nagarajan*[16] since, in so far as he alleges harassment, he says that the treatment was 'related to' race *because* it was materially influenced by his personal characteristics of race. Accordingly, despite the different formulations of the harassment and direct discrimination claims, we are satisfied that the s136(2) test can and should be applied to them without differentiation.

90 The second distinction is between the protected characteristics relied upon. The Claimant complains of discriminatory treatment based on his status as an Algerian and/or as a 'North African'. Although closely connected, the two strands of the case are different and must be considered individually.

91 We have concluded that in the cases of seven of the surviving claims, the burden does shift, whereas in respect of the other three it does not. We will address the two groups of claims separately.

Allegations (13), (15), (16), (19), (20), (23) and (28)

92 Here we begin by considering the claims based on Algerian nationality and/or national origins.

93 We have had regard to all the material put before us other than the explanations offered (in so far as they have been offered) for the acts complained of. We attach particular significance to the following matters: (1) the difference in ethnic/national origins as between the putative discriminators, Dr Eid and Dr Faisal (Kuwaiti) and the Claimant (Algerian); (2) the fact that that difference was known to Drs Eid and Faisal; (3) the extent of the adverse treatment applied to the Claimant (six separate instances between December 2018 and May 2019)[17]; (4) the special significance of the comment that the Claimant was not worthy to represent Kuwait; (5) the fact that the Respondent had no policies or procedures to protect staff from harassment and discrimination; (6) the fact that the Respondent did not operate any programme for the training of managers and staff on harassment, discrimination and related matters; (7) the unsatisfactory disclosure given by the Respondent. Where convenient we will refer to these collectively as the 'seven factors'.

[16] As we have already noted, *Nagarajan* was decided under the differently-worded pre-2010 legislation, but the change in statutory language is unimportant.

[17] The other five surviving claims must be left out of account because, as we will shortly explain, we have concluded that in relation to these no *prima facie* case is made out.

94 In our judgment, there is much to be said for the view that the "not worthy" remark was by itself sufficient to shift the burden of proof to the Respondent. Objectively judged, the comment, addressed by a Kuwaiti to an Algerian, plainly had a racial component. Further, as we explain below, we are satisfied that, regardless of the motivation behind it, it was inherently 'related to' the Claimant's ethnic and national origins. In any event, it was but one of a series of factors. The others all play their part. The difference in race between Drs Eid and Faisal and the Claimant is certainly a material feature and their knowledge of the difference is an essential component of the Claimant's case. The strikingly large number of instances of apparently hostile treatment over a five-month period appears peculiar and cries out for an explanation, especially as these instances include examples of treatment seemingly not applied to any of the other doctors, all of whose relevant racial characteristics differed from his (such as the (apparent) overtime ban (Allegation (15)), the deductions for lateness (Allegation 23)) and the dismissal (Allegation (28)). Some important points are also drawn from 'background' information concerning the Respondent's organisation and the way in which it is run. So, the absence of structures and arrangements to protect employees from harassment and discrimination can reasonably be seen as suggestive of a culture in which unequal treatment is tolerated. The final factor concerns the manner in which the Respondent has conducted the litigation: our finding of seriously defective disclosure is capable of supporting an inference of a desire to suppress damaging evidence. We agree with Mr Platts-Mills that, when all relevant factors are put together, the combined effect is compelling.

95 In considering whether the burden shifts we have not lost sight of the unsatisfactory features of the Claimant's evidence and in particular the important changes to it made in the course of cross-examination. As we have explained, in reaching our primary findings, including those relating to the "not worthy" comment, we have taken those features into account. The primary facts have been found and that analysis is not to be repeated. But, having assembled the seven factors, which taken together seem to us to argue powerfully in favour of the Claimant's case under s136(2), we have turned our minds again to the weaknesses in his evidence, and in particular to whether and, if so, to what extent, his withdrawal of all allegations of overtly race-based treatment militates against the conclusion that a *prima facie* case is made out and the burden of proof shifts. Mr Sethi did not so argue, preferring to concentrate his closing submissions on the facts, but we think it appropriate to address this question. The manner in which a dispute is litigated may have a significant bearing on the incidence of the burden of proof if it adds to, or detracts from, the weight of material from which the Tribunal *could* conclude that unlawful discrimination has occurred. Just as the Claimant is entitled to rely on the Respondent's defective disclosure, it seems to us that the Respondent is entitled to pray in aid his abandonment of all allegations of explicit race discrimination as an independent 'fact' to place into the s136(2) balance.

