CE

EMPLOYMENT TRIBUNALS

Claimant: **Mr A Bedeau**

Respondent: **The Co Operative Group**

Heard at: **East London Hearing Centre**

On: **9, 10, 11, 12, 16, 19, 23, 24, 25, 26 August 2022**
In chambers 31 August, 1 and 2 September 2022

Before: **Employment Judge Russell**
Members: **Ms G Forrest**
Ms S Jeary

Representation:
For the Claimant: **In person, assisted by Ms Hawthorne**
For the Respondent: **Mr M Green (Counsel)**

JUDGMENT

1. **The claim of harassment relating to race fails and is dismissed.**

2. **The claim of direct discrimination because of race fails and is dismissed.**

3. **The claim of victimisation fails and is dismissed.**

4. **The claim of constructive unfair dismissal fails and is dismissed.**

REASONS

1 By a series of claim forms presented by the Claimant between 12 September 2019 and 5 August 2021, the Claimant brought a variety of claims against his former employer, the Respondent. The cases had been subject to significant case management and the issues were determined by Employment Judge Burgher at preliminary hearing on 5 October 2021. As set out in Schedule A to the Case Management Summary, the Claimant relies on 55 acts as constituting conduct which cumulatively amounted to a breach of the implied term of trust and confidence entitling him to resign and treat himself as dismissed. The same 55 detriments are relied upon as acts of direct race discrimination

or in the alternative, harassment relating to race. The final 22 detriments are also relied upon as victimisation, following a protected act on 12 September 2019, namely the presentation of the first Tribunal claim in which the Claimant brought claims of race discrimination and harassment.

2 I subsequently gave the Claimant leave to add three further issues:

2.1 Lynn Brown failed to properly investigate the Claimant's grievances and instead produced a predetermined outcome influenced by communications and directions she had received from Eleanor Ryan and Phil Atkins.

2.2 On or around the 27 April 2021, Andy Mills-White agreed to show a folder of materials that contained scurrilous, racially biased, false and inaccurate comments in signed meeting notes as well as offensive comments about the Claimant's proceedings in the Tribunal, although information about his claim should have been kept confidential.

2.3 On the 27 April 2021, Andy Mills-White arranged a meeting for the purpose of the Claimant reviewing his personnel folder or folders, gave him the folder of complied documents to examine with the expressed purpose of upsetting the Claimant which it did.

3 The Tribunal heard evidence from the Claimant on his own behalf, by way of a 158 page written statement and a 66 page supplementary written statement, as well as cross-examination.

4 The Tribunal heard evidence on behalf of the Respondent with witness statements and cross-examination from:

Andy Mills-White, Senior ER Investigator (7 pages). Mr Mills-White also produced a 5 page supplementary statement.

Mr Bradley Rymer, Transport Operations Manager (3 pages)

Mr Brian Keyworth, Depot General Manager (3 pages)

Ms Eram Akram, People Adviser (2 pages)

Mr James Gilbraith, Depot Operations Manager (2 pages)

Ms Catherine Armstrong, Transport Team Manager (5 pages)

Ms Lynn Brown, Head of Logistics at Nisa Retail (2 pages)

Mr Matthew Hill, Transport Operations Manager (11 pages). Mr Hill also produced a 2 page supplementary witness statement.

Mr Pawel Gorny, Warehouse Operations Manager (2 pages)

Mr Robert Tann, Transport Shift Manager (2 pages)

Mr Wayne Horsfall, Transport Days Manager (7 pages)

Mr Ahmed Sharif, Distribution General Manager (5 pages).

5 In our findings of fact below, the Tribunal makes specific findings on credibility in respect of the material disputes of evidence. Overall, the Tribunal regarded Mr Sharif, Mr Hill, Mr Tann and Ms Armstrong to be particularly straightforward and credible in their evidence, quick to acknowledge where they had made mistakes and showing an ability to see a dispute from the Claimant's point of view even if they did not agree with him.

6 By contrast, whilst the Claimant was calm and polite throughout, we did not regard him to be a credible witness. When faced with apparent weaknesses or inconsistencies in his evidence, he sought to introduce new allegations and gave evidence not in his lengthy statements and not subsequently put to relevant witnesses, he appeared evasive in many of his responses often repeating his allegations rather than answering a clear question put to him by Counsel and was unable to acknowledge that any of the matters alleged may have been born of a genuine mistake or apply equally to other drivers. On a number of occasions the Claimant clearly misheard or misunderstood something which had been said in the Tribunal room. By way of example, the Claimant started his oral submissions by saying that he wanted to address the integrity of the hearing. He said he had not prepared for oral submissions as Mr Green had misrepresented process and told him that it would be written submissions only, the inference being that he had been deliberately put at a disadvantage. This was a serious allegation which Mr Green denied, stating that he had told the Claimant that they would exchange written submissions and have an opportunity to respond orally on matters of law and fact. Indeed, the Tribunal had explained the process for exchanging written submissions and oral submissions (which we said must be of no more than 1 hour each) at the close of evidence on 24 August 2022 and again on 25 August 2022. It was expressly agreed before the Tribunal that written submissions would be exchanged by 11am with oral submissions at 1.30pm. The Claimant could not reasonably have believed that oral submissions would not be expected. This reflected badly on the Claimant's reliability as a witness when deciding disputes about what had been said by managers generally.

7 The Tribunal was provided with and read witness statements from Claudette Clark (Transport Team Manager) and Jordan Shanks (Shift Manager). Neither attended to give evidence for health reasons which the Tribunal accepted were genuine and we attached such weight as we though appropriate in the circumstances. The Respondent also relied upon a statement produced by Mr Steve Murrells. Mr Murrells did not attend to give evidence and no valid reason was given to excuse his failure to attend. We read that statement but attached little, if any, weight to its contents.

8 We were provided with a bundle of documents. This bundle was the cause of much disagreement between the parties in preparation for this hearing and required significant judicial intervention, most recently by me at a Preliminary Hearing in July 2022. The Claimant was and continued throughout the hearing to be very upset about the state of the bundle, which he believed to the deficient and lacking many significant documents. As the hearing progressed, however, the Claimant identified few omissions. The bundle had been re-paginated since the original version produced for the February 2022 hearing but the documents also showed the original pagination which helped with cross-referencing. That original bundle was so deficient by reason of the overly zealous redaction of

documents that the February hearing was postponed. The Tribunal considered it entirely sensible that a new bundle had been produced.

9 The Claimant had clearly not prepared for this hearing on the basis of the new bundle, despite my advice at the July Preliminary Hearing that he should prepare his cross-examination in advance based on the new bundle. In order to assist the Claimant, he was advised by Mr Green as to the order of witnesses for the Respondent to give him time overnight to cross-refer his questions to pages in the new bundle. Despite, this there were significant periods of time spent as the Claimant was unable to identify the relevant document in the bundle, even by reference to its original page number in the old bundle. Both the Tribunal and Mr Green gave considerable assistance whenever it was possible but on many occasions there were lengthy delays as additional time in the hearing was given for the Claimant to prepare his questions. This did significantly slow down the proceedings. The Tribunal bore in mind the fact that the Claimant was a litigant in person and sought to provide practical assistance wherever it could but it did appear that the Claimant was acting deliberately as if trying to prove that the new bundle had disadvantaged him when it did not.

10 At the Preliminary Hearing on 18 July 2022, the Claimant indicated that he wished to rely upon a 5 minute video which he filmed contemporaneously to his paid suspension and which he described as a monologue showing his feeling at the time and the effect on his health. I directed that the video could be played as part of the Claimant's evidence in chief, in order to remove the need to transcribe it, but that the Claimant was responsible for bringing the video on a USB stick with a laptop to play it to the Tribunal and the parties. The Claimant did not bring the USB stick and laptop at the point of which he was giving his evidence in chief. Nevertheless, the Tribunal agreed that he could play it at a later point in evidence so long as he understood that it was his responsibility to bring the necessary equipment. At the close of the Claimant's evidence, he sought to play the video. The laptop was connected to the Tribunal's large screen and speaker but the audio, even on full, was so poor that it was simply not possible for the Tribunal to hear it properly. The Tribunal informed the Claimant that we were still prepared to watch the video at any stage in the hearing, but that he must bring in speakers or some other device to enable the audio to be heard clearly. The Claimant did not do so and the video was not watched, despite his references to it in his submissions.

11 On the first day of the hearing, the Claimant produced extracts from his personal diary which he says provided a contemporaneous record of events from his perspective. Despite their late disclosure, the Tribunal read and took into account the diary extracts when reaching our findings of fact, as set out below. Whilst the diary set out the Claimant's contemporaneous record of events, the Tribunal noted that throughout the course of the evidence there were numerous occasions where the Claimant either deliberately or inadvertently misheard or misremembered what had in fact been said by a witness, as confirmed by the Tribunal's notes. It was a common theme of the Claimant's employment that he and his managers disagreed about what had been said to him. As a result, the Tribunal viewed with caution the contents of the Claimant's diary and regarded it as a record more of what the Claimant thought had been said, or wanted to have been said, that what was actually said.

Findings of Fact

12 The Respondent is a company operating in food retail and distribution throughout the United Kingdom. It has a distribution depot at Thurrock in Essex. The distribution depot has a day shift and a back shift for drivers. Mr Keyworth was the Depot General Manager for Thurrock at the material time. Mr Sharif, the Depot Operations Manager, reported to Mr Keyworth. Mr Sharif managed Mr Hill, the Transport Operations Manager and also the Warehouse Operations Manager. The transport team had two shift managers for days, Mr Horsfall and (after her promotion), Ms Shanks. Mr Horsfall managed three Team Managers: Ms Clark, Ms Armstrong and Ms Peterson, although Ms Peterson was only there for about two months. Ms Shanks managed Mr Robinson and Ms Cieslik. Each of the Team Managers was responsible for line management of a number of specific drivers, although on a day to day basis they would on occasion manage other drivers, for example if their own Team Manager was absent.

13 The Claimant describes his race as being Black British of African-Caribbean heritage and descent. He worked as an agency driver for the Respondent from July 2015 and became directly employed as a class 1 driver from 22 November 2015.

14 Drivers work shifts of differing lengths, the longest of which is 12 hours 45 minutes. Upon attending work, they must pass through a security barrier which operates on automatic number plate recognition technology. If the ANPR does not work, they are able to open the barrier with a card or can use an internal intercom system to ask the employee supervising the gate to open it remotely. The Respondent's electronic time monitoring system, Kronos, records the driver's time of arrival and departure as well as information about the routes allocated to that driver. On attending work, the driver would go to the clerk and be told what the shops to which he was delivering on his route and was then responsible for checking the vehicle, load and relevant paperwork before going out to perform his deliveries.

15 Some shops are more challenging deliveries than others as they may involve slopes or cambers. The driver is responsible for getting the cages of produce off the vehicle, into the shop, removing any waste following the delivery and generally unpacking the cage. On return to the depot, the driver is responsible for ensuring rubbish has been collected from the vehicle, returning it to the parking zone, de-kitting and then going to the office for a debrief and to check whether further work is required. If a driver completes his allocated deliveries and returns to the depot before the end of his shift, he may be allowed to finish early but he must perform any other work reasonably allocated by a manager if it can be completed by the end of the shift.

16 The Team Managers worked from the transport office on site and there is a separate office for the Shift Manager, which has glass on two sides and solids walls on two sides. In the back office, files were stored with secure cabinets used by Team Managers to contain information relevant to the drivers they manage. The Team Leaders sit at a desk in a more open part plan of the office and there is a dedicated drivers' area.

17 On 25 April 2017, the Claimant attended work as usual and was allocated his route and his vehicle. As he drove to his first shop, he felt a vibration though the steering wheel at speeds of over 45mph. The Claimant notified the appropriate clerk who in turn contacted Pullmans, the commercial vehicle repair firm used by the Respondent for vehicle maintenance at the Thurrock depot. The Claimant took the vehicle to the Pullman

premises and a mechanic carried out a visual assessment. The mechanic could not see a fault and told the Claimant either to take the vehicle back to the depot so that the goods could be transferred unto another vehicle or stored in the warehouse and bring the vehicle back for thorough inspection or alternatively to continue with his delivery duties. The Claimant chose to return to the depot and after parking, went to the transport office. He was told to wait in the canteen. Mr Horsfall, who was two levels of management senior to the Claimant and whom the Claimant did not know, told the Claimant that the vehicle was fine, there was no defect and that he needed to take it back out to complete the deliveries.

18 The Claimant's evidence is that Mr Horsfall accused him of caused the problem by bad driving, namely "smashing" the brake pedal. The Claimant described Mr Horsfall as being rude, dismissive and aggressive, insisting that the Claimant take the vehicle out or face disciplinary action. His evidence is that Mr Horsfall refused to allow him to have a trade union representative. The Claimant then spoke to Ms Shanks who agreed to get a trade union representative and Mr Wiseman joined them. It is not in dispute that Mr Wiseman and Mr Scott Greenhow, another Team Manager, each drove the vehicle and both agreed with the Claimant that there was indeed a fault when driven at speed. The Claimant was then provided with a different route. Mr Horsfall disputed the Claimant's account of his conduct, denying that he threatened disciplinary action, was rude or aggressive, that he accused the Claimant of bad driving or denied him a trade union representative.

19 Much time was spent in cross-examination on minor differences in the evidence between the Claimant and the Respondent's witnesses. The Tribunal finds that very little turns on these minor differences, the principal issue being whether Mr Horsfall behaved improperly towards the Claimant or whether it was the Claimant who was unreasonably failing to comply with a management instruction. On balance, the Tribunal do not accept that the Claimant told the Pullmans mechanic that the vehicle was not safe or that he heard Mr Horsfall instruct the Pullmans mechanic to undertake a visual inspection only. These were assertions made for the first time in the Claimant's cross-examination and appeared designed to maximise the fault of Mr Horsfall and support his own position on the day that the vehicle was unsafe.

20 The Claimant was an unreliable narrator of the detail of an incident which occurred over 5 years ago, for example he denied insisting that management come out in the vehicle with him to see the fault when this formed part of his contemporaneous grievance. However, whilst the Claimant did not use the words "rude" or "dismissive" about Mr Horsfall in that grievance, the tenor of his complaint is consistent with the case now advanced, namely that Mr Horsfall acted unreasonably and improperly to the Claimant who had reported a genuine vehicle safety concern.

21 The Claimant explained in cross-examination that he was not prepared to follow the management instruction as he felt that the vehicle was dangerous. In his grievance, he does not say that he was threatened with dismissal but does refer to disciplinary action. Mr Horsfall accepted in cross-examination that he no longer recalls the incident perfectly, but maintained that he acted reasonably throughout, although he conceded that it was not a positive interaction. On balance, the Tribunal finds that Mr Horsfall was annoyed by the Claimant's refusal to continue his route with the allocated vehicle which he perceived as being difficult and unnecessarily intransigent. It is significant that in his contemporaneous interview as part of the investigation into the Claimant's grievance, Mr Horsfall accepted that he did make the Claimant aware that this could become a conduct issue.

22 Having observed the Claimant during this Tribunal hearing, we find that where there is a disagreement, the Claimant has a tendency to become intransigent. His approach is to prolong the discussion to prove himself in the right, focusing on the complaint rather than engaging and finding a solution or seeing things from the other person's perspective. For example, when Mr Gilbraith's letter became available during the course of the hearing, the Claimant initially sought to have it excluded because it was late, repeating his criticisms of the Respondent's approach to disclosure. When the Tribunal noted that it was a document which the Claimant had previously sought because he wanted it in the bundle and which had now been found, the Claimant changed his mind and it was admitted. Ultimately, the Claimant did not refer to the letter in evidence in any event. This is what, we find, happened on 25 April 2017.

23 The Tribunal accepts that Mr Horsfall was dismissive of the Claimant's concerns about the safety of the vehicle. The Claimant was an experienced driver reporting a defect and there no reason not to trust him. Mr Horsfall did tell the Claimant that if he did not take the vehicle onto the road, he would face potential conduct proceedings. Whilst Mr Horsfall may initially have genuinely believed that the vehicle had been deemed roadworthy by Pullmans, he did not take any steps to check with the mechanic or get further information when faced with an experienced driver describing the fault. This was an unpleasant incident and it became heated as Mr Horsfall pressured the Claimant to take the defective vehicle onto a public highway.

24 The Claimant commenced a period of sickness absence following the incident on 25 April 2017. He submitted a written grievance about it to Mr Rymer on or around 3 May 2017. Mr Rymer acknowledged it on 7 May 2017. On his return to work, the Claimant was asked if he wanted to proceed with a formal grievance. The Claimant confirmed on 11 May 2017 that he did. The Tribunal finds that during the Claimant's sickness absence, Mr Rymer and Mr Horsfall spoke about the incident. No notes were taken and this was not a formal investigation. They agreed that there had been a mistake on the day based upon a misunderstanding as when Pullmans had said that there was no fault they had conducted only a visual inspection. Mr Rymer and Mr Horsfall decided that the Claimant's complaint could be resolved with an apology. This is why the Claimant was asked to confirm that he wanted to continue with a formal grievance. Both managers had hoped that it could be dealt with informally by way of apology instead.

25 A grievance meeting was planned for 19 May 2017 but was subsequently rearranged to 1 June 2017. The outcome letter was issued the same day. It does not deal with the Claimant's substantive complaint about how Mr Horsfall had behaved towards him on 25 April 2017 or Mr Horsfall's insistence that other drivers test the vehicle rather than rely on the Claimant's report, rather it attributes the misunderstanding to a mistake based upon the initial visual inspection by Pullmans. There was no acknowledgement of the upset caused to the Claimant or the inappropriate handling of the dispute by Mr Horsfall.

26 Mr Horsfall sent a letter of apology dated 2 June 2017 to the Claimant. This also attributes the problem to the misunderstanding about the extent of the Pullmans inspection. As with the grievance outcome, the apology does not acknowledge that Mr Horsfall had insisted that the vehicle be taken back on the road and the reference to disciplinary action. As Mr Horsfall accepted in his witness statement, this letter was not intended as an admission of fault on his part.

27 On 9 June 2017, the Claimant appealed against the grievance decision stating that Mr Horsfall's conduct, in particular his language and approach, had not been properly investigated. The Claimant expressly stated that he was not suggesting that Mr Horsfall's behaviour had been a personal attack but he wanted to highlight his concern about treatment which could happen to other drivers. Ms John, then Operations Manager, arranged an appeal hearing for 19 July 2017 at which the Claimant was accompanied by his trade union representative, Mr Wiseman. When the Claimant complained about the delay in resolving his grievance, Ms John told him that she could probably give him an answer the next week. This did not happen.

28 Ms John interviewed Mr Horsfall on 14 September 2017. On the same day, she wrote to the Claimant to propose a re-convened appeal hearing on 9 October 2017. The Claimant replied that it was a rest day. When he heard nothing further, the Claimant complained about the delay. As it was not possible to re-convene a hearing swiftly and to avoid further delay, Ms John issued a written decision on 31 October 2017. Whilst Ms John was on holiday from 14 September 2017 to 3 October 2017, the Respondent could provide no explanation for the delay between 19 July 2017 and 14 September 2017 although the Claimant had not asked for an update during this period.

29 In her outcome letter, Ms John addressed each of the points raised by the Claimant. With regards to the incident, she found that each of the Claimant and Mr Horsfall took a stance that was not helpful in resolving the issue but found that Mr Horsfall's conduct was not threatening or bullying. She accepted that the Claimant felt that his competency and professionalism had been undermined, he should not have been pressured to take the vehicle out without proper checks to ensure safety and Pullmans had made an error in conducting only a visual inspection. Ms John concluded that Mr Horsfall had believed the Claimant to be wasting time based as he believed that there was nothing wrong with the vehicle. Whilst not agreeing with him on every point, Ms John upheld the appeal.

30 Earlier in 2017, the Claimant had been elected as a trade union representative for Unite the Union. At a local transport joint consultative council meeting on 25 October 2017, Mr Rymer agreed Mr Wiseman's request that the Claimant be allowed to shadow another Unite representative for a period of two weeks to observe investigations and disciplinary meetings. The Claimant's subsequent request to shadow a representative for two weeks from 11 to 25 November 2017 was granted.

31 The Claimant's evidence is that when he attended the transport office at about 9.15am on 11 November 2017, he saw Mr Horsfall and Ms Clark talking at the Team Managers desk with documents on the table in front of them. Ms Clark called him over and asked a few questions about his activities for the day. When he answered, Ms Clark hesitated and Mr Horsfall asked some further questions before telling him to go on his way. The Claimant noticed that the documents of the table had his handwriting on them and were related to him. He believed that this was his personnel file which Mr Horsfall was using to brief Ms Clark on how to interrogate him when he arrived at work.

32 By contrast, Mr Horsfall's evidence, and email sent on 21 November 2017, is that the Claimant arrived at about 9.30am on 11 November 2017. As it was unusual to see a driver in the office at that time, he checked the Claimant's file and found the form by which Mr Rymer had authorised two weeks to shadow another trade union representative. Mr Horsfall was aware that there were no other trade union officials in the office performing non-driving duties that day. When the Claimant returned to the office, Mr Horsfall asked

him what he planned to do for the day. The Claimant said that he had paperwork which would take him until the end of his shift at 19:45. The conversation took place at the desk with Ms Clark present. Mr Horsfall suspected that the Claimant did not have that amount of paperwork and was using the fact that he had been signed off for shadowing as a means of avoiding driving duties. As a result, he reported this to Mr Harris, the Transport Manager who would be working that evening.

33 In her statement email sent on 21 November 2017, Ms Clark says that she was working on 11 November 2017, there was a discussion at about 9.30am in the transport office about the Claimant's duties as there was no trade union representative was present on site to be shadowed. The Claimant had said that he had union paperwork to sort out, Mr Horsfall asked if there was enough to last the whole shift until 19:45, the Claimant said that there was. Mr Horsfall had checked the Claimant's file to see if he had been signed off but Ms Clark did not recall it being left on the table unattended.

34 The material dispute between the parties is whether the Claimant's confidential personnel file was open on a communal table and being discussed by Mr Horsfall and Ms Clark. The Claimant now relies on this incident as evidence of managers led by Mr Horsfall conspiring against him but did not raise a grievance alleging this at the time. In both a subsequent disciplinary investigation about leaving early that day and a grievance investigation about the file being open on the desk, the Claimant alleged only that his time off request form had been on the desk in front of Mr Horsfall and Ms Clark. The question of who was in the transport office first, what specifically was on the table and whether Mr Horsfall was briefing Ms Clark to interrogate him has taken on greater significance in the Claimant's eyes as part of this Tribunal process than it had at the time. In his grievance submitted on 16 December 2017, the Claimant complained only that when he entered the transport office, his file was open and clearly visible on the desk raising issues around data protection. The Tribunal finds it implausible that if the Claimant believed that Mr Horsfall and Ms Clark were conspiring against him (as he now alleges) that he would not have included this within his grievance or at the very least referred to it in the disciplinary investigation.

35 The Tribunal regarded the differences in the three accounts as lacking any material significance and to be easily explained by the ordinary frailty of human memory. The Claimant however regards them as evidence of collusion and dishonesty on the part of Mr Horsfall and Ms Clark. The Tribunal disagrees, if anything the minor differences and greater detail given by Mr Horsfall suggest that they had not colluded to give a joint account of what had happened. It is clear from contemporaneous emails sent by Mr Horsfall on the morning of 11 November 2017 that he had challenged the Claimant about his work for the day and had asked another manager to ensure that the Claimant stayed until his scheduled finish time. The Tribunal find that Mr Horsfall was concerned that the Claimant did not have enough trade union work and was trying to avoid driving or leave early– this is consistent with Mr Horsfall checking the Claimant's file, discovering that he had been authorised to shadow another union representative and knowing that there was no other trade union representative in the office that day. On balance, the Tribunal does not find that the Claimant's confidential personnel file was open on a communal table or that its contents were being discussed beyond the single trade union request form.

36 Just after 5pm on 11 November 2017, Mr Harris emailed Mr Horsfall and Mr Rymer stating that the Claimant had been in and out of the office printing paperwork until about 4pm and had clocked out on Kronos at 4.30pm without first signing out at the front desk.

Mr Horsfall contacted Ms Shanks, the Claimant's then line manager, to say that an investigation would be required into the Claimant's conduct and to see him for the details. Having regard to the contemporaneous emails, the Tribunal finds that it was Mr Horsfall who initiated the subsequent disciplinary investigation into alleged misappropriation of company time by the Claimant. Furthermore, the Tribunal accepts that Mr Horsfall did review CCTV evidence to observe the Claimant's activities on 11 November 2017. This is consistent with his suspicion that the Claimant did not genuinely have trade union activities to conduct and that he may seek to leave work early and is referred to in the disciplinary investigation meeting.

37 The Claimant's case is that a disciplinary investigation was unwarranted and initiated by Mr Horsfall in bad faith. The Tribunal disagrees. Whether his shift was supposed to end at 19:45 (as Mr Horsfall stated in his emails on the day) or at 6.15pm (as the Claimant stated in evidence), he had still left work over an hour and a half hours early that day. When faced with this apparent weakness in his case, the Claimant asserted for the first time that it was standard practice for trade union representatives to go home early if their work was complete and this had not been an issue for anyone else. The Tribunal did not regard this as plausible as it was not an explanation provided by the Claimant or his trade union representative during the subsequent disciplinary investigation, nor is it supported by any other evidence to this hearing. Indeed, in the disciplinary investigation meeting on 22 November 2017 the Claimant said that he had *not* completed his union duties that day.

38 Ms Shanks wrote to the Claimant on 16 November 2017 to invite him to a meeting to investigate an allegation of misappropriation of time on 11 November 2017 in relation to union duties. Mr Harris was then appointed to investigate the disciplinary allegations and a meeting with the Claimant took place on 22 November 2017. Having checked with Mr Rymer that the Claimant had permission to be off the road to shadow a representative but not to leave his shift early, Mr Harris was satisfied that there was a disciplinary case to answer. However, following an exchange of emails between Mr Paul Travers (a Unite Regional Officer), Mr Rymer and Ms John, at some point before 17 December 2017 it was decided that no further action would be taken. Both Mr Harris and Mr Horsfall were unhappy with the decision in light of the evidence that the Claimant had left work early and without permission. Mr Horsfall sent an email asking for the rationale for the decision.

39 During the disciplinary investigation meeting, the Claimant had referred to his trade union time off request form being on the table on 11 November 2017. He subsequently presented a grievance to Mr Rymer on 16 December 2017 alleging a possible data protection breach. The grievance does not mention that the file was on a table at which two managers were present, nor that they were being considered by the managers in connection with the Claimant's working duties that day. Mr Horsfall is not named as the subject of the grievance and there was nothing to suggest to Mr Rymer that Mr Horsfall was involved.

40 The Claimant was offered and declined the opportunity to deal with his grievance informally. He was advised by letter dated 22 December 2017 that the grievance was going to be heard by Mr Horsfall. The following day Mr Horsfall wrote to arrange a grievance hearing date. Neither the Claimant nor his trade union representative Mr Lewington objected or indicated that the grievance was in fact against Mr Horsfall.

41 The Claimant accepted in evidence that passing the grievance to Mr Horsfall was not an act of race discrimination. In cross-examination, the Claimant said that he had told Mr

Rymer during a conversation in the canteen that the grievance was about Mr Horsfall. He did not put this point to Mr Rymer even when the latter gave evidence repeatedly stating that he only passed the grievance to Mr Horsfall because he did not know that the grievance was about him; if he had, he would have given it to someone else. Even allowing for the fact that the Claimant is a litigant in person, the Tribunal finds this a material omission. The Tribunal found Mr Rymer to be a credible and straightforward witness ready to make concessions as appropriate. We accept his evidence that he did not know that the complaint was about Mr Horsfall when he passed it to him; there was no such discussion in the canteen.

42 The Claimant also said in cross-examination that he had not objected because his trade union representative had advised him that it was the Respondent's process and to let it run. The Tribunal does not find this evidence plausible. A contemporaneous email sent by Mr Lewington to Mr Rymer sets out the Claimant's view that all team leaders and transport management were working together against him. Mr Lewington clearly and understandably sets out the need for proper process, that as a shop steward, the Claimant is required to talk all levels of the management team and it was not acceptable for the Claimant to seek to deal instead with more senior managers such as Mr Rymer and Ms John. This is inconsistent with the Claimant's case that the same trade union representative was simultaneously giving advice to allow the subject of a grievance, alleged to be working against the Claimant, to hear the grievance brought against him by the Claimant.

43 At the outset of the grievance hearing on 11 January 2018, the Claimant took issue with the suggestion that he had refused an informal resolution to the grievance. He then said that it was "strange" that Mr Rymer had passed the grievance to Mr Horsfall as he was aware that there was an open disciplinary investigation which could lead to a conflict of interest. The Claimant did not clearly state at the beginning of the meeting that Mr Horsfall was inappropriate to hear the grievance because he was the subject of that grievance. The Claimant's position is that he was the victim of co-ordinated management harassment and that Mr Horsfall and Mr Rymer were deliberately acting against his interests. The Respondent's position is that the Claimant was difficult to manage, to the point of being obstructive and manipulative. On balance, the Tribunal finds that the Claimant's ambiguous and selective grievance and failure to make clear that Mr Horsfall was the subject of the same was conduct designed to lead the Respondent to fall into a trap of its own making – to let Mr Horsfall hear the grievance about himself but in which he was not clearly named and then complain about it on the basis that it was procedurally unfair. This is consistent with our view of the Claimant as an employee focused on identifying problems rather than solutions. When it became clear as the hearing progressed that the grievance was against Mr Horsfall personally, he accepted that it would not be appropriate for him to hear it and the grievance was passed to manager, Mr Sharif, the newly appointed Operations Manager.

44 Mr Sharif contacted the Claimant on 2 February 2018; Mr Sharif was four levels of seniority above the Claimant. The grievance hearing took place on 8 February 2018 and the Claimant was accompanied by a trade union representative. It was a lengthy meeting at which the Claimant set out his complaint about the documents on the desk but also revisited the broader context of the disciplinary investigation, confirming that he had submitted the grievance after being informed of the initial decision to proceed to disciplinary action.

45 Mr Sharif explored with the Claimant the possibility that there had been a breakdown in communication and working relationship with Mr Horsfall which may be repaired with mediation. The Claimant said that it was not a breakdown in the relationship but an abuse of power. Mr Lewington, however, referred to a breakdown of communication on all levels and mistrust on both sides and welcomed the offer of mediation, describing it as the best way of moving forward. The Claimant said that he was happy to go to mediation but preferably with a specialist mediator.

46 Following the grievance meeting, Mr Sharif spoke to Mr Horsfall and Ms Clark. This took some time to arrange due to their holiday commitments. Whilst there are no notes of the discussions or specific dates, the Tribunal accepted Mr Sharif's evidence on these points as credible and inherently plausible.

47 Orally and by letter dated 6 April 2018, Mr Sharif gave his decision on the grievance. He concluded that the working relationship had broken down to the point that the Claimant and Mr Horsfall could not have a simple conversation about a file open on a manager's desk. This breakdown in the relationship had led to a breakdown in the working relationship and communication between the Claimant and the day shift Team Managers. Mr Sharif recommended mediation with Mr Horsfall, with himself and Mr Lewington present, regular shift meetings for the Claimant and Mr Horsfall to discuss shift performance issues and regular one-to-one meetings between the Claimant and Ms Shanks. He further concluded that management needed to be more transparent and communicate when action was taken to address an issue raised. Whilst the Claimant takes great issue with Mr Sharif's conclusion that there had been a breakdown in relationships, the Tribunal find that conclusion objectively reasonable on the evidence and shared at the time by Mr Lewington.

48 The mediation meeting took place subsequently. It started with both the Claimant and Mr Horsfall setting out their views of what had gone wrong. The Claimant's evidence was that Mr Horsfall had refused to discuss any of the matters put to him and ended the meeting by walking out without discussing anything to do with bullying. Mr Sharif's evidence was that although it was difficult at the start, progress was made with discussion about why they were reluctant to deal with each other. The Claimant's case is that Mr Sharif gave the Tribunal a completely false account of the mediation meeting, asserting that it was only Mr Horsfall who accepted avoiding the Claimant. It is not necessary to resolve this dispute, save to say that the mediation was ultimately not successful in repairing the working relationship between the Claimant and Mr Horsfall.

49 The trade union representatives at the depot hold regular surgeries where drivers can raise any issues and concerns. In the morning of 22 March 2018, Mr Rymer sent an email to managers and trade union officials making clear that at the end of the surgery, the trade union representative should discuss matters raised with the transport shift manager on duty, the manager should record the detail of the discussion and distribute it on the same day to Mr Rymer, other shift managers and union representatives. The transport shift manager should answer queries wherever possible and, if unable to do so, pass it to Mr Rymer. The Tribunal infers from the email that Mr Rymer had become aware of a problem about information sharing following the surgeries.

50 A drivers' surgery took place on 22 March 2018, following which the Claimant sent an email to managers and trade union representatives, recording the issues raised. He copied the email to Mr Sharif and Mr Keyworth. Within 14 minutes of receipt of the email,

Mr Horsfall sent an email to Mr Rymer expressing a wish to put a vote of no confidence against the Claimant because the Claimant had not approached him or raised any of the issues with him directly. Mr Horsfall concluded that the Claimant was not behaving in a way becoming of a Unite union representative. Mr Horsfall had never sent an email expressing a wish to put in a vote of no confidence in respect of other trade union representatives, namely Mr Knowles, Mr Skinner, Mr Wiseman, Mr Moore or Mr Tagg, each of whom the Claimant names as comparators.

51 The relevant shift manager on 22 March 2018 was Mr Harris. He was unable to answer all queries raised in the surgery and did not have time to send out the required record of the issues raised and so asked the Claimant to do it on his behalf. The Claimant accepted in cross-examination that he had not raised any of the concerns with Mr Horsfall but said that this was because they were nothing to do with him and he had discussed them with Mr Tann instead. Mr Horsfall's evidence was that he was frustrated by the Claimant's email as the latter would never approach him to discuss matters raised in a drivers' surgery, unlike Mr Wiseman the other day shift trade union representative, and appeared deliberately to avoid dealing with him.

52 On balance, the Tribunal finds that Mr Horsfall sent his email expressing a lack of confidence in the Claimant because he was intensely frustrated that the Claimant had sent an email setting out driver concerns in very critical terms without discussing them with him and had unnecessarily copied the most senior managers at the depot into the email. The Tribunal accepts that the Claimant was choosing to bypass Mr Horsfall and his desire not to speak to or deal with Mr Horsfall about legitimate concerns of drivers working on the day shift for which he was responsible is indicative of the very poor quality of their working relationship. Further, we find that the decision of the Claimant to include Mr Sharif and Mr Keyworth as recipients of the email (when Mr Rymer had made clear that very day that any matters requiring more senior management attention should be sent to him) demonstrates a degree of malicious intent. The complaints raised by the Claimant were very generalised issues leading us to infer that the Claimant was seeking to portray Mr Horsfall in a poor light to more senior managers.

53 On or around 26 May 2018, the Claimant became aware that Mr Horsfall had shared on Facebook the fact that he had signed a petition on change.org in support of the release from prison of Mr Stephen Yaxley-Lennon (otherwise known as Tommy Robinson). Mr Yaxley-Lennon is a well-known public figure on the political far right. He had been found in contempt of court and imprisoned for live-streaming a video outside Leeds Crown Court during a trial of multiple defendants for sexual offences on multiple victims which contained information in breach of reporting restrictions. The petition read **"Tommy is in prison for reporting on grooming gangs. This is a disgrace and needs to be overturned. Please get this discussed in parliament."**

54 The Tribunal found implausible Mr Horsfall's suggestion that he had shared the post by accident or that somebody else with access to his Facebook account may have done so. The manner of his evidence gave the impression that he was keen to say anything to excuse something which was quite clearly unacceptable. On balance, the Tribunal find that Mr Horsfall did share on Facebook the change.org petition and stated that he had signed it. The post itself did not express any discriminatory views.

55 The Claimant told Mr Sharif about the Facebook post. In his witness statement, the Claimant said that he told Mr Sharif that he had been sent and was in possession of the

screen shot and that Mr Sharif had simply said “leave it with me”. In cross-examination, however, the Claimant expanded his evidence to say that he offered to show it to Mr Sharif but that Mr Sharif had declined to look at it. When put to him that this was a new allegation, the Claimant maintained initially that it was in his statement (it was not) before saying that it was clear that those paragraphs did not cover the whole conversation, before attempting to deflect the line of questions to criticism of the Respondent and the bundle which included the wrong version of the social media policy. When asked why he had not previously alleged that Mr Sharif had refused to look at the Facebook post, the Claimant said that Mr Sharif could have looked for the Facebook post himself before finally accepting that it was an oversight not to have mentioned it.

56 Mr Sharif’s evidence was that he asked the Claimant to provide some evidence which he could look into it but that the Claimant had failed to do so. Mr Sharif strongly denied that the Claimant had screenshots of the Facebook post with him, had offered to show it to him or that he had declined. He maintained that whilst he had been willing to investigate further, he could not do so without the Claimant providing a copy of the offensive Facebook post.

57 On balance, the Tribunal prefer the evidence of Mr Sharif. In circumstances where Mr Sharif wanted to see the Facebook post in order to look into it, it is not plausible that he would have refused to look at the post if the Claimant did in fact offer to show it to him that day. The Claimant’s evidence was unreliable and developed in the telling. The Claimant failed to provide Mr Sharif with the requested copy of the Facebook post and this was the reason why Mr Sharif did not investigate further. The Tribunal rejects the Claimant’s case that Mr Sharif was lying in his evidence and had instead been looking to protect Mr Horsfall. This was a common theme of the Claimant’s approach not only to the evidence of Mr Sharif but that of all of the Respondent’s witnesses – they were lying as part of a conspiracy by all managers and those involved in trying to resolve his grievances to protect Mr Horsfall and improperly criticise him. The Claimant was prepared to make this serious allegation, often with little evidence in support beyond his steadfast and utterly unshakable conviction that he was the victim of management misconduct. The Tribunal found Mr Sharif to be an honest and straightforward witness, it is not plausible that he would set aside his personal integrity to protect a manager two levels below him and it is inconsistent with the steps later taken by Mr Sharif to support the Claimant in his training and career development.

58 Though employed as a driver, the Claimant is clearly and commendably an ambitious person and sought to develop his career with the Respondent. He applied for a job as Warehouse Operations Manager, some three levels more senior than his driver job. Mr Sharif did not shortlist the Claimant for interview but was happy to support the Claimant in his development and desire to advance his career. Although discussions about a development plan would usually take place with a line manager, Mr Sharif had multiple conversations in early 2018 with the Claimant in which he informed him about a possible vacancy in the warehouse as a Team Manager and encouraged the Claimant to send him his covering application letter and CV in order to provide feedback to help strengthen his application.

59 The Claimant did not accept in evidence that he had been supported by Mr Sharif, instead he maintained that Mr Sharif had lied when stating that he had been on the shortlist for the Warehouse Operations Manager vacancy. The Tribunal found this to be a further example of the Claimant’s tendency to mishear or misinterpret, whether innocently

or deliberately, evidence with which he disagreed. At no stage did Mr Sharif say that the Claimant had been shortlisted for the Warehouse Operations Manager vacancy – quite the opposite, that it was whilst shortlisting he saw the Claimant's application for such a more senior management role and advised the Claimant of the more realistic Team Manager vacancy. When required by the Tribunal to put to Mr Sharif all of the alleged lies told on oath in relation to career development, the only additional point put was that the Claimant said that Mr Sharif had told him to speak to Mr Keyworth. The Tribunal considered Mr Sharif to be a credible and plausible witness who gave evidence in a straightforward and patient way when faced with repeated allegations of lying and being duplicitous in his contemporaneous emails offering career development support to the Claimant. The Tribunal find that Mr Sharif as a very senior manager spent considerable time and energy in a genuine desire to assist and develop the Claimant and his career. Mr Sharif adopted a positive and supportive management approach entirely at odds with the picture that the Claimant seeks to paint of him.

60 As part of this career development process in 2018, Ms Shanks conducted a professional development plan review with the Claimant in which they agreed development objectives and activities, including further training and opportunities to shadow a team manager, shift manager, operations manager and compliance. Ms Shanks was happy for the Claimant to spend time in the warehouse but it was his responsibility to liaise with the warehouse Shift Manager to make the arrangements.

61 Mr Sharif arranged for the Claimant to meet Ms Nadine Gibbs, the depot HR manager. She told the Claimant that she would let him know of any jobs which came up which may be suitable and suggested that he might be mentored by Mr Sharif. Ms Gibbs left the Respondent's employment only days later.

62 As Depot Manager, Mr Keyworth was several management levels above the Claimant and had no direct responsibility for the Claimant's training and development, only for the personal development plans of his own direct management reportees which were completed every six months. This was not, as the Claimant submitted, an admission that there should be six monthly personal development plans for drivers. The Tribunal accepts the evidence of Mr Hill that given the large number of drivers and limited number of management vacancies, allied to some extent with driver reluctance to move to a management role which could be less well paid than driving, there was simply not the need or capacity to have regular six monthly personal development plans for drivers and instead they adopted a "time to talk" process for drivers who expressed a desire in career development and from which a personal development plan may follow. Mr Keyworth did, however, have at least one informal conversation with the Claimant in which he advised him to consider applying for a role in the warehouse where there were more opportunities.