96 We have also had regard to the additional points discussed below in addressing the burden of proof in relation to the claim based on the Claimant's 'North African' national status.

97 Having weighed the competing cases with care, we are satisfied that the Claimant has comfortably discharged the burden of proving facts from which, in the absence of any other explanation, the Tribunal could infer, in respect of the seven claims under consideration here, infringements of the 2010 Act based on his Algerian nationality and/or national origins. We have explained our reasons for regarding his case under s136(2) as compelling. The fact that he made material changes to his evidence in the course of cross-examination may tip the scales marginally back towards the Respondent, but is certainly not decisive. The 'reason-why' question directs attention principally to the *employer's* actions and the motivation behind them. Weaknesses in an employee's evidence may damage his credibility but save on issues of primary fact on which claims depend, his contribution is relatively unimportant. We have explained our reasons for accepting his evidence on the "not worthy" comment, the only matter on which our finding depended exclusively on his evidence. And the fact that key allegations have been withdrawn does not warrant the conclusion that what remains is a purely tactical claim pursued in bad faith. Mr Sethi rightly did not put his case that way. We accept that the Claimant's claims are sincere, despite the fact that he has belatedly been constrained by his conscience to acknowledge that he has no 'smoking gun' evidence to rely upon. As for the factors considered next in the specific context of the complaint of discrimination based on 'North African' nationality, these add little to the overall assessment in respect of the first strand claims, for reasons which we will explain.

98 In so far as the claims are based on 'North African' nationality and/or national origins, our assessment is slightly more marginal. The seven factors already discussed in relation to the first strand apply with equal force in the Claimant's favour, but there are some countervailing points. We tentatively mention two.[18] In the first place, we are offered no evidential basis for the theory inherent in the Claimant's case of a policy or practice of Kuwaiti KHO decision-makers to discriminate against persons from a specific group of states in the western half of northern Africa. The theory seems improbable on its face. In addition, we have held as a matter of primary fact that the Claimant's more specific assertion that the Respondent operates a discriminatory hierarchical system with Kuwaitis at the top, East Africans in the middle and 'North Africans' (by his definition)[19] at the bottom is not made out on the evidence. Second, the Claimant's complaint that he was the only 'North African' doctor at the KHO does not suggest discrimination in the absence of any suggestion of, let alone evidence pointing to, a policy or practice of discouraging applications from 'North African' doctors or turning down without good reason any such applications if made.

99 Taken together, these points arguably lean slightly against the proposition that the treatment complained of was materially influenced by the Claimant's 'North African' nationality and/or national origins. Nonetheless, we have reached the clear conclusion that, here again, he has done enough to shift the burden of proof to the Respondent. To our minds, the seven factors clearly carry the day, particularly because of the racial element in the "not worthy" comment. That remark was offensive to him not only as a non-Kuwaiti but also as an Algerian and so, by his

[18] These are our own reflections. Counsel's submissions did not venture here.
[19] Hereafter, use of the term in inverted commas will allude to the Claimant's definition.

lights, also a 'North African'. In essence, his case is that he suffered harm because of who he is and where he comes from. That case does not require the Tribunal to find a policy of discriminating or a discriminatory hierarchical structure. And we have not attached particular significance to the fact that the Claimant was the only 'North African' doctor.[20] For all of these reasons, we are clear that the s136(2) test is satisfied for the purposes of the second strand as well as the first.