63 In line with the agreed development plan, the Claimant contacted Mr Gorny, the Warehouse Operations Manager, to try to arrange some time shadowing in the warehouse. The Tribunal had regard to a subsequent exchange of emails between the Claimant and Mr Gorny which we considered to be indicative of the Claimant's approach to managers and his career development. Headed "conversation follow up", the Claimant started by expressing disappointment at the lack of professionalism shown by Mr Gorny, suggesting that the latter had promised to liaise with the transport shift and team leaders to find time for the Claimant to shadow in the warehouse but had not communicated with him further and then claimed to know nothing about it. He added:

> "**where I come from, it is extremely bad practice to not keep promises. It is also not befitting of a manager to not keep to his or her word. It is also disrespectful and shows a lack of care and attention to not spell an individual's name correctly. Can you please take the necessary steps to correct your errors and then get back to me with your new plan, including dates going forward.**"

64 Mr Gorny's response was placatory: he was sorry that the Claimant felt that way but suggested that he had misinterpreted what had been said at the meeting. Whilst Mr Gorny accepted that he had told the Claimant that he would support his development in terms of getting more knowledge and experience, that did not mean he would be driving the whole process as that was the responsibility of the Claimant and his manager. Mr Gorny made some suggestions to find agreed dates and times for shadowing in the warehouse. The Claimant's reply was, the Tribunal finds, unnecessarily confrontational and impolite to a senior manager trying to help him. The Claimant wrote: '**Thank you for your response Pawel, I am glad you have miraculously remembered our meeting**' and denied any misinterpretation.

65 The Claimant's evidence was that Mr Hill had told him that Mr Horsfall had given him an instruction to ensure that the Claimant obtained no work experience or training of any kind. The comment was allegedly made in or around 20 March 2019 and said to be at a time when Mr Horsfall was Ms Shanks' line manager. Mr Horsfall and Mr Hill both denied such comment was made. In resolving this dispute of evidence, the Tribunal considered it relevant that Mr Horsfall was junior to Mr Hill, with no authority to give such an instruction and Ms Shanks was no longer line managed by Mr Horsfall in March 2019 (having been appointed Shift Manager in 2018). The Tribunal found Mr Hill to be a credible and reliable witness, whereas for reasons set out on other issues in dispute, the Tribunal found the Claimant to be an unreliable witness. On balance, we find that no such comment or instruction was made.

66 On 16 July 2018, the Claimant sustained an injury at work whilst unloading a cage which fell towards him and caused him pain to his back. An accident report form was completed. The Claimant continued to work immediately after the accident until 11 August 2018 when he commenced a period of sickness absence.

67 On 16 August 2018, a doctor's statement of fitness to work for the period to 30 August 2018 stated that the Claimant may be fit for work on amended duties, namely to avoid heavy lifting or other strenuous activities for the next few weeks. The Respondent's absence record shows that the Claimant informed Mr Horsfall the same day that the GP had advised that he could return to work on amended duties.

68 The Claimant attended work on 17 August 2018 and spoke with Mr Horsfall. In his witness statement, the Claimant does not refer to any refusal either by Ms Shanks or Mr Horsfall to refer him to Occupational Health. It became apparent in cross-examination that the Claimant's complaint was that Mr Horsfall sent him home without conducting a formal return to work meeting. This is not an issue before the Tribunal. The Claimant said that it should be considered as part of his general case that his injury was not properly cared for and that proper process was not followed. Although the Claimant is a litigant in person, the Tribunal decided that it would not be in the interests of justice to permit the Claimant to broaden his case in this way given the background of extensive case management and considerable care put into establishing the agreed issues. The

Respondent has not prepared the case to meet such a generalised allegation and would be prejudiced if the issues were broadened at this late stage.

69 Mr Horsfall's evidence that the Claimant was accompanied by a trade union representative who requested the adjustment of two weeks "buddying-up" with another driver in order to avoid the more strenuous duties in line with the GP's fit note was denied by the Claimant. From as early as the defective vehicle incident in April 2017, the Claimant had been accompanied at all meetings with managers. Further, on his return to work on 31 August 2018, one of the agreed steps was that he would be "buddied-up" for that day. On balance, the Tribunal prefers the evidence of Mr Horsfall to that of the Claimant on this point.

70 The Claimant met Ms Shanks on or around 1 September 2018 to discuss a work adjustment plan ("WAP"). A WAP is used for any employee with amended duties. It was agreed that the Claimant would have a maximum weight of 10 kilograms of ambient goods per day. The WAP was intended to remain in place for three weeks with an anticipated return to normal duties at that point. This is consistent with an email from Mr Horsfall to Ms Clark sent on 1 October 2018 and the Claimant's evidence that there was a further meeting with Ms Shanks to discuss the WAP on 20 September 2018 and a planned review on 27 September 2018.

71 On 20 September 2018, it was agreed that the WAP would remain in place but with an increased weight limit of 20 kilograms. There was a further review on 15 October 2018. The Claimant's case is that Ms Shanks told him that the WAP was being withdrawn although the contemporaneous documents record an agreement that he would continue to work on a maximum weight of 15 kilograms.

72 The Claimant's evidence on the alleged refusal on 15 October 2018 (he amended the date in the list of issues) to refer to Occupational Health was confusing. Initially he said that it was Ms Shanks who had refused to refer him, acting on an instruction from Mr Horsfall. He then said that when first approached, Mr Horsfall had said that he could not send the Claimant to Occupational Health as he had returned to work but then changed his mind and agreed to refer him on 15 October 2018. The Claimant's final position in his evidence was to accept that he had assumed that Ms Shanks had been told not to refer him because he was back at work. In her statement, Ms Shanks denied saying any such thing. Although Ms Shanks did not attend to give evidence it was for good reason and the Tribunal considered it inherently unlikely that a manager would have made such a clearly mistaken statement. In rejecting the Claimant's evidence, we also take account of its inconsistencies and the fact that he was in fact referred to Occupational Health on 15 October 2018 when he spoke to Mr Horsfall which is not consistent with an alleged instruction not to refer by Mr Horsfall on the very same day.

73 The referral form stated that the Claimant had been absent from work for four weeks, recently due to a back issue and sought to understand his fitness to carry out full operational duties given that he had successfully completed a four-week WAP. Details of duties given were mainly driving but also moving heavy cages of product off the vehicle and into shops, with quite a lot of manual work.

74 The Occupational Health report dated 5 November 2018 set out the opinion that any muscular injury would now have healed and that any ongoing symptoms were likely due to changes in the Claimant's posture and movement which the Claimant could address with

pain medication. The Occupational Health physician concluded that there was no medical reason why the Claimant could not deliver to shops with heavier physical workloads and that any ongoing symptoms were expected to resolve completely in due course. He suggested a four-week phased return to heavier work.

75 The Claimant subsequently complained that the consultant Occupational Health physician had been rude, not allowed him to answer questions, had not looked into relevant information, was selective in what he had written and had refused to acknowledged any level of the back pain the Claimant said that he was experiencing. The Claimant obtained from his GP a statement of fitness for work recommending amended duties from 5 November 2018 to 19 November 2018, avoiding heavy lifting and/or straining. The Tribunal infers that the Claimant sought the alternative medical advice and made his complaint because the Occupational Health physician had not supported his case for amended duties and he did not agree with the contents of the report. This is consistent with the Claimant's conduct during these proceedings and during internal grievance hearings where he would challenge and seek to re-argue any decision which did not go entirely in his favour, asserting wrongdoing by the decision maker.

76 Despite the Occupational Health report stating that no adjustment beyond the phased return to full duties was required, Ms Shanks met the Claimant on 7 November 2018 and agreed a WAP which permitted the Claimant to review and assess the suitability of the shops allocated to him each day but without restriction on the number of cages to be delivered. Ms Shanks asked if there was anything else they could do to help and Mr Wiseman, his trade union representative, suggested regular hours and a possible earlier start time. Ms Shanks agreed to look into both. A review of shops which a team manager assessed as suitable was planned for 11 February 2019. The content of the meeting and Ms Shanks conduct is inconsistent with the Claimant's case that Ms Shanks showed a lack of care for his health. To the contrary, the Tribunal finds that Ms Shanks went to great lengths to support the Claimant when she could simply have relied on the Occupational Health report provided.

77 Mr Robinson became the Claimant's line manager from 19 November 2018 following Ms Shanks promotion to Shift Manager.

78 On 2 December 2018, the Claimant received distressing news that a close family member had been injured in a crime overseas. The Claimant was naturally shocked and upset. He contacted Mr Sharif by telephone and explained the situation. Mr Sharif authorised a week's paid leave for the Claimant and recorded that there was no expected return date. The Tribunal infers that after the paid week, the Claimant's leave would be authorised but unpaid. The Tribunal find it significant that the Claimant contacted Mr Sharif directly rather than the three intermediate managers: Mr Robinson, Ms Shanks or Mr Horsfall. The Tribunal infers that the Claimant anticipated a sympathetic and positive reaction from Mr Sharif. On balance, the Tribunal accepts as credible and plausible Mr Sharif's evidence that whilst he agreed a week's authorised paid leave, he also told the Claimant to keep his shift managers informed about his ongoing absence and eventual return. Whilst it is not an issue to be decided, the Tribunal consider it significant that the Claimant now alleges that Mr Sharif was lying on oath about the instruction to contact the shift managers and breached his confidentiality by telling Ms Shanks the reason for his absence. The Claimant would not accept that there could be any mistake or misunderstanding – he was clear that Mr Sharif was lying in his evidence. The Tribunal finds this was the Claimant's consistent approach to any witness called by the

Respondent who gave any answer with which he disagreed or which did not fit his view of the case, no matter how immaterial the differences. This adversely affected our view of the Claimant's own credibility.

79 As shown in contemporaneous emails, the Claimant did not contact his shift managers and Mr Robinson called him on 4 December 2018. The Claimant indicated that he may return to work the following day. On 5 December 2018, the Claimant again approached Mr Sharif, bypassing his direct managers, to indicate that he did not feel fit to go out on the road by himself. Ms Shanks then agreed that the Claimant could be released from duty until Monday 10 December 2018. This is consistent with the Tribunal's finding of fact that Ms Shanks was supportive and flexible towards the Claimant when he required adjustments to his duties.

80 The Claimant was absent again on 18 to 20 December 2018. He did not follow the Respondent's absence reporting procedure and did not want to give the reason for his absence upon his return to work. Mr Robinson wrote to the Claimant on 27 December 2018 to advise that there would be an investigatory meeting into his unauthorised absence. The Claimant then contacted Mr Sharif to ask for a meeting. Mr Sharif emailed Mr Lewington and Mr Tagg, two other trade union representatives, to say that whilst he had an open door policy, the Claimant needed to discuss any issues with the shift team to strengthen relationships on shifts and in the transport department as a whole. The trade union representatives agreed to meet Mr Sharif to discuss how to provide support and enable people to express how they feel.

81 The Claimant was absent again on 29 December 2018 as he was too stressed to work or drive. On 30 December 2018, the Claimant told Mr Horsfall that he was still not fully well but would return to work on 31 December 2018.

82 On 31 January 2019, the Claimant met Ms Shanks, accompanied by Mr Wiseman his trade union representative, to discuss his health and ability to work following the events in December 2018. Ms Shanks asked whether there was anything that they could do to help to alleviate some of the pressure. Mr Wiseman suggested regular hours and Ms Shanks agreed both regular hours and earlier start times, with a planned review on 11 February 2019 (the same day as the planned review of the existing WAP about assessing which shops were suitable). There was no discussion about the Claimant's back and no agreement to adjust his actual duties when at work at this meeting.

83 On 3 February 2019, Ms Shanks sent the Claimant a copy of the amended rota as agreed the previous week. She told him that she was out of the business for a few days and had briefed Mr Robinson accordingly. The Claimant's initial case was that Ms Shanks failed to update the Respondent's computerised records to reflect the workplace adjustment because of his race. Disclosure of emails showed that Ms Shanks had sent the amended rota to the planning team on 3 February 2019. Rather than accept that he was mistaken and Ms Shanks had done nothing wrong, the Claimant continued to criticise Ms Shanks, now on the basis that it had been unreasonable of her to take three days to do it. The Tribunal disagrees. Ms Shanks acted proactively and promptly to support the Claimant at what was understandably a very difficult time for him.

84 The Claimant attended the disciplinary investigation meeting with Mr Robinson on 7 February 2019. Mr Robinson decided that there should be no further action. He said that he and the Claimant needed to form a better relationship as he had not been fully aware

of the reasons for the Claimant's absence and expressed a willingness to help and support the Claimant. The Tribunal find that this was an entirely appropriate and conciliatory approach by Mr Robinson.

85 Ms Shanks again referred the Claimant to Occupational Health on 20 February 2019 as he continued to assert that he had an ongoing back problem but there appeared to be no supporting medical evidence. In her referral, Ms Shanks provided details of the Respondent's varying shift lengths, rota pattern and the nature of the work of a driver, including daily manual handling and up to four and a half hours driving time. It appears that the WAP about the Claimant assessing the suitability of shops for delivery remained in place.

86 The Claimant met Mr Robinson on 21 February 2019 for a catch up and to discuss how the amended rota was working. Mr Robinson noted that it was due to expire on 3 March 2019 after which the Claimant would return to his normal rota. Mr Robinson expressed hope that the Occupational Health report would be back before then. The Claimant said that the amended rota had been to enable him to care for his injured family member, he did not say then as he does now that it was by reason of his back problem. Mr Robinson said that if the Claimant wanted a longer term change to his rota, he would need to apply for flexible working. The Tribunal finds that this was an appropriate and supportive meeting with Mr Robinson. The amended rota agreed by Ms Shanks was never expressed to be permanent and little turns on whether 3 March 2019 was a review or an expiry date; if the Claimant wanted a permanent amendment, it was appropriate to require a flexible working application.

87 The Claimant's evidence is that when he arrived at work on 13 March 2019, Mr Robinson called him over to his desk in the open office and told him that his WAP and adjustments were cancelled with immediate effect and that if he did not like it, he would have to put in a flexible working request. The tone of the language quoted by the Claimant suggests a hostility which the Tribunal finds is in stark contrast with the supportive approach of Mr Robinson in earlier meetings, including 21 February 2019 when adjustments required for caring commitments and a possible flexible working request had been discussed. The Tribunal finds on balance that Mr Robinson did no more than remind the Claimant of the content of their earlier discussion that he would be returning to his normal rota unless a flexible working request was made and agreed.

88 In cross-examination, the Claimant was asked to identify any evidence to support his assertion that he was told on 13 March 2019 that the WAP was being immediately discontinued. The Tribunal considered it fair to give him time to do so given the size and problems with the bundle. At the end of that day's evidence, the Tribunal reminded the Claimant to review the documents overnight and to identify any evidence he relied upon. The following morning, the Claimant identified only comments made in the notes of a subsequent meeting on 9 April 2019 when Mr Robinson and Mr Hill told him that the Respondent could not accommodate the current adjustment and discussed alternative adjustments. The Tribunal considers that any discussion about the discontinuance of workplace adjustments on 9 April 2019 provides no evidence to support the Claimant's case that he was told on 13 March 2019 that all WAPs were discontinued with immediate effect. The Tribunal finds on balance that the WAP for assessing the suitability of allocated shops was not removed on 13 March 2019 but was still in place on 9 April 2019. This is consistent with the Claimant's reference in his grievance against Ms Shanks on 25 March 2019 to being on a WAP due to a workplace injury. It is not plausible that the

Claimant would use the present tense (I am on a WAP) if he had been told that it had been cancelled with immediate effect on 13 March 2019.

89 The Claimant raised the issue with Ms Shanks. She explained to him that an adjustment was only intended to be a short term measure and indicated that a flexible working request was likely to be agreed, describing it as "just a formality". On 14 March 2019, the Claimant submitted his flexible working request and was invited to a meeting on 18 March 2019. The meeting did not proceed and subsequent attempts with Ms Shanks to arrange a meeting were unsuccessful due to an inability to find a date where both the Claimant his trade union representative could attend. Eventually, a date of 3 April 2019 was agreed for the meeting. This meeting did not take place as by then the Claimant had raised a grievance against Ms Shanks. The process was put on hold until that grievance had been decided by Mr Hill. The Claimant attended a welfare review meeting with Mr Tann on 2 August 2019 at which the flexible working request was discussed. Throughout this period, the amended rota with its earlier start time remained in place.

90 Neither the Claimant's original statement nor his supplementary statement clearly deal with the allegation in issue 1.16 that on 14 March 2019, Mr Robinson refused to make the WAP agreed on 30 January 2019. The Tribunal considers that it adds little in any event, as we have found that on 21 February 2019 and 13 March 2019 Mr Robinson had told the Claimant that he would be returning to his normal rota but he did not in fact do so pending a decision on his flexible working request.

91 In a report dated 13 March 2019, the consultant Occupational Physician confirmed that the Claimant had experienced lower thoracic back pain following the accident at work but with no underlying medical condition of relevance and that the Equality Act did not apply. The doctor confirmed that there continued to be some impact on Claimant's functional capability and that he was awaiting physiotherapy. The doctor concluded:

> '**I should be grateful for your continued support in helping him avoid pushing items up inclines … until his back condition is more stable. Furthermore, it might be helpful for him to avoid the longer 13 hours shifts for about 3-6 months to allow him time to truly try and get on top of his back problem.**'

92 The Claimant's evidence is that Mr Horsfall told him that there was no reason for him to be on a WAP and that if he wanted adjustments, he would have to make a flexible working request, stating the reason for it and that the Respondent would decide if he needed it. The list of issues suggests that this also took place on 13 March 2019. The Tribunal has found that the WAP in respect of allocating only suitable shops for delivery had not been removed. This is consistent with Mr Horsfall's email on 24 March 2019 in which he stated that there was a need to clarify the Claimant's ability to assess which shops were suitable to be allocated to him now that the Occupational Health report had been received.

93 On 25 March 2019, the Claimant gave Mr Hill a written grievance about the conduct of Ms Shanks in the following terms:

> **'Over quite a period of time she has been harassing me and intentionally creating an environment in the workplace whereby I am continually undermined and put in positions where I am attacked by other managing staff and having to defend myself.**

My line manager has no ability to manage me as he is being pressured and micromanaged by Jordan.

I am on a WAP due to a workplace injury but Jordan has not put it on the system, as there is a conscious effort to both mask the fact and cause conflict.

I am also on an amended rota as I have to care for my mother due to her current health conditions. The actions of Jordan surrounding this issue are deeply concerning and hurtful. Her actions have also caused untold amount of stress at what is already a difficult time.

On a number of occasions, company processes are not being followed at a detriment to myself.

Several promises have also been reneged on.

There was little to no care for my personal wellbeing and as a representative for the company, a distinct lack of duty of care. Furthermore, on several occasions, Jordan has conversed with me in a very rude manner which underpins an unjust hostility towards myself.

Regards Akiiki Bedeau.'

94 Although the Claimant asked Mr Hill not to take any further action, Mr Hill considered that the nature of the allegations were so serious as to require a formal grievance investigation and process. The Tribunal agrees. These are very serious allegation which if true would warrant potential disciplinary action against Ms Shanks. A meeting to discuss the grievance was scheduled for 9 April 2019, one of only two dates offered when the Claimant's trade union representative was available.

95 By letter dated 26 March 2019, Mr Robinson invited the Claimant to a meeting on 5 April 2019 to discuss the Occupational Health report. The Claimant's witness statements do not deal with his allegation that Mr Robinson told him that very day that the Occupational Health recommendations would not be followed. On balance, the Tribunal finds it implausible that Mr Robinson would have made such a comment when there was a scheduled meeting to discuss the report and given his earlier supportive stance towards the Claimant. In the event, the meeting was re-scheduled to 9 April 2019 (the same date as the grievance meeting with Mr Hill).

96 On 31 March 2019, Mr Robinson was notified of damage to a vehicle last driven by the Claimant. Ms Clark, one of the Team Managers, spoke to the Claimant to get information for the completion of an accident pack. From an email sent on 4 April 2019, albeit redacted, it is clear that the Claimant completed the accident report forms stating that he had seen no damage when doing his end of vehicle journey checks and did not know how it had been caused. In his witness statement, the Claimant describes this as Ms Clark claiming that he had caused the damage. However, Ms Clark accepted his explanation and nothing further happened. The Claimant was not required to sign an accident pack accepting blame for the damage.

97 Dealing first with the meeting with Mr Robinson on 9 April 2019 to discuss the Occupational Health report. There is no reference in the notes of the meeting to the Claimant being told that all adjustments would be immediately discontinued. Although the notes taken by Mr Hill are not verbatim, the Claimant signed them at the time of the

meeting to confirm that they were accurate. On balance the Tribunal finds that the notes are an accurate record of the discussions. The Claimant was not told that the Respondent would be immediately discontinuing any work adjustments. Instead, Mr Robinson explained that the Respondent could not accommodate an adjustment where the Claimant could refuse ad hoc to deliver to a shop on his own assessment as it needed to ensure that all shops were covered. Instead, Mr Robinson suggested that the introduction of a new system of allocating items to cages would help spread the load and reduce the weight of cages and that other adjustments could be made to help the Claimant, for example taking additional breaks and being allocated other work to provide from the more manual tasks of the job. The Claimant accepted in evidence that Mr Hill had said nothing about the removal of adjustments in the meeting.