Allegations (5), (8) and (21)

100 In respect of Allegation (5), we have accepted Dr Khalil's evidence concerning his many failings as a member of the team of patient-facing In-house Doctors, the many complaints to which those failings gave rise and the many unsuccessful attempts to get him to improve. We are also mindful of the fact that there was no suggestion that any other In-house Doctor performed poorly but received more favourable treatment than he did (his case simply being that his performance was entirely satisfactory and not inferior in any way to that of his peers). The evidence substantiates an entirely rational ground on which it was open to the Respondent's decision-makers to conclude that he should be moved to fresh duties[21] and argues against the theory that the change in his role in 2017 was motivated by considerations of race.

101 Our review of Allegation (8) leads us to a similar assessment. The facts are clear. A female colleague made it known that she felt most uncomfortable in the Claimant's presence. She made no complaint about anyone else. There was no mutual complaint by the Claimant. It was not suggested that any issue of this kind had ever arisen before at the KHO. A pragmatic policy decision was taken to nip the problem in the bud by ensuring that the two were kept apart. Since there was no suggestion from any quarter that she had done anything wrong, it is hard to see how a warning of any sort could sensibly have been directed to her. By contrast, there were rational grounds for speaking to the Claimant, as the person about whom a concern had been raised, in order to avoid further difficulty. The Claimant is entitled to complain that he was subjected to a detrimental, quasi-disciplinary act (a warning), albeit not one based on any disciplinary process, let alone a finding of wrongdoing. That treatment was not what we would regard as reasonable but there is ample evidence before us that the Respondent does not regard adherence to norms of sound UK employment relations practice as a priority. The refusal of the Claimant's request for the issue to be "escalated" (or investigated) was consistent with the policy decision to which we have referred. In our judgment, the facts argue persuasively against an inference of discrimination in relation to Allegation (8).

102 We were surprised that the Claimant sought to base a claim on Allegation (21). Our first instinct was that nothing capable of founding a claim of harassment or standing as a detriment was shown. On balance, however, we prefer to assume in his favour that refusal of the leave request was potentially a detriment at least.

[20] As can be seen, we have not included the Claimant's solitary status as a North African doctor among the seven factors.

[21] We are not here making the mistake of considering the employer's explanation at the first stage of the burden of proof analysis. It is elementary that the explanation must not be considered at the first stage. Our finding is merely that there was a rational, evidential basis for a judgement about the Claimant's performance which is consistent with the explanation relied upon.

But at this point the going becomes all the more difficult for him. As we have found, leave requests were often refused if made late. The Claimant's requests here relied on were made exceedingly late. The stated ground for the refusal to allow three weeks' leave was consistent with the ordinary practice, as was the grant of one week in response to the second request. The Claimant did not make out a case for special treatment on compassionate grounds. Here again, the evidence supports the Respondent's simple denial that the decisions complained of under Allegation (21) had anything to do with race.

103 We have measured Allegations (5), (8) and (21) individually and together, noting a number of considerations which seem to us to militate strongly against an inference of unlawful discrimination. We have also set against those considerations the seven factors, to which we have attached considerable collective weight in relation to the other surviving complaints, and asked whether they tip the balance in the Claimant's favour. Having done so, we are satisfied that, persuasive as they are, they do not. On these claims, he fails to make out a *prima facie* case. Accordingly, Allegations (5), (8) and (21) fall away at this point.

(3) Burden of proof – outcome: treatment 'related to' or 'because of' race?

104 By way of recapitulation, the complaints which remain are Allegations (13), (15), (16), (19), (20), (23) and (28). In respect of these, we have found that the burden of proof has shifted to the Respondent.

105 We have differentiated above between the harassment and direct discrimination claims because the parties are entitled to clarity as to which statutory provisions are being applied to which acts. But, as we have explained, for the purposes of the burden of proof provisions, the Tribunal's approach does not distinguish between the two causes of action.