98 In his grievance meeting with Mr Hill on 9 April 2019, the Claimant was asked whether he thought that Ms Shanks was setting the department against him. The Claimant said that he did not think that. In cross-examination, when challenged on the inconsistency between the allegation in the grievance letter and the concession in the meeting, the Claimant said that he did not think that his grievance was suggesting that Ms Shanks was setting up the department against him, his relationship with Ms Shanks was good whilst she was his line manager, the issues came later and were not related to Ms Shanks. His explanation was that he believed that the issues needed a full investigation and that making the grievance against Ms Shanks was the fastest way of resolving them as she could have told them what the situation was. The Claimant did not accept that such a strongly worded grievance could have upset Ms Shanks as she could say that she had done nothing wrong and so it would not affect her. His response concluded: "**I would have been surprised if at the end of the investigation it had been found that she had done those things but I did not know.**"

99 On 12 April 2019, Mr Sharif contacted Mr Lewington to ask for dates to set up a meeting between the day shift Team Managers and the Claimant. He had met the Claimant for over an hour and half some days before and was struggling to understand why the relationship with his managers had deteriorated to such an extent that the Claimant was approaching him directly. The following day Mr Hill contacted Mr Lewington and Mr Tagg to inform them that he had spent two hours with the Claimant that day, and six hours with him over the course of the week, and there needed to be some tangible action to improve the working relationship between the Claimant and the day shift Team Managers, specifically Ms Shanks, Mr Robinson and Mr Horsfall. Mr Hill proposed a round table conversation indicating the importance of repairing the working relationship. In their emails, neither Mr Hill nor Mr Sharif tried to attribute blame for the breakdown but were entirely focused on the need to resolve the problem. The emails are not consistent with the Claimant's case that Mr Hill and Mr Sharif were involved in some overarching scheme by managers to subject him to excessive scrutiny to secure his dismissal.

100 On 12 April 2019, the Claimant attended work and received his allocated route for the day with the final shop being in Tonbridge, Kent. In carrying out his ordinary vehicle checks, the Claimant found defects which he notified to the Respondent. The Claimant's evidence was that Mr Robinson and Mr Horsfall had tried to force him to take the defective vehicle onto a public highway but, in cross-examination accepted that he could not recall the words used. Both Mr Robinson and Mr Horsfall denied giving any such instruction and accepted that the vehicle was defective. On balance, the Tribunal finds that no such instruction was given by either Mr Robinson or Mr Horsfall.

101 The Claimant made a handwritten note on his route manifest recording that he had raised issues about his health and ongoing back problems; he objected to delivery to the Tonbridge shop as there was a gulley and/or slope. Neither Mr Robinson nor Mr Horsfall agreed to countersign the note as each believed that the route was appropriate. Mr Robinson said that the risk assessment for the Tonbridge shop did not flag up a risk with the gulley and that they could not accommodate an ad hoc refusal. The route was not changed.

102 The dispute took a long time to resolve and the Claimant did not leave the depot until 12.37 pm. At approximately 4.10pm, he telephoned the clerks and said that he was not going to deliver to the last shop in Tonbridge as he was still in Tunbridge Wells and would not have sufficient time to do the delivery and return by his finish time (6pm). The clerk told the Claimant that there was enough time, he could skip the de-kit upon return to depot if need be, he should go to the shop and that the staff would help him unload. The Claimant disagreed and maintained that it would be a breach of the rules for him not to do the de-kit, managers could not simply remove parts of his job. The Tribunal disagrees. Managers are entitled to give employees reasonable instructions and it was entirely reasonable for the Claimant to be told to make the delivery even if he had to miss the de-kit. The clerk provided a statement on 16 April 2019 setting out his account of the conversation.

103 The Claimant drove to the Tonbridge shop. He telephoned the clerk again at about 5pm to say that he did not intend to do the delivery as he needed to be back to the depot to finish on time. As the clerk could not persuade him to do the delivery, it was escalated to the day shift Team Manager who spoke to the Claimant but was not able to change his mind. The Respondent was unable to arrange a re-delivery due to noise restrictions after 7pm. They were required to provide the shop with a credit thereby suffering financial loss.

104 On 13 April 2019, Mr Robinson initiated an investigation into the Claimant's refusal to do the Tonbridge delivery. The investigation meeting was due to take place on 18 April 2019. As a result there were three internal processes ongoing, each with outstanding meetings with different managers: Mr Robinson dealing with Occupational Health and adjustments, Mr Hill dealing with the grievance against Ms Shanks and now this third possible disciplinary investigation with Mr Robinson. In addition, there was the request by Mr Sharif and Mr Hill for a meeting to resolve the breakdown in the working relationship between the Claimant and his direct managers.

105 The first meeting due to take place on 18 April 2019 was discussion of the Occupational Health report and possible adjustments. There is a dispute of evidence as to what happened, specifically as to who said what and who else was present at particular points. The Claimant maintains that there are significant discrepancies between Mr Horsfall and Mr Robinson's contemporaneous statements but was unable to identify anything specific when invited and given time to do so. Having considered the statements of Mr Robinson and Mr Horsfall, we are satisfied that there are no material inconsistencies and it is simply the case that Mr Robinson has given more detail as he was present for more of the discussions. In any event, the material facts are not in dispute even on the Claimant's account. The Tribunal finds that the Claimant and his trade union representative, Mr Skinner, were told that Mr Horsfall would be taking notes at the meeting. The Claimant, or Mr Skinner acting on his behalf it matters not, objected that this would not be appropriate as it may limit his ability to take matters further if need be. Mr Horsfall maintained that he could be the note taker as there was no right of appeal and

that neither Ms Shanks nor Ms Armstrong could take the notes. On balance, the Tribunal resolves the only material dispute in favour of Mr Horsfall and Mr Robinson, and find that attempts were made to find a note taker from the warehouse.

106 Whilst waiting for the meeting to start, and as the dispute about the note taker ran its course, Mr Skinner told the Claimant that he had seen Mr Horsfall in the car park and suspected that he was "under the influence" because of his demeanour and strange behaviour. The Claimant's evidence is that he consulted Mr Lewington and Mr Knowles (another trade union representative) who advised him that the matter could not be ignored and so he reported it to Mr Hill.

107 Mr Hill met the Claimant at 11:30am to obtain a statement about the allegation made earlier that morning about Mr Horsfall. Mr Knowles was present as the Claimant's trade union representative. The Claimant said that he thought that Mr Horsfall was under the influence as he seemed overly hyped up and jovial. Notes of the discussion record Mr Hill asking him whether he was asking for a drugs and alcohol test and the Claimant replied that he was. The meeting notes also record the Claimant explaining that he had spoken to colleagues, including Mr Skinner, about Mr Horsfall's behaviour. The Claimant vehemently denied in cross-examination that he had referred to drugs or alcohol, had asked for Mr Horsfall be tested or had referred to a conversation with Mr Skinner. However, the meeting notes were signed by the Claimant at the time to confirm their accuracy and the Tribunal finds the Claimant's denials in cross-examination incorrect.

108 Mr Hill interviewed Mr Skinner at 12.25pm. Mr Skinner said that he and the Claimant had a conversation about Mr Horsfall running to get an Easter egg from the back of his car, the time taken and what he might have been doing in the meantime. Mr Skinner said that the Claimant went immediately to Mr Hill's office. Mr Skinner was asked whether the conversation was enough to have a basis to raise concerns about drug or alcohol use. He replied no, it was just banter and that he had tried to stop the Claimant from reporting it, concluding '**the gentleman might have concerns with the colleague, it took us about an hour to sit down as he did not want him doing notes. They have issues that should get resolved.**' When this was put to the Claimant, the Claimant maintained that Mr Skinner had been very serious and had not tried to stop him reporting it. He maintained that Mr Skinner had given Mr Hill inaccurate answers because his personality was to be non-confrontational, adding that Mr Skinner would give inaccurate information about anything if he felt that it would avoid confrontation. The Tribunal finds it significant that when faced with evidence that undermines his case, rather than accept it the Claimant sought to impugn Mr Skinner's integrity and truthfulness. Notes of the meetings with the Claimant and Mr Skinner were provided to Mr Lewington who expressed no concern that Mr Skinner had given inaccurate information. It is not plausible that a trade union representative would lie to avoid confrontation with management or that another, experienced trade union representative would not challenge it if there were any genuine basis for concern.

109 Mr Hill spoke with the Claimant again later that afternoon, this time the Claimant was accompanied by Mr Lewington. He was advised that the drugs and alcohol test had returned a negative result. Mr Hill expressed the opinion that the allegation could be malicious and not based on evidence given the Claimant's limited interaction with Mr Horsfall. On advice from Ms Ryan in Employee Relations, Mr Hill suspended the Claimant pending an investigation into the making of a malicious or untrue allegation.

110 As can be seen from Mr Hill's contemporaneous email, the principal reason for suspension were the allegations against Mr Horsfall which had not been substantiated by Mr Skinner. However, Mr Hill also believed that a period of suspension on full pay would enable the conclusion of the outstanding meetings in relation to the Occupational Health report, the grievance against Ms Shanks and the disciplinary investigation into the Claimant's refusal to deliver to the Tonbridge shop. Ms Ryan was involved in drafting the suspension letter sent on 19 April 2019, including the wording of the allegations to be considered. The Claimant regards Ms Ryan's involvement as sinister. The Tribunal does not. It is entirely normal practice for Employee Relations advisers to provide advice (including amendments) to important documents such as suspension letters and conduct of a disciplinary process.

111 On 23 April 2019 the Claimant was invited to a reconvened grievance hearing on 26 April 2019. On 25 April 2019, the Claimant was invited to the reconvened meeting to discuss the Occupational Health report and, by separate letter, to a disciplinary investigation on 2 May 2019 into the failed Tonbridge shop delivery.

112 The reconvened grievance meeting took place with Mr Hill on 26 April 2019 but adjourned without being completed.

113 On 2 May 2019, Mr Hill invited the Claimant to a series of meetings on 9 May 2019 - (1) with Mr Robinson to discuss the Occupational Health report and adjustments; (2) the disciplinary investigation with Mr Robinson into the failed Tonbridge delivery; and (3) with Mr Hill to discuss the grievance against Ms Shanks.

114 The Claimant attended the depot on 9 May 2019, accompanied by Mr Lewington, but stated that he was not feeling well and did not feel able to proceed. The Claimant was told to provide a fit note and was again referred to Occupational Health.

115 The Claimant obtained a statement of fitness to work which signed him off work for the period from 14 to 31 May 2019. On 17 May 2019, however, Mr Lewington advised Mr Sharif (copied to Mr Hill) that the Claimant had texted to say that he was fit to attend any meetings required and was fit to return to work. Mr Sharif asked Ms Ryan whether the Claimant could return to work when the fit note covered the period to 31 May 2019. Ms Ryan's advice was that the Claimant could declare himself fit for work but questioned whether the decision may be because his company sick pay was due to run out before the end of the fit note period. Mr Hill replied: '**yes that is what is driving the decision**' but agreed that the Claimant could return to paid suspension with a requirement to attend meetings.

116 In an email to Ms Ryan on 22 May 2019, Mr Sharif thought it strange and unusual behaviour that someone who is signed off for stress would say they were fit to resume work a couple of days later and said that he believed that it may be because the Claimant's company sick pay entitlement would run out before the end of the period covered by the fit note. He described it as a "miraculous recovery". The Claimant objects to the content of the emails ascribing an ulterior motive for his early return to work. The Tribunal does not agree. It was understandable that the managers would link the Claimant's early return to work to the expiry of this company sick pay in the circumstances and the language used was unobjectionable. Insofar as the Claimant says that it was offensive for Mr Sharif to use the word "miraculous", we note that he used the same word in his February 2019 to Mr Gorny, referring to his miraculous recovery of memory. The

Claimant cannot reasonably have considered the word offensive when he was prepared to use it himself.

117 The investigation meeting into the failure to deliver took place on 30 May 2019 and Mr Robinson decided that there should be a disciplinary hearing to consider whether the Claimant had misappropriated company time when he failed to complete the delivery. The Claimant's complaint in evidence was that it was a breach of process for Mr Robinson to be the investigator when he had been involved in the discussion on 12 April 2019 about whether it was an appropriate route to be allocated. However, the Tribunal finds that Mr Robinson was not involved in the discussions about the Claimant's refusal to deliver to Tonbridge at the end of the day although he did speak to the Claimant about it the following day. Moreover, neither the Claimant nor his trade union representative objected to Mr Robinson's role as investigator at the time. The Tribunal infers that this was because objectively considered there was no valid reason to object.

118 It is convenient to deal here with the subsequent handling of the disciplinary process. In July 2019, Mr Sharif was appointed to hear the disciplinary allegation about the failure to deliver. He invited the Claimant to a disciplinary hearing on 25 July 2019 but this did not proceed as the Claimant said that he had had insufficient notice and it was re-scheduled for 16 August 2019. On 8 August 2019, Mr Paul Travers, the Unite Regional Officer, contacted Mr Keyworth to express concern that Mr Horsfall was bullying the Claimant, directly or indirectly, and required a full investigation into Mr Horsfall's conduct. Mr Keyworth replied to Mr Travers, asking that the union or the Claimant provide some examples of inappropriate behaviour by Mr Horsfall and that there would be a formal investigation by a manager from another depot. It was agreed that interaction between Mr Horsfall and the Claimant would be minimised as far as possible. On 11 August 2019, Mr Travers said that pending the outcome of the investigation into Mr Horsfall's conduct, it made sense to postpone the disciplinary hearing with the Claimant. Mr Keyworth agreed but advised that as Mr Horsfall had now been signed off sick for a month, there would be a delay in the independent investigation. There was indeed a delay and the investigation conducted by Mr Gilbraith, the Depot Operations Manager at Andover, did not conclude until 1 July 2020. There was no finding that Mr Horsfall had bullied the Claimant. The disciplinary process should have re-started but was overlooked. When Mr Sharif became aware in October 2020 that the disciplinary process was outstanding, he decided that it would not be appropriate to proceed due to the time which had passed.

119 Indeed, Mr Horsfall had submitted a grievance against the Claimant on 24 April 2019 after the drugs and alcohol allegation. In an email sent on 10 February 2020, Mr Horsfall chased Mr Sharif for an update on his grievance and the investigation being conducted by the manager from another depot. The Tribunal infers from this that it was also decided not to proceed with Mr Horsfall's grievance until the conclusion of the independent investigation.

120 On 3 June 2019, the Claimant was invited to a reconvened grievance meeting on 5 June 2019. Mr Hill sent his decision letter on 13 June 2019. The Claimant asserts in issue 1.29 that Mr Hill acknowledged that managers had acted improperly but declined to uphold the grievance. The Tribunal finds that this is not an accurate interpretation of the grievance decision. The three page letter addressed in detail the Claimant's concerns and the evidence heard. Mr Hill made it clear that it was perfectly normal for a Shift Manager to delegate meetings to a Team Manager and that it was appropriate to have regular reviews between managers dealing with separate issues relating to an employee. Mr Hill

accepted that there may have been a failure of managers consistently to share information and the informal adjustment in January 2019 was a mistake as there was no clear method to log it or communicate it. Mr Hill said that Ms Shanks decision was well intentioned, the Claimant was aware that it was an amended rota to assist with his caring responsibilities and that the amended rota was communicated to others. Mr Hill acknowledged the way the Claimant felt but concluded that he could find no evidence of a deliberate effort to cause conflict for him. The Tribunal finds that the letter is conciliatory in tone with Mr Hill trying to restore a positive working relationship.

121 The Claimant appealed against the grievance outcome on 17 June 2019. He complained that Mr Hill had relied on things which had not been said or had been taken out of context. He said that the outcome letter did not explain Ms Shanks' actions with regard to the rota adjustment which, in the appeal, he linked with the earlier WAP made to address his back injury. The Claimant had given his appeal letter to Mr Lewington to be submitted on his behalf and the Tribunal accepts as true Mr Sharif's evidence that he did not receive it until 15 August 2019. The Claimant was invited to an appeal meeting on 11 October 2019 and the outcome was provided at a meeting on 17 December 2019. The Tribunal also accepts Mr Sharif's evidence that the delay after 15 August 2019 was caused in part by annual leave commitments and in part by the time required to investigate the wide-ranging and serious issues raised by the Claimant.

122 On 21 June 2019 the Claimant attended a meeting with Mr Hill to investigate the Claimant's allegations that Mr Horsfall had been "under the influence" on 18 April 2019. The Claimant repeated his explanations for his concern and added that some further information to support his case that the concern raised had been genuine. The meeting re-convened on 25 June 2019. Notes taken at the meeting lead the Tribunal to find that the Claimant's approach was confrontational. When Mr Hill explained that he was being given an opportunity to explain why his concerns about Mr Horsfall that day were justified, the Claimant replied: "**what part do you not understand, the examples I gave you, I spent five minutes explaining to you, in the last meeting**" and suggesting that he felt he was being harassed. When asked to provide a specific example of Mr Horsfall's behaviour which suggested that he was under the influence, the Claimant did not answer in a straightforward manner but said that he had explained it over and over again. Whilst the Claimant may have felt that he had little to add to what had already been said, he was being offered a yet further opportunity to justify his concerns and avoid disciplinary action. This was to his benefit, not to his detriment.

123 At the end of the meeting, after a short adjournment, Mr Hill informed the Claimant that the matter would be passed for a disciplinary process. As part of the reason for the initial suspension was to conclude outstanding meetings, including this investigation, no longer applied, the Claimant's suspension would end and he could return to work. Mr Hill made clear that there was no formal WAP in place but agreed that for one month the Claimant would have a fixed 7.30am start and maximum shift lengths of 10 hours 45 minutes. Mr Hill agreed to arrange required refresher training for the Claimant.

124 In making arrangements for refresher training, Mr Hill discovered that the Claimant was due for his bi-annual driver's assessment. The assessment covered the same areas as the refresher training and did not have a pass or fail outcome. If any areas of concern were identified, they would only result in additional training. In the circumstances, Mr Hill decided that the Claimant should therefore have his bi-annual assessment rather than the agreed refresher training. Mr Hill shared his decision with Mr Horsfall and Ms Shanks by

email sent on 26 June 2019 but he did not tell the Claimant. Mr Hill accepted that this was an oversight on his part for which he apologised during his evidence.

125 When the Claimant attend work on 1 July 2019, he was very unhappy to be told that he would be completing a bi-annual assessment rather than refresher training. Mr Hill met him and explained that the assessor was aware that the Claimant may need help if he had any problems due to his driving being rusty or discomfort with his back. He assured the Claimant that he was under no pressure as any issues flagged about the driving or ways of working would be addressed by way of support. The Claimant was not reassured. He again commenced a period of sick leave. The GP fit note cited neck and upper back pain but the reason given by the Claimant to the Respondent directly, as recorded on its internal records, was mental health, bullying and harassment. On his return to work on 3 July 2019, the Claimant's self-certification form relied both on harassment at work and his ongoing back injury.

126 The Claimant was absent from work on 4 November 2019. Mr Tann, the manager on duty, could not see on the system any authorisation for the absence. He sent the Claimant a letter expressing concern about the Claimant's welfare as nobody had heard from him and they had not been able to make contact, before warning him that unauthorised absence without contacting the depot could lead to disciplinary action including termination. In fact, the Claimant had been allowed by Ms Armstrong, his manager, to go home as he was unwell. The Claimant does not accept that this was a genuine oversight which happened over a weekend and instead alleges now that Ms Armstrong had deliberately failed to record her permission for his absence in order to cause problems for him. This does not form part of the issues to be decided but the Tribunal considered it indicative of the Claimant's deep held conviction that a range of managers were improperly targeting him and his inability to accept that mistakes sometime happen. On 7 November 2019, as soon as Mr Tann became aware of his error, he quite properly sent the Claimant a letter asking him to disregard the earlier letter and to accept his sincere apology for the error caused by miscommunication on site.

127 When the Claimant attended work on 7 December 2019, he objected to being given a route which he believed was not compliant with his WAP. The Claimant explained to Mr Robinson that the problem was the slope at one of the shops on the route. In his witness statement the Claimant alleged that Mr Robinson refused to change the route and he had to wait until another manager, Ms Clark, agreed to do so. In cross-examination, however, he accepted that Mr Robinson said that he could not see it on the shop risk assessment but agreed to change it anyway, after about 5 to 10 minutes of discussion. The Claimant's note of the incident produced on 16 December 2019, refers to two or three shops being unsuitable and suggests that Mr Robinson's request for the Claimant to explain his concern and discuss the risk assessment was to pressurise him, label him a liar and intentionally expose him to risk. The Tribunal finds that the note evidences the Claimant's genuinely held contemporaneous perception that in even being questioned by Mr Robinson, his integrity was being challenged. It does not provide evidence of any specific comment by Mr Robinson which could be perceived as inappropriate.