106 What is the effect of the burden shifting? The answer is given by s136(3): the employer must "show" that it did not contravene the Act. That means that it has the legal burden of proving that it acted lawfully. The burden is (as we have noted above) discharged on the usual balance of probabilities and not some mysterious higher standard of the sort sometimes contended for in the early years of the burden of proof provisions.[22] But what is sauce for the goose is sauce for the gander. Mere assertion will no more found a defence under s136(3) than a *prima facie* case under s136(2). What is required is evidence.

107 Applying the language of s136(3), we arrive at a clear answer: the Respondent signally fails to show a ground for its actions which excludes discrimination because of the Claimant's nationality as an Algerian and/or 'North African'.

108 As to Allegation (13) (the "not worthy" comment), the only relevant evidence on the Respondent's side was contained in the statement of Dr Eid, para 18, in which he simply denied making the remark. In making our finding to the contrary,

[22] Mr Platts-Mills rightly did not contend for any gloss to be applied to the statutory language. Fortunately, we are nowadays seldom pressed with distractions of this sort.

we have rejected that evidence. That leaves us with no explanation for the act complained of, let alone one which excludes discrimination. The inevitable result is a finding that the remark was at least materially influenced by the Claimant's race.

109 For completeness, we should add that, even if we had not held that Dr Eid was materially influenced by the fact of the Claimant's nationality or national origins, the "not worthy" comment would have been found to be an act of unlawful harassment in that it was inherently 'related to' race as a slur addressed by a Kuwaiti to a non-Kuwaiti about the latter's fitness to represent the former's country. The requirement for a loose, 'associative' link between the remark and race (not necessarily the complainant's race) is amply satisfied.

110 Turning to Allegation (15) (the overtime ban), again, Dr Eid offers a bare denial, which we have rejected. The inference of discrimination is not rebutted.

111 Dr Eid's evidence in relation to Allegation (16) (the desk move to the second floor) was (statement, para 15) that at the time of the move there was no free desk. But we have rejected that evidence. No tenable explanation for the treatment complained of remains, let alone an explanation which excludes discrimination.

112 There was no dispute about the fact on which Allegation (19) rests, namely the instruction to the Claimant complete 150 BLOGs in a week. Dr Eid (statement, para 24) maintained that it was perfectly reasonable. He was supported in that respect by Dr Khalil (statement, para 23). But despite this evidence we have found that the requirement was unachievable. The Respondent's explanation is rejected and the claim necessarily succeeds.

113 There was also no dispute that the Claimant received a warning (Allegation (20)) as a direct result of failing to comply with the requirement to complete 150 BLOGs in a week. The Respondent's only answer to the claim was that the requirement was not discriminatory. The Tribunal has found that the requirement was at least materially influenced by race, and accordingly discriminatory. It seems to us to follow almost inescapably that the punishment for failing to satisfy the requirement was equally discriminatory. But even if we are wrong about that as a matter of logic the Claimant succeeds on Allegation (20) because the only explanation provided by the Respondent has been rejected and accordingly we are left with no explanation for the warning that excludes discrimination.

114 As to Allegation (23), we have looked to the Respondent to demonstrate on evidence that the deductions from pay on which the Claimant relies were not materially influenced by race. We have accepted his evidence that other doctors during the material period were routinely late for work as he was but did not suffer deductions from pay. We have also noted the wholly inadequate disclosure given by the Respondent on this part of the case. The difference in treatment is simply not explained and the s136(3) burden is not discharged.

115 Remarkably, we are offered no witness evidence on the most substantial claim of all, Allegation (28) (dismissal). Here, the Claimant directs the claim at Dr Faisal. The Respondent's pleaded case (grounds of resistance, paras 3 and 5) is

that the dismissal was based on the Claimant's "conduct and capability". The 'conduct' is not specified beyond the assertion that there were (unspecified) complaints when (on unspecified occasions after April 2017) he covered for colleagues in patient-facing duties and these led to 'management' (which seems to have meant the Administration) deciding to dismiss. As already noted, Dr Faisal was not among the witnesses before us and no statement in his name was presented. Dr Eid's statement was silent on the subject of dismissal. No other member of 'management' (or the Administration) was called. The decision to dismiss was taken at a level above Dr Khalil, and there was no suggestion that she was involved. And as we have noted, the Respondent disclosed no document relating to that decision or the process by which it was reached. The Respondent's case on Allegation (28) is simply to deny that the dismissal entailed any discrimination. It amounts to no more than a (negative) assertion. The burden is not discharged and the inference of discrimination prevails.

116 Having reviewed the totality of the evidence presented on behalf of the Respondent, we are satisfied that it comes nowhere near to showing that, in respect of those allegations on which it bears the burden of proof, its actions were not materially motivated by race. It has simply failed to provide an explanation for its conduct which excludes at least a material element of discrimination. On many points, it provides no explanation whatever.

117 For the reasons already given, we find that Allegations (13), (15), (16), (19), (20) and (23) are made out as acts of race-related harassment and Allegation (28) is made out as an act of direct race discrimination.

118 In case we are wrong to classify any of Allegations (13), (15), (16), (19), (20) and (23) as instances of harassment, we uphold them in the alternative as detrimental acts of direct discrimination.

(4) Jurisdiction – time

119 It is common ground that Allegation (28) was brought in time. On their face, the other six complaints which we have upheld were presented out of time. Are they nonetheless within time on the ground that, taken with the dismissal, they amount to 'conduct extending over a period' within the meaning of the 2010 Act, s123(3)(a)? In our judgment, they are. They arose out of events which happened within a sufficiently brief period to be properly seen as a single continuum rather than an extended series of disparate acts. Most have the character of apparently arbitrary and/or gratuitous and/or oppressive managerial acts. All are laid at the doors of Dr Eid and/or Dr Faisal and/or 'management'/the Administration (a small group in which Dr Eid and Dr Faisal were key figures). These factors all support the Claimant's case on the application of s123(3)(a) and fit with the evident purpose of the legislation, which must be to ensure that all claims are litigated promptly without necessitating fresh proceedings whenever a new ground of complaint arises.

120 The remainder of the claims pursued, all of which are on their face out of time, have failed on their merits. Since they did not entail unlawful behaviour by the

Respondent, they cannot be added to the chain of (unlawful) acts which we have held to be within time. 'Conduct' referred to in s123(3)(a) must mean unlawful conduct. Further and in any event, it would obviously be idle to apply that provision to give the Tribunal jurisdiction to entertain any claim already found to be without substance.

121 Mr Platts-Mills rightly did not run an alternative argument on jurisdiction invoking the discretion under s123(1) to substitute a longer limitation period in place of the standard three months. There was no evidential foundation for such an argument and, for the reason just given in relation to s123(3)(a), the Tribunal would inevitably have rejected it in any event on the further ground that all claims other than those rescued as forming part of 'conduct extending over a period' had failed on their merits.

122 It follows that all bar the seven claims which we have upheld fail also for want of jurisdiction.

Outcome and Postscript

123 For the reasons given, the claims succeed in part.

124 The Respondent should not delay in learning lessons from this unhappy story. It is not open to them to employ staff in the UK without accepting responsibility for treating them in accordance with applicable equality and employment relations legislation and practice. Ignoring that responsibility will inevitably land them with further valid claims and associated reputational damage.

125 A remedies hearing must be listed if the parties remain constitutionally unable to communicate in a constructive and realistic way. A case management hearing for the purpose of listing the remedies hearing and giving all necessary directions will be held in March (a notice of hearing will follow). If the Tribunal is notified that all remedies issues have been resolved by agreement, the case management hearing will of course be vacated.

Employment Judge Snelson
_____18th Jan 2023_

Judgment entered in the Register and copies sent to the parties on : 19/01/2023

..... for Office of the Tribunals