128 On 18 December 2019, after conducting his standard pre-delivery checks, the Claimant notified a clerk and Mr Robinson that the vehicle was not loaded safely or securely. Mr Robinson, Mr Hill (who was in the yard) and then Mr Greenhow each inspected the load. Each agreed with his assessment but the Claimant's case is that they would have taken any other driver's word for it and that this was a challenge to his

competence, performance and experience and an example of what he describes as a very specific hostility that he felt from some individuals in the dayshift team. Mr Hill disagreed: it was standard practice to double-check to avoid loads being sent back to the warehouse unnecessarily. No documentary evidence was adduced by either the Claimant or the Respondent to show what the standard practice would be. The Tribunal preferred the evidence of Mr Hill on this point. The Claimant had also suggested in his evidence that it was standard practice not to take action on driver lateness despite there being contemporaneous evidence in the bundle to show that disciplinary action for lateness was indeed taken as the Respondent asserted. We find that the Claimant's assertions of standard practice are, on balance, deployed when he seeks to argue that specific action should not have been taken against him and that he was being singled out.

129 At the end of his shift on 21 December 2019, the Claimant said in evidence that while he was waiting to be signed out, Mr Robinson signed out several drivers behind him in the queue, logged off the computer then walked out of the office without saying anything to the Claimant, acknowledging his presence or signing him out. In cross-examination, however, he accepted that he did not in fact know whether he had been signed out or not by Mr Robinson. In his diary note for the day, the Claimant states that Mr Robinson pretended not to see him and seven other drivers, before then signing out John who was behind him in the queue (rather than only him being ignored and the several other drivers all being signed out). On balance, the Tribunal considers that his contemporaneous note more likely to be accurate and find that the Claimant was not treated differently to other drivers and it was only one driver, John, who was obviously signed out when he and others were not.

130 On 22 December 2019 Ms Clark, one of the Team Leaders, asked the Claimant to sign a record of conversation relating to a tachograph discrepancy on 11 November 2019. The Claimant refused to sign, and no further action was taken. In cross-examination the Claimant accepted that such a request would ordinarily be appropriate, but it should have been dealt with by his line manager, Ms Anderson, when she was back on duty and not Ms Clark as there was no urgency. In his diary entry for the day, however, the Claimant's complaint is about the timing of the request over a month and half after the discrepancy. It was only in his later grievance, submitted on 17 March 2020, that the Claimant complained about being asked by Ms Clark rather than Ms Anderson. The Tribunal found this to be a further example of the Claimant's willingness to change and expand his criticisms as his perception that he was being unduly scrutinised became ever more firmly fixed in his mind.

131 On 23 December 2019, before the Claimant picked up his route for the day, Mr Greenhow (one of the Team Leaders) asked if they could have a quick chat and invited the Claimant to go into one of the offices with him. Mr Greenhow wanted to discuss information which suggested that the Claimant had left site without permission the day before without completing his debrief. This was the debrief at which a defect in the fridge printer had not been reported. The Tribunal finds it plausible that Mr Greenhow wanted, and indeed insisted, on closing the door given the nature of the conversation. The Claimant denied both allegations and refused to sign documents given to him by Mr Greenhow, insisting that if there was to be an investigation, there should be a formal invitation and a trade union representative present.

132 The Tribunal heard a great deal of evidence as to the precise events of that morning but find that there was little, if any, material difference in what was said or done

only in the interpretation of the reason for it. Mr Greenhow repeatedly refused to allocate the Claimant a route maintaining that he had questions for the Claimant to answer (namely about whether the Claimant had left site early the day before without completing the debrief to report the fridge defect). The Claimant was upset and, in the absence of Mr Hill, initially spoke with Mr Keyworth. When Mr Hill arrived at work, the Claimant approached him but he said that he was not getting involved as Mr Keyworth was dealing with it. The Claimant returned to Mr Keyworth's office and there was a disagreement about whether he or Mr Hill was dealing with the dispute. Mr Keyworth asked the Claimant to leave his office as he had a meeting, the Claimant did not leave until he had been asked repeatedly to do so. Mr Greenhow maintained that he had more questions for the Claimant; the Claimant maintained that he had already answered them and that any investigation should be done formally with a trade union representative present. After some tense discussion between Mr Wiseman and Mr Greenhow, the latter agreed to allow the clerks to give the Claimant a route. The Claimant later contacted HR.

133 In his evidence, Mr Keyworth was initially mistaken about the subject of the dispute, believing it to relate to the Claimant's desire to speak to Mr Hill before taking a delivery out rather than, in fact, Mr Greenhow's refusal to allocate him a route as there were allegedly still questions to be answered about the previous day. The Tribunal does not find that mistake material, the substance of his evidence about what then happened was consistent with that of the Claimant and Mr Hill. The Claimant had come to see him in his office but had not left when asked to do so. Mr Keyworth accepted that he may have dealt with the Claimant in a dismissive way, but he needed to ask him to leave more than once as he had a managers' meeting due to start. Mr Keyworth said that the Claimant had continued to ask questions which he had already answered in full and just stood there without leaving because he disagreed with the answer given. The Tribunal finds Mr Keyworth's description of the Claimant's demeanour consistent with occasions during our hearing when challenged as to the relevance of a question or reminded by the Tribunal of the answer actually given by the witness rather than that the Claimant claimed had been given, the Claimant would remain silent until prompted to move on. A further example was when the Claimant became distressed whilst cross-examining Mr Mills-White and said that he did not wish to ask any more questions despite a lot of the statement not yet having been covered. The Tribunal offered the Claimant a short break to compose himself and to speak to the clerk if he required any assistance with further questions he may still have. The Claimant again went silent and had to be asked several times to leave the room.

134 During the dispute on 23 December 2019, Mr Horsfall went to see Mr Keyworth. In his email to Ms Armstrong the following day setting out his account of what had happened, Mr Horsfall also suggested that he had seen the Claimant outside Mr Keyworth's window, holding his mobile telephone up as if he were recording them.

135 On 24 December 2019, Ms Armstrong wrote to the Claimant requiring him to attend an investigation into three allegations: (1) on 22 December 2019, he had failed to report a defect on a fridge printer in his vehicle; (ii) on 22 December 2019, he left site without permission and (iii) he had breached GDPR on 23 December when recording two senior managers on his mobile device without their permission. The allegations did not include the Claimant's behaviour on the morning of 23 December 2019, in particular, his refusal to leave Mr Keyworth's office. In cross-examination, the Claimant accepted that that there would be reason to investigate in the allegations were put in front on her but maintained that the allegations were not true.

136 It is not in dispute that on each of 28 and 29 December 2019, the Claimant was allocated a route which would take his working hours beyond those agreed in his WAP. The Respondent's case is that this was an innocent error by planning. The Claimant's case was that the limited shift length adjustment was not on the system and, when contacted by Ms Armstrong, planning said that they had no idea when or why it had been removed. The Claimant's says that the removal of the WAP was a deliberate decision by his managers, although he does not know which one. The Claimant subsequently raised this as part of his grievance submitted on 17 March 2020.

137 As part of her investigation into the Claimant's subsequent grievance appeal, Ms Akram interviewed Mr Darren Jackson, a planning assistant. By the date of the interview in December 2020, the Respondent had introduced a safer shop list with a gradient for each shop as a more objective way of assessing suitability which could be used by planning in advance of route allocation. Previously, however, it was an ad hoc assessment on an individual basis of what was appropriate for a driver on a WAP as slopes could be interpreted differently by managers and drivers. As a result, every day a colleague (driver) would say that a slope was too much and planning could not say whether it was appropriate as every colleague is different and every slope is different. Mr Jackson said that under the old system, coming into work to find whether a route was okay or not for a driver who struggled with some slopes was essentially a game of chance. The planning team would leave it to the driver to judge whether the slope was something that they could or could not do and, if necessary, the front desk and Team Manager would look at it and change their job. Furthermore, Mr Jackson confirmed that only the planning team could affect the system and a WAP would not be deleted, although it could be missed as there was no specific macro for adjustments.

138 There was an exchange of emails in December 2019 and January 2020 between Mr Morrison (in the local planning team) and Mr Hill, copied into other managers, which reviewed the utilisation of drivers at the depot and included tables showing the statistics for drivers on WAPs or following a non-standard rota. There were 11 drivers on the day shift, at least two of whom were known by Mr Hill to be white British. In his email thanking Mr Morrison for the information, Mr Hill said: '**it really shows where WAPs are not working for the business and need challenging at the next review, definitely should be discussed at senior managers meeting in a fortnight, or could be shift managers meeting.**" The Tribunal finds that the operational problems caused by WAPs and the belief that there was a need to challenge them was not specific to the Claimant but applied across the depot and on each shift. Mr Morrison's observation was that a lot of the WAPs included exclusion of shops with a camber or slope and this was generally the reason why planned routes had to be changed at the time of dispatch and was particularly difficult to manage or plan for.

139 On balance, the Tribunal finds that the process in place on 28 and 29 December 2019 did not include a specific method for recording adjustments in a WAP specific to an individual driver. The suitability of a route allocated, whether in terms of length or shops, was effectively luck of the draw. Disagreements about suitable shops and slopes when routes were given out arose not only with the Claimant but also other drivers on a WAP.

140 On 7 January 2020, Ms Armstrong met the Claimant to investigate the allegations notified to him on 24 December 2019. The meeting lasted about 2 hours and 20 minute. It took so long largely because, as the notes show, the Claimant repeatedly answered questions from Ms Armstrong with questions of his own. The overall impression gained by

the Tribunal is that the meeting became more protracted and difficult due to the Claimant's refusal to answer straightforward questions with a straightforward answer. Ms Armstrong explained the reason for the investigation in an open and transparent way, reassuring him that it had nothing to do with his race and was not an act of harassment. The Claimant did not accept that Mr Greenhow had any legitimate reason to speak to him on 23 December 2019 and said that it was Mr Greenhow who should be investigated. On 6 March 2020, the Claimant was informed that no further action would be taken.

141 On 7 January 2020, Mr Sharif informed the Claimant that his appeal against the original decision on his grievance against Ms Shanks was not upheld. Mr Sharif said that whilst the Claimant had complained that statements were taken out of context or inaccurate, he had provided details of no particular statements. This is consistent with the way in which the Claimant has put his case in this Tribunal. The Claimant will make a broad assertion of evidence being wrong or, as below, emails being slanderous but without giving particular examples which can then be analysed. Indeed, when asked to identify the emails said to be slanderous, racist and in blatant disregard for his well-being, the Claimant initially said that it was all emails about him in the period to January 2020. This was not helpful. The Tribunal on several occasions had cause to explain that it is for the Claimant to adduce relevant evidence and not for him to expect us to read every page in the bundle and try to find to support his case for him.

142 On 29 January 2020, the Claimant was provided with documents after a data subject access request some of which he regarded as slanderous and racist in blatant disregard for his wellbeing. The list of issues does not identify the specific documents or offensive comments, further information has previously been sought and neither that nor the Claimant's witness statement identified the specific documents complained of and, as above, initially he said that it was all emails about him during the period to January 2020. The Tribunal invited the Claimant during the course of his cross-examination to identify the relevant documents and allowed him an extended lunch adjournment to do so. The Claimant gave us a list of pages and at the beginning of the following day, the Tribunal went through each in turn and asked the Claimant to identify the specific conduct which he relied upon with regard to this issue. These are:

- An email by Mr Sharif on 29 July 2019 in which he misspelt the Claimant's name by adding at random additional letters "a", "k" and "i", the longest of these being "**Aaaakkkiiiiikkkiii**". The Claimant regards this as racist. Mr Sharif asked for details about the Claimant's flexible working request which he believed that it was originally due to the need to care for his family member. Mr Sharif said that they needed to look into and audit trail the timeline as the Claimant had commented that it had taken 9 months to resolve when the incident itself had only occurred in December 2018. The Claimant accepts that the facts in the email are accurate but says that it demonstrated a blatant lack of care for his wellbeing and portrayed a stereotypical picture of him as workshy.
- An email from Mr Sharif to Mr Keyworth dated 31 July 2019, also trying to establish the timeline for the Claimant's flexible working request, in which he wrote: '**I will add in there the dates and times when he went missing, refused to take a job out and then drove past the shop and brought it back.**' The Claimant regards this as slanderous.
- An email sent on 6 and 7 September 2019 between a night shift Transport Manager and Ms Armstrong in which the Claimant's name was misspelt "**Akiiiki".**

- An email exchange on 30 August 2019 in which his name is again misspelt and the comment that: "**he is on a WAP due to personal issues or due to a condition which limits him from doing a certain number of iambic cages. I thought the OH report said that there is nothing wrong with him**." The Claimant says that was a blatant disregard for his wellbeing.
- An email sent from Ms Cieslik to Mr Robinson copied to Ms Armstrong on 28 July 2019, the following content, '**could you please give me an update regarding A Bedeau WAP plan? We have changed his job for today, but his sick note ran out yesterday.**' The Claimant says that this shows a blatant disregard for his wellbeing.
- An email sent from Ms Shanks to Mr Hill, copied to Mr Horsfall, on 3 August 2019 in which she wrote: '**Rob held his flexible working on Friday and was deemed that he no longer needed the request but did say that he was put on his amended rota due to his WAP duties, as such, he is also expecting to be re-referred to occupational health. As expressed previously, I have some real concerns that as we approach the amended rota, that he would continue to change the reason why he was put on this adjustment, making it impossible for us to manage him**.' The Claimant regards this as a blatant disregard for his health.
- A redacted email sent on 29 August 2019 with a table of late despatches in which his name is again misspelt. The Claimant also takes issue with the facts that he is named where other late despatch drivers are not. The Claimant regards this as slanderous.

143 Having considered each in turn, the Tribunal does not accept that they are slanderous or show blatant disregard for health. The Claimant may not like or agree with what is said in the emails, but the Tribunal regards them as perfectly ordinary emails sent between managers dealing with issues that had arisen in the management of the Claimant's flexible working request and the need for a WAP following Occupational Health advice. The email on 31 July 2019 refers to the failed delivery to Tonbridge and other problems that managers had reported. Again, the Claimant may not agree that this was accurate but it was entirely reasonable for Mr Sharif to give a full picture of the problems which managers were describing when reporting to Mr Keyworth.

144 Mr Sharif accepted in the subsequent grievance investigation and in his evidence at this hearing that he had deliberately misspelt the Claimant's name and that this was inappropriate. His explanation was that he had done so to avoid the emails being identified in a data subject access request. The Tribunal finds this unprofessional but also unnecessary as there was nothing objectionable in the emails and they were provided after a data subject access request. However, we accept that this was his genuine reason for the deliberate misspelling of the Claimant's name. We also find on balance that the misspelling in the other emails was no more than a typographical error.

145 The suggestion that there was an assumption that the Claimant was workshy and that this was a stereotype based on race was not the way in which the case has been set out in the pleadings, the list of issues, many case management hearings or indeed his witness statements, rather it arose in the course of the Claimant's oral evidence. We considered it nevertheless. To ask for more details of the need for the flexible working request and to ask about the extent of a WAP cannot objectively reasonably be considered to be evidence tending to suggest that the managers thought that the Claimant was workshy.

146 On 1 February 2020, the Claimant did not attend for work. At about 7.45am, Ms Clark telephoned him to request an explanation for his absence as he had not contacted

the depot and had been expected. In fact, the Claimant was absent on annual leave which had been booked and approved by someone in the planning team. Ms Clark asked for a copy of the approved leave request as she could not find it. The Claimant did not provide it. On 20 February 2020, the Claimant realised that he had not been paid for the day as it was recorded as absent without leave. He informed Ms Armstrong and gave her a copy of the authorised leave request. Ms Armstrong immediately authorised an expedited payment and the error was corrected within a day.

147 The Claimant's case is that we should infer from the fact that it was Ms Clark who made the telephone call rather than his line manager and that nobody else would be telephoned only 15 minutes after the start time, that she was acting on instruction by Mr Horsfall and because of his race. He also maintained that his leave request approval had been deliberately unrecorded and then lost in order to cause him conflict at work again on the basis that it had never happened to anyone else. When pressed as to his knowledge about whether such things had happened before, there was a lengthy pause before the Claimant then asserted that it was usual practice to wait for the hourly driver check. The Tribunal did not find the Claimant's assertions persuasive or indeed reliable. There was no evidence in support and we find that whilst the Claimant subjectively believes that this was a co-ordinated and deliberate attempt to get him into trouble, on balance it was nothing more than a very minor error and the sort of oversight which is commonplace even in the best run workplaces.

148 The Claimant submitted a grievance on 17 March 2020 in which he said that he was being continuously subjected to harassment and racial discrimination at the Thurrock depot. He said that since he had presented his claim to the Employment Tribunal, on 12 September 2019, the frequency of discrimination, harassment had increased noticeably. The Claimant relied specifically upon: (i) the AWOL issue on 4 November 2019; (ii) the route allocated on 7 December 2019; (iii) the issue with the load on 18 December 2019; (iv) the requirement on 22 December 2019 to sign a record of conversation about the tachograph discrepancy; (v) the events of 23 December 2019; (vi) the appropriateness of the routes allocated on 28 and 29 December 2019; (vii) the emails provided in January 2020 after his data subject access request and (viii) the issues around his absence and pay in February 2020.

149 The grievance was passed to Mr Phil Atkins. He acknowledged receipt on 18 March 2020 and said he would confirm a hearing date but asked the Claimant to bear with him as there may be some delay due to the current COVID-19 situation. The Tribunal take judicial notice of the fact that whilst the first national lockdown had not yet been announced, the number of cases was increasing rapidly and measures were already being put in place in anticipation of significant disruption due to the pandemic. The grievance was then passed to Ms Brown as Mr Atkins believed that he could not hear it due to a possible conflict of interest. The Claimant assumes from the fact that Mr Atkins did not explain the conflict, that he influenced Ms Brown's subsequent decision. He accepts, however, that there is no evidence to support this assumption. Moreover, the Claimant did not put to Ms Brown that her decision had been directed by Mr Atkins. The Tribunal find on balance that Mr Atkins did not direct or influence Ms Brown's investigation or subsequent decision.

150 On 5 April 2020 the Claimant contacted Ms Lala Chek, a People Adviser, asking for clarification of the current policy on hearing investigations and grievances given the changes caused by the pandemic. Ms Chek replied that it had been agreed with trade

union partners that all Employee Relations cases which were not considered business critical would be paused until the end of April, with a review once they understood the ongoing impact of the coronavirus pandemic. Ms Chek said that this did not cover cases involving gross misconduct or allegations of harassment and bullying. Ms Chek wrote to the Claimant on 14 April 2020 to say that there was an agreement with the union to pause cases which could be addressed at a later date and she would be back in touch shortly.

151 As the Claimant's grievance included allegations of bullying and harassment it would not have fallen within the category of paused cases referred to by Ms Chek. By letter dated 21 April 2020, the Claimant was invited to a grievance hearing with Ms Brown to take place on 30 April 2020.

152 In his meeting with Ms Brown, which lasted three hours, the Claimant set out his view that he was being treated differently to other people, being harassed and discriminated against. Mr Wiseman, his trade union representative, said that the Claimant was being monitored but no allegation had ever been found worth pursuing. He described it as a perception and thought it was because the Claimant was of a different race. The Claimant did not agree that there had been a breakdown in relations as it was not mutual. We infer from this that, as before, the Claimant viewed the situation as managers' abuse of power and not a breakdown in relationship caused by any conduct of his own. When Ms Brown asked why it may be related to race given the level of diversity and ethnicity at the depot, the Claimant replied that he was the only black person on his shift, most diversity was with Eastern European drivers. Mr Wisemen also said that there was not much diversity in drivers. The Claimant said that he was upset by the content and to see his name and smiley face emojis in the emails provided in the data subject access request, suggesting that managers found everything funny. Towards the end of the meeting, Mr Wiseman said:

> '**one of the things that needs to be understood is that when you have a perception that you are being treated differently for whatever reason, you become more attentive to what is going on around you because you feel like you are being looked at and much more aware and read into things are not necessarily there. The perception is that is Akiiki is receiving more scrutiny than others, it might be nothing, it might be something, just another piece in the puzzle.**'

153 The Claimant did not sign to confirm the accuracy of the notes taken by Ms Chek. In his email to her, he said that Ms Chek had done incredibly well to capture as much of the interview meeting as she had and it was not a case of needing to correct parts, but due to the amount of information he had given on complex and important issues, a different understanding may be given if the notes are solely relied upon. Also, he said that Ms Brown should have her own notes and the meeting should have been tape recorded. The Tribunal finds this uncooperative behaviour by the Claimant. An accurate record of the meeting was desirable and the Claimant could have corrected any errors, omissions or comments taken out of context. It seemed to the Tribunal that the Claimant was again looking to create a problem or ambiguity rather contributing towards finding an agreed outcome on something as simple as the notes of his grievance meeting.

154 As part of the grievance investigation, Ms Brown interviewed Mr Keyworth and Mr Greenhow about the events of 23 December 2019. Mr Greenhow described the Claimant as being elusive, walking off and not happy to be challenged. In her interview with Mr Hill, Ms Brown put Mr Wiseman's suggestion that the Claimant may be being victimised as he

got more attention than anyone else. Mr Hill said '**Akiiki is one of approximately ten drivers who seem to need more attention than anyone else.**' In other words, it was not just the Claimant who required greater management intervention.

155 Ms Ryan asked Mr Mills-White to produce a timeline of the Claimant's grievances as she believed that they may have been submitted in response to or to delay investigations. Mr Mills-White sent the timeline on 15 June 2020 based upon the content of ER service logs and agreed that the Claimant's grievances and contact with ACAS did appear to be in close proximity to being taken to task on a matter. This is the email forwarded by Ms Ryan to Ms Brown referred to below. By this date, the Claimant had contacted ACAS on 16 July 2019, 6 April 2020 and 3 June 2020. He had also presented ET1 claims on 12 September 2019 and 28 May 2020. Further ET1s would be presented on 31 July 2020, 12 January 2021 and 5 August 2021. Mr Mills-White's timeline included the notifications from ACAS but not the date of presentation of ET1s, it also includes most of the incidents relied upon by the Claimant in these proceedings and records four grievances between April 2017 and 15 June 2020 as well as issues around WAPs, special leave, the Tonbridge failed delivery and events leading to suspension in 2019, bullying allegations in July 2019, the December 2019 incidents and the issues with lateness from May 2020.

156 The ER service records also include a lengthy entry dated 4 July 2019 where managers wanted to log their concerns about managing the Claimant. Mr Horsfall said that any advice would be welcome. The Claimant does not accept that the content of ER service logs is accurate or reliable. The Tribunal accepts that a service log is no more than a record of what the relevant manager told ER at the time of the contact and is not, of itself, evidence of the truth of what was said. It is clear that whilst the Claimant regarded managers as subjecting him to undue scrutiny and criticism, his managers regarded him as resistant to ordinary, reasonable management instruction. The Tribunal finds that just as the Claimant's subjective perception of events is genuinely held, so too was that of his managers but each must be tested objectively by reference to the evidence before this Tribunal. It was not improper for managers to record their concerns with ER indeed, given the nature of the Claimant's claims that he was being harassed and singled out by his managers, it was objectively reasonable for them to do so.

157 The Claimant asserts that Employee Relations were directing Ms Brown's grievance investigation. The Claimant was asked to identify the evidence to support his assertion and gave the page numbers for the following documents in the bundle:

- An email from Mr Mills-White to Ms Ryan, forwarded to Ms Brown, on 15 June 2020 with the table of Employee Relations cases logged regarding the Claimant, with the comment: "**Lynn some bedtime reading?**"
- An email from Ms Chek to Ms Ryan dated 1 June 2020 entitled "Recruitment data – AB case", the following documents in the bundle are copies of the Claimant's manifests for 28 and 29 December 2019 and WAPs in place for drivers at Thurrock as at 7 December 2019.
- An email from Ms Ryan to Ms Brown on 1 June 2020 with the same subject title and the following documents are diversity statistics for recruitment into Thurrock, with the comment "**it looks almost like a 50/50 split contradicting AB's comments that the managers prevent the hiring of anyone but White British**".

158 The Tribunal does not accept that this provides any evidence that Mr Mills-White, Ms Ryan or Ms Chek were directing Ms Brown's investigation. Instead, we find that they show that Ms Brown was gathering relevant evidence about the issues raised by the Claimant, including WAPs, appropriate routes and diversity. On balance, the Tribunal find that Ms Brown actively and thoroughly investigated the issues raised in the grievance with the assistance but not direction of Employee Relations. The emails are consistent with the normal support and guidance from Employee Relations to a manager investigating a serious and complex grievance. The reference to "bedtime reading" may be flippant and even inappropriate but it is not indicative of Ms Ryan directing the investigation. Expressing her own view about whether the diversity statistics contradicted the Claimant's case (in fact, the notes of the meeting record only that the Claimant said that he was the only black person on his shift and Mr Wiseman asserted that there was not much diversity in the drivers), falls far short of evidence that Ms Ryan was directing the investigation.

159 In a detailed letter dated 18 August 2020, Ms Brown informed the Claimant that his grievance was not upheld. Overall, Ms Brown agreed that whilst many of the incidents had occurred there was insufficient evidence to suggest that it was in anyway due to race or harassment. Ms Brown set out the evidence taken into account and her reasons for rejecting the Claimant's account. Overall, she found that the Claimant's negative perception of attempts to manage him caused frustration for both him and the management team, creating breakdowns in relationships and leading to all conversations escalating, such as happened on 23 December 2019. The Tribunal accepts as truthful and consistent with the extent of the investigation and reasons set out in the conclusion letter, that this was not a pre-determined outcome.

160 On 26 August 2020, the Claimant appealed against Ms Brown's grievance decision. He relied on what he described as glaring factual errors. The Tribunal considered the contents of the Claimant's letter and find that what he refers to as "glaring factual errors" are in fact matters where Ms Brown has not accepted his evidence but preferred the evidence of others. The Claimant also asserted that where Ms Brown found that a situation had occurred, it was not open to her then to find that there was no harassment or discrimination or to find that he was to blame (for example, her acceptance that there had been a disagreement on the morning of 23 December 2019). However, it was not in dispute that there had been a disagreement and the key issue was precisely whether it was caused by the behaviour of the Claimant or Mr Greenhow and, if the latter, for what reason. Ms Akram was appointed to investigate and hear the appeal.

161 Returning to the chronology of the Claimant's interactions with his managers at the depot. On 24 May 2020, Ms Shanks wrote to Ms Armstrong expressing concern that the Claimant had been over 10 minutes late on two occasions in the previous week and late on seven occasions since 1 May. It is clear from an email from the night shift Transport Manager, Mr Mardell, sent on 29 May 2020 that the Respondent was concerned that driver lateness had been creeping up which and he referred to a few repeat offenders and the impact on the daily plan. Mr Horsfall forwarded the report to his team and made clear that one occasion of lateness every now and then was understandable but any more should result in a direct challenge to the driver with further lateness escalated to a record of conversation and then formal action. Mr Horsfall required his managers to tell him of action taken. In her reply, Ms Cieslik said that she had issued records of conversation in May 2020 to two of her drivers. Ms Armstrong said that she had issued records of conversation to the Claimant and another driver, referred to by initials. This is consistent with Mr Hill's evidence, which we accept, that a monthly lateness report is considered by a

Shift Manager and circulated to Team Managers, with about 10 to 12 drivers each year being subject to disciplinary action, usually for more regular episodes of lateness. The Tribunal find that driver lateness was challenged generally and the Claimant was not being singled out

162 Ms Armstrong held an investigatory meeting with the Claimant on 23 June 2020 in which he explained that he had experienced difficulty clocking in on time due to problems with the ANPR at the barrier and, due to the harassment he had been experiencing, he tried to spend as little time in the office and so could not clock in early. After an adjournment, Ms Armstrong said that she would not conclude the meeting that day but would monitor the Claimant's clock-ins for the next two weeks and provide daily feedback when she was on duty about any further lateness with a review in July 2020.

163 The review meeting took place on 13 July 2020. Ms Armstrong noted that the Claimant was still having issues with lateness. The Claimant repeated that he was being harassed and the Respondent had failed to put in place actions to support him. Little progress was made at this meeting or a further meeting which took place on 24 July 2020. At a meeting on 30 July 2020, Ms Armstrong issued the Claimant with an informal record of conversation for lateness but acknowledged that their regular catch ups were helping. The Claimant complained that no action had been taken on a grievance he had submitted on 16 December 2019.

164 Following the record of conversation issued in July 2020, the Claimant was late on three consecutive days: 8, 9 and 10 September 2020. The Claimant was invited to a meeting on 25 September 2020 with Ms Armstrong to discuss his lateness. Notes were taken of the meeting but the Claimant refused to sign them as he did not regard them as an accurate reflection of the discussion. He made no proposed amendments to correct any asserted inaccuracies. Again what should have been a straightforward meeting became protracted, lasting about 3 hours, because Ms Armstrong had to ask the same questions numerous times before the Claimant would give what should have been a straightforward answer. Essentially, the Claimant's position was that an investigation was inappropriate because Ms Armstrong had failed to have a daily catch up with him about whether he had had issues with punctuality as previously agreed, further the problem had been with issues at the gate (other than on 10 September 2020 when he was late because he had left his permit at home). Whilst accepting the impact of lateness on the business, Mr Wiseman and the Claimant asked Ms Armstrong to detail the actual cost of the Claimant's lateness and asked for details of other drivers investigated for lateness. Ms Armstrong refused to provide the requested information.

165 Ms Armstrong was dissatisfied with the Claimant's explanations and decided that there was a disciplinary case to answer. The Claimant in his evidence maintained that Ms Armstrong had in fact accepted his reasons but passed it to disciplinary anyway due to pressure from Mr Mills-White. He relies on the fact that in the meeting Ms Armstrong referred to breach of the lateness policy when no such policy existed. Ms Armstrong strongly rejected this implausible suggestion when she gave her own evidence. Whether or not there was a formal lateness policy agreed with the trade union, it is clear from Mr Horsfall's earlier email that there was in place a process by which all managers monitored the lateness of all drivers and escalated action in incremental steps if the problem persisted. The case was passed to a disciplinary hearing because the Claimant had had an informal warning for being late and within less than two months, had three further episodes of lateness on consecutive days.

166 When Ms Armstrong told the Claimant during the meeting that it would be passed for a disciplinary hearing, the Claimant continued to speak for four pages of notes – accusing Ms Armstrong of being rude, not allowing him to speak, that it was her fault as she had not spoken to him to deal with matters informally, that three minutes and five minutes lateness could have had no effect on the day, that the Respondent was guilty of lost time in delayed route assignment and not answering his questions. The Tribunal find this intemperate outburst to be both unwarranted and indicative of the Claimant's response to a manager's attempt to address a shortcoming in his conduct. Rather than trying to find any small fault in order to take disciplinary action, Ms Armstrong had shown patience in her attempts to manage the Claimant by informal counselling and daily contact – a significant investment of time by a Team Manager with other drivers to manage and day to day activities to be undertaken.

167 Ms Clark chaired the disciplinary hearing on 15 October 2020 and issued a three month verbal warning, recorded in writing. This was the lowest formal disciplinary sanction available. The Claimant does not accept that this was reasonable as there was, he says, a failure to investigate fairly or properly the issues around his lateness; moreover, he says that Ms Clark knew that it was unreasonable but decided to issue the verbal warning anyway. In cross-examination Ms Clark rejected the Claimant's suggestions. The Tribunal find on balance that Ms Clark issued the verbal warning because after four months of informal discussion and making clear the need to improve his punctuality, the Claimant was late on three separate occasions, over three consecutive days. On 18 October 2020, the Claimant appealed against the verbal warning. His appeal was subsequently heard and rejected by Mr Gorny.

168 On 17 October 2020, the Claimant asked Mr Hill if he could work from home on days of trade union meetings due to a lack of meeting rooms at the depot. He did not state that he had such a meeting on 20 October 2020. The Tribunal accepts Mr Hill's evidence that he did not see the email initially and had not understood the email to refer to a meeting happening so soon. He accepts that he did not reply to the Claimant's email. The Claimant attended the depot on 20 October 2020. Mr Hill did not allow him to work from home but instead offered him the use of his office for the day. Mr Hill's reason for refusal was that if the meeting did not take the whole day, the Claimant may be allocated other duties. The Claimant does not assert that other trade union representatives were allowed to work from home but disagrees with Mr Hill's reason on the basis that before the pandemic, the meeting would have taken place off site and he would have been signed off for the full day. This may well be true given the additional time required to travel to and from such meetings and the limited time for attendance at the depot. However, the routine use of video platforms for meetings during the pandemic meant that travelling time was removed and, therefore, the Tribunal accepts as plausible and credible Mr Hill's reason for refusing to authorise working from home generally on days of trade union meetings.

169 On 20 October 2020, whilst the Claimant used his office, Mr Hill worked from a desk in the open Team Managers area. Rather than see this as an attempt to assist him, the Claimant suggested in evidence that Mr Hill had made the offer in order to monitor him as the office had glass walls on two sides. The Tribunal note, however, that this was not a belief which the Claimant recorded in his contemporaneous diary entry. We find that it is indicative of the Claimant's willingness to ascribe a malicious motive, without evidence, to even the most benign interaction with managers when he did not get exactly what he had requested, namely to work from home.

170 Whilst delivering to a shop on 21 October 2020, a cage hit the Claimant's left hand as he was removing it from the tail lift. The normal practice is for the Team Manager to carry out an initial investigation, including talking to the driver, and produce a completed accident pack. Mr Harris (Team Leader) began to complete the accident pack but was not able to speak to the Claimant as he was absent due to sickness. Ms Armstrong sent the incomplete accident pack to Mr Mills-White and Ms Chek on 23 October 2020.

171 In November 2020, the Claimant was invited to attend an investigatory meeting on 14 December 2020 to discuss the accident. A driver would normally only be formally investigated if the completed accident pack showed that there may have been some element of fault or error on their part. Ms Armstrong accepted in evidence that the information could have been obtained from the Claimant in an informal conversation but she chose to make it a meeting so that it would be noted and to avoid any confusion. It is therefore understandable that when he received the invitation letter, the Claimant believed that there was some suggestion of fault on his part.

172 At the meeting on 14 December 2020, the Claimant was shown CCTV footage. Ms Armstrong asked how the Claimant's back and hand were, about the camber at the particular shop and whether there was anything the Claimant would have done differently. She also said that it was very clear from the CCTV footage that the Claimant had not done anything different with that cage than to other cages, it had hit an edge as it hit the pavement, and that there would be no further action against the Claimant but she would provide feedback to Health and Safety about the cages. The Tribunal finds that Ms Armstrong quickly and clearly made the Claimant aware that he had done nothing wrong to cause the accident.

173 In November 2020, the Claimant had requested leave for trade union activities which was granted. The Claimant was issued with a rota which he did not believe would be legally compliant with the requirement for rest days. Ms Armstrong referred the issue to the planning team who incorrectly stated that the rota was legally compliant. In fact, there was a scheduling error in the rota originally produced by planning. When the problem became apparent, the rota required an amendment to the effect that the Claimant was required to take a rest day on 26 November 2020 and to work a day which had originally been allocated as a rest day. The Claimant was only told this when contacted by Mr Hill on 25 November 2020. The Claimant replied that he could not work on the day originally allocated as a rest day and gave a valid explanation for his inability. In the end, it was agreed that the Claimant would take the original rest day as leave.

174 The Claimant had a meeting with Mr Hill on 4 December 2020 to discuss whether or not he had observed an incident which had occurred the previous month where another driver was said not to have been complying with social distancing requirements. The Claimant had been reluctant to attend an investigation meeting, as can be seen from the significant number of emails trying to arrange it. The Tribunal finds the Claimant's reluctance indicative of his level of distrust as he believed that the investigation meeting was some sort of attempt to implicate him in wrongdoing despite repeated assurances that he was being interviewed only as a witness. When the investigation meeting finally took place, the Claimant said that he had no relevant information to provide. The Claimant then had no further involvement in the investigation.

175 By letter dated 22 January 2021, Ms Akram sent the Claimant her decisions on his appeals against the grievance decisions of Ms Brown and Ms Shanks. On 26 September 2020, Ms Shanks had decided the Claimant's grievance against Mr Robinson about being allocated an inappropriate route on 16 December 2019. The Claimant had appealed on the basis that it was not appropriate for Ms Shanks to hear his grievance as she was the subject of a grievance herself. As Ms Akram noted in her letter, by this time the Claimant's earlier grievance about Ms Shanks had not been upheld and he had not expressed any objection to her hearing the Robinson grievance at the time.

176 Ms Akram's appeal decision is not one of the matters relied upon by the Claimant in the List of Issues and, as such, we deal only with it to the extent that it has helped us to reach conclusions on the issues which we do have to decide. Ms Akram accepted that the Claimant had been treated differently to other colleagues. However, she found that this was not because of race but because the relationship between him and management and deteriorated such that there was a lack of trust on both sides which created a challenging environment. It was so bad that managers and the Claimant were keeping written records of their discussions. She accepted that the Claimant had experienced management action which he had not wanted and that it was a stressful working environment but found that there was no link to his race or Employment Tribunal claims. She also acknowledged that it had been equally time consuming and stressful for the managers to have to deal with the grievances raised against them by the Claimant. The relationship with managers at the depot had deteriorated to such an extent that it caused the Claimant continually to question the motives and intent of the management team.

177 It is also significant, the Tribunal finds, that when asked to give details of why he suggested that Mr Keyworth had influenced or directed the outcome of his earlier grievance, the Claimant accepted that he had no evidence but maintained that Mr Keyworth, or another senior manager, did have undue influence. The Tribunal infers from this both that the Claimant's distrust of managers by now extended all the way to Mr Keyworth, the most senior manager at the depot, and that the Claimant was relying on nothing more than his own opinion when questioning the motives of his managers. This is consistent with his evidence about Ms Akram's finding that the misspelling of his name was deliberate but not due to race, namely that it was unreasonable of her not to conclude that it was racist when he had made it clear that he felt that it was and that he expected an investigator to start with the assumption that if it looks like a discriminatory act then it probably is.

178 It is necessary to take a step back in the chronology of events in the workplace to deal with the ongoing investigations throughout 2020 into issues in the depot by both Mr Gilbraith, commissioned in August 2019, and Ms Brown. In summary, both Mr Gilbraith and Ms Brown had concluded that there had been no harassment or bullying of the Claimant by his managers. The Claimant was dissatisfied with the conclusions and on 20 September 2020 wrote to Mr Murrells, the Chief Executive Officer, setting out his complaints at the way in which he was being treated. If true, these were very serious matters showing a culture of misconduct pervading the entire management team on the day shift and extending into senior management at the depot. As a result, the letter was passed to Mr Mills-White, a senior member of the ER team with experience in providing advice and assistance in complex cases. The Tribunal do not accept the Claimant's characterisation of these facts as Mr Mills-White "intercepting" his letter, far less that he did so in order to cover up impropriety.

179 Whilst the Claimant initially welcomed the involvement of Mr Mills-White, over time he has come to regard him as a key part of the wrongdoing he believes he has experienced. This much was clear from the way in which the allegations against Mr Mills-White have developed significantly as the cases progressed and the distress experienced by the Claimant when it came to cross-examining Mr Mills-White. For example, whilst the original issues complained about the contents of a folder which he viewed on 27 April 2021, the additional issues added by way of amendment now allege that Mr Mills-White did so with the express purpose of upsetting the Claimant. The Tribunal found Mr Mills-White to be an impressive and calm witness, showing great patience and even-handedness when answering the range of allegations of impropriety which the Claimant now makes against him. In his submissions, the Claimant described Mr Mills-White as a vile individual, incapable of honesty and lacking any level of integrity. The Tribunal categorically reject as baseless such an attack on Mr Mills-White's character or evidence.

180 Upon being given the Claimant's letter, Mr Mills-White contacted him to obtain more information. The Tribunal finds that Mr Mills-White was genuinely trying to understand why the Claimant had reached the conclusions he had and whether there was any substance to them. Mr Mills-White had some knowledge of the context of the Claimant's letter from his advice provided during the Brown and Gilbraith investigations. From the timeline provided to Ms Ryan, in particular from the ER logs, he was aware of the views expressed by the Claimant's managers. The Tribunal accepts that seeing both the Claimant's and the managers' accounts of various disputes which had arisen over a period of over three years, Mr Mills-White formed the view that there was a significant problem which needed to be addressed.

181 The Claimant attended a meeting with Mr Mills-White on 4 February 2021 in which he set out his perspective of the difficulties and their causes. The Claimant maintained that there was not a breakdown in relationship as that would suggest that it was two-sided. Mr Mills-White had already spoken to Mr Keyworth who had explained management's perspective of the difficulties and their causes. Having heard both sides, it was apparent to Mr Mills-White that relationships had broken down and that this was not limited to a problem with one manager but extended throughout the depot management team. Following his meeting, Mr Mills-White made a number of suggestions of possible solutions, such as re-deployment to another shift, to the warehouse, another depot or another part of the business. The Claimant was unhappy with the suggestions as he did not consider that he had done anything wrong, however he agreed to consider one of the proposed roles if his current salary, terms and conditions were guaranteed but only as a temporary measure whilst what he described as "outstanding issues" were fixed. The Tribunal infers that this relates to the Claimant's firm view was that the sole cause of the problems was the conduct of the managers at the depot and that action needed to be taken against them. A further meeting by Microsoft Teams on 18 February 2021 took matters no further. The Tribunal accepts Mr Mills-White's evidence that he was trying to be a conduit and point of liaison between the Claimant and the depot to find a pragmatic way forward but this was not possible. On balance, the Tribunal finds that the Claimant was not realistic about how bad the relationship between himself and the managers had become and, as he did not believe himself to be in any way to blame, would not be the one to leave.

182 The Claimant was absent from work from 8 February 2021 to 21 February 2021, with the reason on the fit note being stress at work. At this time, the Claimant was also

taking issue with what he said was the improper handling by the Data Protection manager of his most recent data subject access request.

183 On 15 March 2021, Mr Hill contacted Ms Ryan to ask for help as he was due to go on annual leave but was worried as he felt that the situation between the Claimant and the management team had reached breaking point. It is perhaps indicative of the Claimant's approach in cross-examination, disputing every minor point, that he took issue with the suggestion that Mr Hill had "called" for help when the meeting took place on Teams. There are notes of the Teams meeting between Mr Hill and Ms Ryan to which the Tribunal were referred in evidence. The Claimant does not accept that the notes are accurate, although it is not clear in what respect or how he would know as he was not present. The Tribunal infers that the Claimant disputes the accuracy because he does not agree with what Mr Hill told Ms Ryan, rather than whether it was in fact said. The Tribunal accepts Mr Hill's evidence that the notes are an accurate and reliable record of what was discussed.

184 Mr Hill told Ms Ryan that his team were being adversely affected by issues arising with the Claimant which had been going on for over 18 months. He said that he had to spend half a day to a full day a week supporting the day shift managers. He also referred to the time spent managing the Claimant and in dealing with the grievances raised against the day shift managers. He referred to the fact that the managers were named in the Employment Tribunal claims brought by the Claimant. Mr Hill described the effect upon the mental health and personalities of Mr Robinson, Ms Clark, Ms Chek, Mr Horsfall, Ms Armstrong, Ms Shanks and himself in significant detail as well as the significant sickness absences. In particular, Mr Robinson had a long period of sickness absence and resigned as he could not face working with the Claimant and the regular note-taking was affecting his confidence. Mr Robinson later retracted his resignation. Ms Clark had a period of sickness absence for anxiety which Mr Hill regarded as worse in the six months where she had closer contact with the Claimant. Ms Chek was spending a lot of time managing the Claimant's Tribunal claims, gathering information and supporting the team. Mr Horsfall was struggling to manage the Claimant, had also been absent due to sickness and appeared to be personally targeted by the Claimant. Ms Armstrong felt that she could no longer manage the Claimant despite being the most resilient member of the team and her personality was being affected. Ms Shanks had sickness absence by reason of depression and stress at the same time as Mr Horsfall and Mr Robinson. Mr Hill found that the escalation of issues which should be resolved by a conversation was draining his energy and they were struggling to understand what they had done wrong other than a difference in views. Mr Hill also said that his team were really struggling to engage with the regular ET and grievance requests - Mr Robinson had already said he could not face attending Tribunal due to emotional strain and the rest of the team may feel the same if things continued.

185 Ms Ryan interviewed the other day shift managers. Notes of the interviews were retained in a file, along with the note of her discussion with Mr Hill and notes from interviews undertaken previously by Mr Gilbraith. Relevant parts of the interview statements are as follows:

- Ms Clark felt that the Claimant was antagonising the day shift management team to get a reaction out of them. Ms Cieslik was the only one not mentioned in grievances. The Claimant had raised complaints against all managers but appeared to be targeting Mr Horsfall and Mr Robinson. It felt as if the Claimant

was asking questions to confuse or trip you up. The Claimant was managed the same way as any other colleague in the same situations, but was incredibly difficult to deal with. The Claimant refused a request as simple as to clean a vehicle in accordance with a trade union agreement and it became so awkward that she ended up doing it herself. The situation was a ticking time bomb which was affecting Mr Robinson, Mr Horsfall and Ms Armstrong in particular.

- Mr Horsfall said that the Claimant blatantly went out of his way to frustrate everyone. He had him drug tested for no reason, raised grievances, complaints, Tribunal claims and called him racist without any evidence. He was off sick for two months in 2019 with stress. Ms Shanks' and Mr Robinson' mental health had been affected. Any process they follow results in Tribunal claims and grievances such that people tiptoe around the Claimant and feel they cannot manage him. He described the Claimant as treating it as a game to get money.

- Mr Robinson said that even using the Claimant's name was emotionally triggering and he dreaded the days the Claimant was at work. He had to be really cautious with everything he said as the Claimant would write it all down, carrying his little black book everywhere, trying to catch him out. He described it as harassment and a personal attack which had affected his mental health. Mr Robinson was frustrated that the management team were not being supported.

- Ms Shanks said that the day shift team was not in a great place, the atmosphere was rubbish and the whole shift had been broken by one person. They avoided interaction with the Claimant other than on key operational issues as they feared retribution. The Claimant was a large part of the reason for her four month sickness absence in 2019 and it had affected her confidence. Action needed to be taken. She described being present as a witness in a meeting with the Claimant where she said nothing but was then accused of bullying him, despite the Claimant telling a Team Manager that she was sorting his issues. She described this as bizarre and manipulative. She also referred to the Claimant using his diary to twist what was said. It was affecting Mr Horsfall, Mr Robinson, Ms Armstrong, Ms Clark, Ms Cieslik and Mr Greenhow.

- Ms Armstrong confirmed that she had asked that the Claimant be removed from her team. She confirmed the effect on the Claimant's behaviour on the health of Mr Robinson and Ms Clark, describing the situation as very tense and a nightmare. It was also affecting Mr Horsfall, Mr Robinson, Ms Shanks, Ms Clark, Ms Cieslik, Mr Greenhow and the clerks allocating routes.

- Ms Cieslik (to Mr Gilbraith, not Ms Ryan) did not want to manage the Claimant. She said that he was difficult to manage based on what she knew about him making cases against former managers and outstanding grievances. She described difficult meetings with the Claimant, that he was constantly making notes and her view that he was playing games to get what he wanted. She referred to the money paid by the Respondent on Tribunal cases and that he did not want to do his job. As a result the Claimant was treated more tolerantly and favourably than anybody else. She concluded that she had a good relationship with the Claimant but would not have him in her team.

186 On 19 March 2021, Mr Robinson sent a follow up email expressing his view that the business had let him down and left him exposed to a very toxic and volatile situation. He had been questioned and investigated despite his proven innocence on more than one occasion with no repercussions for the Claimant. The continued acceptance of the false and malicious accusations had caused him to hit the lowest point in his life and a breakdown of his mental health.

187 On 24 March 2021, the Claimant was put on paid leave whilst the Respondent investigated the alleged irretrievable breakdown of the relationship between him and the members of the day shift transport management team.

188 In the meantime, from his discussions with the Claimant and Mr Keyworth, Mr Mills-White had formed the view that the Claimant did not understand how his managers felt when trying to manage him. He was aware that the Claimant had been placed on paid leave whilst the alleged breakdown in the relationship was investigated. Mr Mills-White decided to meet the Claimant and his trade union representative at the depot on 27 April 2021 and to allow him to read the statements provided from the managers' viewpoint to Ms Ryan and, earlier, to Mr Gilbraith. As the Claimant read the documents, he became upset and maintained that the statements were false.

189 The Tribunal finds that Mr Mills-White's contemporaneous emails throughout his contact with the Claimant were sympathetic and showed a genuine desire to be supportive to the Claimant. Whether or not his belief that he was being systematically harassed by his day shift managers acting in a co-ordinated course of conduct towards him was well-founded, the Claimant clearly believed it and was finding the workplace very stressful. When the Claimant thought that Mr Mills-White agreed with his view of events, the Claimant welcomed his involvement. However, when the Claimant realised that Mr Mills-White did not see him as the entire victim and tried to give him a more objective view of both sides of the problem, the Claimant view of Mr Mills-White changed and has, over time, developed to the extent that he appears to regard him as the key architect behind a lot of the management acts and decisions on his grievances with which he disagrees. Whilst it was optimistic of Mr Mills White to think that by showing the Claimant the managers view, the Claimant would understand the effect not only him but also on his managers of the difficult relationships, the Tribunal has no hesitation in finding that it was not done with the deliberate purpose of upsetting the Claimant but to try to help.

190 By letter dated 28 April 2021, the Claimant resigned with immediate effect. He said that it was an unfair constructive dismissal in response to repeated fundamental breaches, bullying and harassment, culminating in the review of his file on 27 April 2021 which he regarded as containing numerous documents with fictitious allegations. The Tribunal finds that the contents of the file which were read on 27 April 2021 were the last straw which caused the Claimant to resign.

Law

Discrimination and Harassment

191 Section 13 Equality Act 2010 provides that a person discriminates against another if, because of a protected characteristic, he treats that other less favourably than he treats or would treat others. Race is a protected characteristic. Conscious motivation is not a requirement for direct discrimination, it being enough that the protected characteristic had

a significant influence on the outcome. The crucial question is why the complainant was treated in the way in which they were, particularly in cases where there are no actual comparators identified, **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285.

192 Section 136 Equality Act 2010 on the burden of proof (which applies to harassment and victimisation equally) states:

> "**(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.**
>
> **(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.**
>
> **(5) This section does not apply to proceedings for an offence under this Act**."

193 In **Igen Ltd v Wong** [2005] IRLR 258, the Court of Appeal provided the following guidance (which is not to be treated as a substitute for the statutory language itself):

> **(1) … it is for the claimant who complains of … discrimination to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of adequate explanation, that the employer has committed an act of discrimination against the claimant which is unlawful … . These are referred to below as "such facts".**
>
> **(2) If the claimant does not prove such facts he or she will fail.**
>
> **(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of … discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".**
>
> **(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.**
>
> **(5) It is important to note the word "could" in section 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.**
>
> **(6) In considering what inferences or conclusions can be drawn from those primary facts, the tribunal must assume that there is no adequate explanation for those facts.**
>
> **(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw … from an evasive or equivocal reply to a questionnaire…**

> **(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant …**
>
> **(9) Where the claimant has proved facts from which conclusions could be drawn that the employer has treated the claimant less favourably [on the prohibited ground] …, then the burden of proof moves to the employer.**
>
> **(10) It is then for the employer to prove that he did not commit, or … is not to be treated as having committed, that act.**
>
> **(11) To discharge that burden it is necessary for the employer to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the [prohibited ground] …, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.**
>
> **(12) That requires a tribunal to assess not merely whether the employer has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.**
>
> **(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.**

194 The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination; they are not, without more, sufficient material from which we could conclude that there had been discrimination, **Madarassy v Nomura International plc** [2007] IRLR 246, CA at paras 54-57.

195 The higher courts have recognised that tribunals risk getting bogged down in technicalities if they apply the burden of proof rule in a strict and mechanical way in every discrimination case. Employment Tribunals should be wary of treating the burden of proof provisions (and the judicial decisions explaining them) as such a rigid template that the forensic approach of an Employment Tribunal to evidence becomes different to that of other fact finding first instance tribunals, **Veolia Environmental Services UK v Gumbs** UKEAT/0487/12. So, if the tribunal can make positive findings as to an employer's motivation, it may not need to revert to the burden of proof rules at all, **Martin v Devonshires Solicitors** [2011] ICR 352, EAT.

196 Unfair or unreasonable treatment of itself is not sufficient, but where there is a comparator who is treated more favourably the absence of an explanation for the unreasonable treatment may amount to the 'something more', **Anya v University of Oxford** [2001] ICR 847, CA.

197 Where the Claimant relies on a hypothetical comparator, he must still prove primary facts from which the Tribunal could find or infer that such a person would have been treated more favourably in the same circumstances, **Balamoody v UK Central Council for Nursing Midwifery and Health Visitors** [2002] IRLR 288.

198 Harassment is defined in section 26 of the Equality Act 2010 as follows:

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

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

(b) the conduct has the purpose or effect of -
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and
(b)the conduct has the purpose or effect referred to in subsection (1)(b).

…

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

(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect."

192 In **Richmond Pharmacology v Dhaliwal** UKEAT/0458/08/CEA, the EAT provided guidance to the effect that an Employment Tribunal deciding harassment claims should consider in turn: (i) the alleged conduct, (ii) whether it was unwanted, (iii) its purpose or effect and (iv) whether it related to a protected characteristic. As to effect in particular, at paragraph 15, the EAT made clear the importance of the element of reasonableness, having regard to all of the relevant circumstances, including context and in appropriate cases whether the conduct was intended to have that effect. At paragraph 22, Underhill LJ (then President), held that:

> **"We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."**

199 Section 27 of the Equality Act 2010 prohibits victimisation. The Claimant does not need to show a comparator but he must prove that he did a protected act and that he was subjected to a detriment because he had done that protected act. As with direct discrimination, it is not necessary for the Claimant to show conscious motivation, it is sufficient that the protected act had a material influence on the outcome.

Constructive Dismissal

200 Section 95(1)(c) ERA provides that a dismissal occurs if the employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to do so by reason of the employer's conduct. Whether the

employee was entitled to resign by reason of the employer's conduct must be determined in accordance with the law of contract. In essence, whether the conduct of the employer amounts to a fundamental breach going to the root of the contract or which shows that the employer no longer intended to be bound by one or more of the essential terms of the contract, **Western Excavating Ltd v Sharp** [1978] IRLR 27 CA.

201 The term of the contract which is breached may be an express term or it may be an implied one. In this case, the Claimant relies upon breach of the implied term of trust and confidence. This requires that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. The employee bears the burden of identifying the term and satisfying the tribunal that it has been breached to the extent identified above. The employee may rely upon a single sufficiently serious breach or upon a series of actions which, even if not fundamental in their own right, when taken cumulatively evidence an intention not to be bound by the relevant term and therefore the contract. This is sometimes referred to as the "last straw" situation. This last straw need not itself be repudiatory, or even a breach of contract at all, but it must add something to the overall conduct, **Waltham Forest London Borough Council – v- Omilaju** [2005] IRLR 35.

202 The question of fundamental breach is not to be judged by reference to a range of reasonable responses, **Buckland v Bournemouth University Higher Education Corp** [2010] IRLR 445, CA. The tribunal must consider both the conduct of the employer and its effect upon the contract, rather than what the employer intended. In so doing, we must look at the circumstances objectively, that is from the perspective of a reasonable person in the claimant's position.

203 In **Tullett Prebon Plc v BGC Brokers LLP** [2010] EWHC 484 QB, Jack J stated at paragraph 81 that the conduct must be so damaging that the employee should not be expected to continue to work for the employer and that:

> "**Conduct, which is mildly or moderately objectionable, will not do. The conduct must go to the heart of the relationship. To show some damage to the relationship is not enough**."

204 In **Kaur v Leeds Teaching Hospitals NHS Trust** [2018] EWCA Civ 978, at paragraph 55, Underhill LJ suggested that in a constructive dismissal claim it is normally sufficient for a Tribunal to ask itself the following questions:

> (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, her resignation?
>
> (2) Has she affirmed the contract since that act?
>
> (3) If not, was that act (or omission) by itself a repudiatory breach of contract?
>
> (4) If not, was it nevertheless a part (applying the approach explained in **Omilaju**) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the **Malik** term? (If it was, there is no need for any separate consideration of a possible previous affirmation).
>
> (5) Did the employee resign in response (or partly in response) to that breach?

Conclusions

205 Ordinarily, the Tribunal would address each alleged issue in each cause of action in turn. There are however 58 factual issues relied upon as harassment, direct discrimination because of race and/or fundamental breach of the implied term of trust and confidence with the latter 25 issues also relied upon as acts of victimisation. To avoid an already lengthy Judgment from becoming unnecessarily repetitive, the Tribunal have considered each issue in turn by reference to whether it was an act of harassment (did the conduct occur, was it unwanted, did it relate to race, did it have the prescribed effect), an act of direct discrimination (was it less favourable and was it because of race) and whether it was victimisation (was it a detriment and was it because of a protected act). We then considered overall the conduct relied upon and whether there was any discriminatory theme in the issues when looked at holistically. We have, however, considered the constructive dismissal claim separately as it is a very different legal test and it is important not to lose sight of the possibly cumulative effect of any conduct when considering whether there has been a fundamental breach and a last straw.

Equality Act Claims

206 Issue 1.1. The Tribunal has found as a fact that Mr Horsfall was annoyed by the Claimant's refusal to continue his route with the allocated vehicle and was dismissive of the Claimant's safety concerns. He did tell the Claimant that if he did not take the vehicle back out on the road, he would face potential conduct proceedings. This was pressure to take a defective vehicle onto a public highway. The Tribunal can understand why it was unwanted by the Claimant. The next question to consider is whether Mr Horsfall's conduct was related to the Claimant's race. In so doing, we took into account the Claimant's case as it developed at Tribunal to an assertion that it was because of a perception of the Claimant as trying to avoid work which was related to stereotypical assumptions based upon race. Closer to the date of the incident, in his appeal letter dated 9 June 2017, the Claimant made clear that this had not been a personal attack by Mr Horsfall and his concern was that such treatment could happen to other drivers. Moreover, we have found that the Mr Horsfall was annoyed by the Claimant's intransigence and that the Claimant contributed to the situation by adopting an approach which sought to prolong the discussion to prove himself right rather than to find a pragmatic solution. Overall, we conclude that Mr Horsfall's conduct was in no way related to the Claimant's race.

207 For the same reason, even if this were less favourable treatment (and we consider that it would not be as the Claimant's own position at the time was that another hypothetical driver in the same situation could be treated the same), it was not in any sense because of the Claimant's race.

208 Issue 1.2. The Tribunal has found that during the Claimant's period of sickness absence, Mr Rymer spoke to Mr Horsfall and they agreed there had been a misunderstanding by Mr Horsfall about the extent of Pullman's inspection. They decided that that the Claimant's grievance could be resolved by an apology from Mr Horsfall. In other words, we conclude that the outcome of the grievance was essentially decided before the grievance meeting with the Claimant. As a result, there was no engagement with the substance of the Claimant's complaint about the way in which Mr Horsfall had acted. To this extent, the Tribunal concludes that the decision was predetermined and/or not fully investigated.

209 We carefully considered why Mr Rymer approached this grievance in the way that he did and whether it was in any way related to the Claimant's race. We conclude that it was not. It was a misguided but pragmatic attempt to draw a line under the incident by informal rather formal action. This would enable the Claimant to feel vindicated that he had been in the right and have both men move forward more positively in their working relationship. Mr Rymer, wrongly but genuinely, assumed that the Claimant would be happy with an apology. The apology was provided as Mr Horsfall was genuinely sorry that there had been a disagreement. It was, however, not a full apology as Mr Horsfall did not admit any fault for mishandling the situation or for upsetting the Claimant. Overall, therefore we conclude that this was an inappropriate approach to the grievance and that it was unwanted conduct.

210 The grievance was submitted on 3 May 2017, the decision was given by Mr Rymer on 1 June 2017. The Tribunal does not consider this to be "delay" given that the grievance meeting was originally planned for 19 May 2017 but was re-arranged without apparent objection from the Claimant. The grievance was dealt with in a timely manner.

211 The Tribunal considered whether Mr Rymer's decision to resolve the grievance by way of an apology from Mr Horsfall was in any way related to the Claimant's race. The Claimant did not establish any primary facts from which we could conclude that it was. To the contrary, we conclude that race played no part in what he considered a pragmatic attempt to draw a line and move on and where he expected the Claimant would be happy with an apology. This of course was mistaken, but it was not in any way related to race.

212 In the alternative, the Claimant has not proved facts from which we could conclude that a driver of a different race, involved in a disagreement based upon a misunderstanding of the full picture by a more senior manager, would have been treated any differently.

213 Issue 1.3. The appeal was submitted on 9 June 2017 and the appeal hearing took place on 19 July 2017. Ms John told the Claimant that she could probably give him a decision the following week. Not unreasonably, therefore, he expected a swift outcome. In fact that decision was not communicated to the Claimant until 31 October 2017. This was a significant delay of almost five months and the Tribunal accepts that it was unwanted by the Claimant, who had expressed concern about delay at the grievance hearing itself.

214 The question is therefore whether the delay was in any way related to the Claimant's race. The Tribunal has found no explanation in the contemporaneous documents for the delay between 19 July 2017 and 14 September 2017, when Ms John interviewed Mr Horsfall. However, the Claimant had not asked for an update in this period and the Tribunal bear in mind that it was the school holiday period and a time when, we infer, many employees would be on holiday. Ms John herself was on holiday from 14 September 2017 until 3 October 2017. There were then practical difficulties in re-convening the appeal hearing so that an oral decision could be given. These are valid non-race related reasons for the delay. The Claimant has not proved primary facts from which we could find that Ms John would have behaved with any greater speed had the Claimant been of a different race.

215 For the same reasons, in the alternative, the Claimant has not proved primary facts from which we could find that a driver of a different race in the same or not materially

different circumstances would have had their grievance appeal concluded without such delay.

216 Issue 1.4. The Tribunal has not found that the Claimant's confidential personnel file was open on a communal table or that its contents were being discussed on 11 November 2017. The only document on the table and being discussed were the single trade union request form. As such, the unwanted conduct alleged by the Claimant is not made out on the evidence. However, for completeness sake, the Tribunal have found that Mr Horsfall checked the Claimant's file as it was unusual to see a driver in the office at that time of the morning. The Claimant's request form and its authorisation were relevant documents, not least as the Claimant's request had been to shadow another union representative and Mr Horsfall was aware that no other union officials in the office that day who could be shadowed. This had nothing whatsoever to do with the Claimant's race (whether related to race for harassment or, in the alternative, because of race for direct discrimination).

217 Issue 1.5. When told by Mr Harris that the Claimant had been clocked out at 4.30pm on 11 November 2017 without first signing out at the front desk, Mr Horsfall contacted Ms Shanks, the Claimant's then line manager, to say that an investigation would be required into the Claimant's conduct and to see him for the details. Mr Horsfall clearly did start the investigation, albeit it was ultimately conducted by another manager. Mr Horsfall also reviewed the CCTV evidence and he did not detail the allegations against the Claimant at that time. This was done later in Ms Shanks' letter dated 16 November 2017 which made clear that it related to misappropriation of time on 11 November 2017 in relation to union duties. The Tribunal is prepared to proceed on the basis that this was unwanted by the Claimant as the real issues are whether it was related to race and/or had the prescribed effect (considered subjectively and objectively).

218 The Tribunal has not accepted that the disciplinary investigation was unwarranted and initiated by Mr Horsfall in bad faith. By his own admission, the Claimant left work over an hour and a half early that day. There is no evidence to support the Claimant's assertion, when addressing this weakness in his case, that it was standard practice for trade union representatives to go home early if their work was complete – his trade union work was not complete by his own admission and no such assertion was made by the Claimant or his trade union representative at the investigation meeting. There were substantial, non-race related reasons for this disciplinary investigation and race played no part at all.

219 For the same reasons, we conclude in the alternative that a driver in the same material circumstances but of a different race would also have been subjected to a disciplinary investigation.

220 Issue 1.6. The Tribunal has found that Mr Harris and Mr Horsfall were unhappy with the decision to take no further action on the disciplinary allegation about misappropriation of company time in respect of the Claimant leaving work early on 11 November 2017. The decision not to proceed with the disciplinary investigation was to the benefit of the Claimant, it was not to his detriment. Mr Horsfall sent an email asking for the rationale for the decision. This was not a complaint but a request for information. It was an understandable request given that even on his own case, the Claimant had left work early when there was still trade union work to do and the decision had been taken by a more senior manager against the recommendation of the investigating manager. This was the only reason for the email, it was not in any way related to the Claimant's race.

For the same reasons, it was not in any way because of the Claimant's race.

221 Issue 1.7. As the Claimant accepted in cross-examination that Mr Rymer's decision to pass the grievance to Mr Horsfall for consideration was not an act of race discrimination, we conclude that it was not related to or because or race.

222 Issue 1.8. In the List of Issues, the Claimant's complaints are both that there was delay and no determination of his grievance by Mr Sharif, just an offer of mediation. The Claimant's grievance had been that data protection rules had been breached by leaving his confidential personnel file open in a public area where it could be seen by others. In his grievance decision, Mr Sharif makes no explicit finding as to whether that did or did not take place. Instead, the grievance decision letter focuses on the communication issues which Mr Sharif believed existed between the management side and the Claimant and its adverse effect on communication. We accept, therefore, that there was no determination of the actual grievance and that this was unwanted conduct.

223 In deciding whether it was related to race, the Tribunal has found that Mr Sharif believed that the relationship had broken down to such an extent that the Claimant and Mr Horsfall could not have a conversation about a file open on the manager's desk. In other words, the breakdown in the relationship and communication problems arose from the content of the grievance and were not unrelated to it. Furthermore, Mr Lewington had also referred to a breakdown on communication and mistrust on both sides. Mediation was discussed at the grievance meeting and was welcomed by Mr Lewington. It was not rejected by the Claimant who simply expressed a preference for an experienced mediator. In these circumstances, Mr Sharif's decision to focus on the communication issues is not surprising and, the Tribunal would go so far as to say, understandable. The Claimant has not proved facts from which we could conclude that it was in any way related to his race.

224 In the alternative, and for the same reasons, the Tribunal concludes that another driver of a different race in materially the same circumstances would have been treated in the same way.

225 The Claimant's grievance was submitted on 16 December 2017 and Mr Sharif's decision was sent to the Claimant on 6 April 2018. It is relevant, however, that it was only passed to Mr Sharif after the grievance meeting on 11 January 2018 when the Claimant first expressed his objection to Mr Horsfall hearing the grievance. For the reasons already given, this arose from an understandable misunderstanding unrelated to race. The grievance hearing with Mr Sharif took place on 8 February 2018. The Tribunal does not consider such a delay to be undue given the seniority of Mr Sharif and the other undoubted pressures on his time. It was necessary for Mr Sharif to speak to Mr Horsfall and Ms Clark as part of his investigation and we have found that this took some time due to holiday commitments. It is for this reason that there was further delay. Looked at overall, the Tribunal does not conclude that the delay was in any way related to the Claimant's race. In the alternative, it is not because of the Claimant's race either.

226 Issue 1.9. There is no dispute that the email was sent by Mr Horsfall. Given that it expresses no confidence in the Claimant, the Tribunal accepts that it was unwanted conduct. Such an email was not sent in relation to any of the named comparators. The issue in deciding the harassment claim is therefore whether the email was sent for a reason related to the Claimant's race. The Tribunal has found that Mr Horsfall sent the email because he was intensely frustrated by the Claimant's email setting out driver

concerns, copied to the most senior managers at the depot, without prior discussion of those concerns with him. Moreover, we have found that the Claimant was deliberately bypassing Mr Horsfall and the concerns were expressed in a way by which the Claimant sought to portray Mr Horsfall in a poor light. The Claimant's conduct, in light of the email from Mr Hill the same day, demonstrates a degree of malicious intent.

227 The Tribunal has no hesitation in concluding that Mr Horsfall should not have contacted Mr Rymer in such terms. Trade union representation is a matter for its membership following a democratic vote. It is not appropriate for a manager to express to another manager a vote of no confidence no matter how irritated. Where there is genuine cause for concern about the conduct of a trade union representative, there should first be calm discussion with union rather than an email sent in pique. However, in the circumstances, the Tribunal accepts that it was sent because of the Claimant's conduct following the drivers' surgery and was not in any way related to his race.

228 Issue 1.10. This issue comprises two parts – the conduct of Mr Horsfall in sharing the petition and the failure of Mr Sharif to act upon the Claimant's complaint.

229 Dealing first with the Facebook post itself, the Tribunal has rejected as implausible Mr Horsfall's evidence and has found that he did share the petition supporting the release of Mr Yaxley-Lennon from prison. The Claimant's case is that this showed that Mr Horsfall was an active and vocal supporter of an individual known to hold right-wing views and advocate violence and other illegal acts against people of BAME origin. The Tribunal gave considerable thought to this submission which may appear superficially attractive. However, we do not accept that this inference is safe to draw. We prefer the submission of Mr Green that it is legally wrong to say that support for such a figure is automatically discriminatory, the statutory tests must be applied to the facts of this particular case. The post shows that Mr Horsfall supported Mr Yaxley-Lennon's release from prison, not necessarily his views on people of non-white ethnicity or non-Christian religion. The petition itself stated that the "disgrace" which needed addressing was Mr Yaxley-Lennon's imprisonment for reporting on grooming gangs. If Mr Yaxley-Lennon had been imprisoned for a racially aggravated crime, then the inference would be permissible. Here, however, the imprisonment was for contempt even if related to Mr Yaxley-Lennon's interest in the trial because of ethnicity. For these reasons, the Tribunal is not satisfied that the Facebook post was inherently related to race (even of others and not necessarily that of the Claimant for the purposes of the harassment claim) nor did it have any express content related to race. The Claimant was not treated less favourably in respect of the post itself as it was a post to a number of people and was brought to the Claimant's attention by another driver who, therefore, had equally seen it.

230 We have dealt with the issues in the order set out in the List of Issues for clarity. However, in deliberating on issues 1.1 and 1.9 where we have been critical of Mr Horsfall's conduct towards the Claimant, the Tribunal considered it vital to take into account our findings and conclusions on this Facebook issue. Specifically, we considered whether or not there were primary facts on this issue from which we could infer race as a material cause on other issues when looking at the claim holistically. For the reasons set out above, we concluded that we could not. Even taking into account this Facebook post, we are satisfied that Mr Horsfall's conduct in April 2017 and March 2018 were solely for the reasons we have given (essentially irritation with the Claimant's conduct which he perceived to be difficult and obstructive) and not in any way because of race.

231 The second part of issue 1.10 relates to Mr Sharif's handling of the Claimant's complaint. Mr Sharif asked the Claimant to provide him with some evidence and he would look into it. The Claimant failed to provide the screenshot of the Facebook post provided to him in the capacity of trade union representative which was all that was required. The lack of appropriate action was therefore caused by the Claimant's inaction and not that of Mr Sharif. Mr Sharif would not have investigated the post without evidence even if brought to him by a driver of a different race such that the Claimant was not treated less favourably. The Tribunal has found it not plausible that Mr Sharif was looking for a way to avoid an investigation in order to protect Mr Horsfall. Indeed, we conclude that the development of the Claimant's evidence and case against Mr Sharif on this issue is indicative of the approach taken by the Claimant more generally – when faced with management conduct which he now seeks to rely on as discriminatory but which is not supported by contemporaneous documents or even his own initial evidence, the Claimant adds new allegations and incorporates that manager into his overarching theory that a great many, if not all, of the managers at the depot were conspiring against him.

232 Issue 1.11. Each of Ms Shanks, Mr Sharif, Mr Keyworth and Ms Gibbs were supportive of the Claimant and sought to enable his career development for example, in agreeing that he could have time shadowing in the warehouse or indeed helping him with his application. Mr Sharif proactively brought a possible suitable vacancy in the warehouse to the Claimant's attention and offered help with his application. The agreements were to support the Claimant and to permit him the time to shadow in the warehouse, however, it was for the Claimant to make the practical arrangements with the warehouse managers. There was no failure to act on verbal agreements as alleged in the list of issues and this had nothing to do with race. Nor is there any evidence that Mr Lee Hill, Mr Nick Robinson or Ms Anna Peterson were treated any differently. The Tribunal has found that Mr Hill did not make the comment about an alleged instruction from Mr Horsfall to ensure that the Claimant received no work experience or training.

233 In considering the issue of career development, the Tribunal found that the Claimant's evidence often belied a willingness to hear what he wanted to be said rather than what had been said. This was particularly evident in Mr Keyworth's evidence about six monthly PDPs for his own management reports (not as the Claimant asserted evidence that there were six monthly PDPs for drivers). It is also consistent with the Claimant's emails with Mr Gorny alleging that promises had been made to him whereas Mr Gorny had in fact said that he would support his career development not that he would be driving the process for the Claimant. The Tribunal also considers the tone of the Claimant's emails to Mr Gorny to be relevant to considering the issues before us overall. The Claimant was unnecessarily confrontational and rude to a more senior manager from whom he sought a career development opportunity. Whilst complaining about rudeness and an implicit criticism of his professionalism by Mr Horsfall in April 2017, here the Claimant openly accused Mr Gorny of lack of professionalism and implies that he is lying.

234 Issues 1.12 and 1.13. There was some confusion about the dates given in the List of Issues, with the Claimant amending the date for the alleged refusal to 15 October 2018. There was no refusal on 17 August 2018, the complaint was about being sent home without a formal return to work meeting. The Tribunal has found that there was no refusal to refer him to Occupational Health as alleged or at all, to the contrary the Claimant was referred to Occupational Health on 15 October 2018 by Mr Horsfall.

235 Issue 1.14. Ms Shanks sent the amended rota to the planning team on 3 February

2019, providing prompt and proactive support to the Claimant. There was no failure as alleged in the issue.

236 Issues 1.15, 1.16, 1.17 and 1.21. The Claimant had been on a WAP since 7 November 2018 which modified his allocated duties by allowing him to assess the suitability of shops allocated on his route. In addition, from 31 January 2019 the Claimant benefitted from modifications to his rota, with regular hours and earlier start times, as a temporary adjustment to assist him with his caring responsibilities on compassionate grounds. The Tribunal has found that on 13 March 2019, Mr Robinson did no more than remind the Claimant that he would be returning to his normal rota unless a flexible working request was made and agreed. This was confirmed by Ms Shanks. There was no removal of the WAP on 13 March 2019 or statement by any manager that the WAP would be removed. The Tribunal have found it implausible that on 26 March 2019, the day the Occupational Health report was received, Mr Robinson would have told the Claimant that its recommendations would not be followed whilst simultaneously setting up a meeting to discuss its contents given his earlier supportive stance. Based upon our findings of fact, therefore, the conduct alleged in these three issues did not occur – there was no cancellation with immediate effect of the WAP or the rota modification and the Occupational Health recommendations were not ignored, nor was the Claimant told that any of these things would happen.

237 There are notes of the meeting on 9 April 2019 which whilst not verbatim were signed by the Claimant, and have been accepted by the Tribunal, as accurate. There is no reference to the Claimant being told that all adjustments would be immediately discontinued although he was told that the Respondent could not accommodate the adjustment of ad hoc refusal of a shop based on the Claimant's assessment on the day. Alternative adjustments were discussed and given that the Occupational Health report had referred only to support to avoid pushing items up inclines and the longest shifts until his back was stable, the Tribunal does not accept that the suggestions of Mr Robinson were contrary to Occupational Health advice (even if they were not what the Claimant wanted to hear). Mr Hill said nothing in the meeting. As such, the conduct relied upon by the Claimant is not made out on the evidence. Even if it were, the Claimant has not established primary facts from which we could conclude that it was in any way related to or because of race. Indeed, the difficulty of the Respondent in accommodating WAPs applied to many of its drivers as shown by the emails sent in December 2019 between Mr Morrison and Mr Hill.

238 Issue 1.18. The Claimant did make a flexible working request on 14 March 2019 and the meeting did not take place until 2 August 2019. However, the Tribunal has also found that timeous attempts were made to arrange a meeting to meet with Ms Shanks to discuss the request but these were not successful due to availability problems. The process was put on hold until the Claimant's grievance against Ms Shanks was concluded but, significantly, throughout the period the Claimant continued to benefit from his amended rota with earlier start times. In other words, the delay caused the Claimant no disadvantage at all. Between April 2019 and July 2019 there were a plethora of other outstanding internal processes involving the Claimant (health, grievances and disciplinary) which required meetings and the Claimant was suspended from work for a key part of this. The Tribunal infers that the flexible working request process was not regarded as critical until the other processes were resolved, in particular the health reviews and grievance against Ms Shanks, as they were all interlinked. This was the reason for the delay and it was not in any way race related.

239 In the alternative direct race discrimination claim, the delay in holding the meeting was not a detriment as the Claimant continued to benefit from the amended rota throughout. The Claimant could have no justified sense of grievance in the circumstances. Finally, there are no primary facts from which we could conclude that a driver of a different race in materially the same circumstances would have had a meeting any sooner.

240 Issues 1.19 and 1.29. The Claimant complains about Mr Hill's handling of his grievance against Ms Shanks. The grievance was presented on 25 March 2019 and the decision letter was sent on 13 June 2019. As we said above, between April 2019 and July 2019 there were a plethora of other outstanding internal processes involving the Claimant (health, grievances and disciplinary) which required meetings and the Claimant was suspended from work for a key part of this time. Nor was it a period of inaction. Grievance meetings were scheduled for 9 April 2019, 26 April 2019 and 9 May 2019, although the latter did not take place due to the Claimant's ill-health. The Claimant was signed off work until 31 May 2019, although he said that he was fit to return from 17 May 2019. An attempt to meet on 30 May 2019 was not successful and was reconvened on 5 June 2019. The decision was sent 8 days later. Looked at in the round, the Tribunal concludes that this was a thorough investigation which took place over a relatively short period of time, despite the number of other ongoing processes and the additional short delay caused by the Claimant's ill health. None of this has anything to do with race and a driver of a different race in materially the same circumstances would have been treated the same.

241 Insofar as the Claimant takes issue with Mr Hill's conclusions, the investigation was thorough and the outcome letter detailed and balanced. The Tribunal does not accept that Mr Hill did acknowledge that managers had acted improperly in such a way as would justify upholding the grievance. Read overall, at most Mr Hill says that managers did not communicate as well as they could and that the rota adjustment for family reasons should have been dealt with formally rather than informally. The Claimant's grievance had been one of harassment and deliberate wrongdoing by Ms Shanks, including involving others in mistreatment of the Claimant. A finding that communication could have been better and informality had been a mistake is not a finding of impropriety which could uphold the grievance. The more so when the Claimant had accepted in the first grievance meeting that he did not think that Ms Shanks was setting the department against him. The Claimant's assertion that this conciliatory outcome letter, again trying to improve communication, supports his case that he was being harassed or targeted in some form of concerted course of conduct by managers underscores his willingness to misinterpret evidence, even when written, to attempt to bolster a case which lacks plausibility when tested against the evidence. None of this has anything to do with race and a driver of a different race in materially the same circumstances would have been treated the same.

242 Issue 1.20. Ms Clark asked the Claimant for relevant information to complete the accident pack and he completed his part of the relevant forms. The Claimant was not required to sign the pack accepting blame for the damage, he was asked what he knew as he was the last person to drive the vehicle. Ms Clark immediately accepted his explanation without further question. This was an entirely trivial and insignificant day to day matter which was swiftly and informally resolved. It is inconsistent with the Claimant's case that he was being blamed for the damage or that his managers were looking to cause problems for him. This is not conduct which is capable of amounting to harassment

as, objectively viewed, no reasonable employee could see it as having the effect required by section 26. It was in no way related to the Claimant's race in any event. Nor could it amount to a detriment and it was not because of race.

243 Issues 1.22, 1.23 and 1.24. These issues all arise from the route allocated on 12 April 2019 and, in particular, the Tonbridge shop. Neither Mr Robinson nor Mr Horsfall tried to force the Claimant to take a defective vehicle out, they each accepted that the vehicle was defective. The Claimant's notes on the manifest refer only to the appropriateness of the Tonbridge shop. Neither Mr Robinson nor Mr Horsfall counter-signed those notes because they did not agree with the Claimant's opinion as the risk assessment for Tonbridge did not support his concern and they did not change the route for the same reason, and also because an ad hoc change could not be accommodated. There was a genuine difference of opinion between the Claimant and his managers. The Tribunal has not heard evidence from which we could find, on the balance of probabilities, that the gulley did render the Tonbridge shop inappropriate (and the Claimant bears the burden of proof). In any event, even assuming that the Tonbridge shop was inappropriate due to the Claimant's injury, it is clear to the Tribunal that the dispute had nothing to do with the Claimant's race nor did the refusal to countersign his notes on the manifest.

244 Issues 1.25 and 1.27. The disciplinary investigation for misappropriation of company time was for the failure to complete the Tonbridge delivery on 12 April 2019. The Claimant did not accept in cross-examination that there was anything suspicious in the fact that he refused to carry out the very delivery to which he had objected that morning. The Claimant was due to finish his shift at 6pm and he had completed his penultimate delivery at 4.10pm. The clerk with whom he spoke believed that there was enough time for the Tonbridge delivery and offered practical support to ensure that the Claimant would not be late finishing, namely assistance from the shop staff and skipping the de-kit. The Claimant also refused the instruction by a Team Manager to complete the delivery when he called again, this time in Tonbridge, at 5pm.

245 The Tribunal concludes that there was a disagreement between the Claimant's belief that there was insufficient time and the belief of the clerk and the manager that there was sufficient time. The Claimant may well have been right but this was something which could properly be established in a disciplinary investigation. A disciplinary investigation is not the same as a finding of misconduct and the Claimant would have been able to set out his explanation in full to the satisfaction of an investigating manager. However, the combination of the fact that this was the very shop to which the Claimant had objected, that the clerk and a Team Manager considered it a reasonable instruction and the Claimant refused causing financial loss to the Respondent was the reason why it was considered potentially a disciplinary matter. Insofar as Mr Robinson spoke to the Claimant about the incident on 13 April 2019, whether or not a second debrief, was because he wanted to know more about what had happened with regard to the failed delivery. The Tribunal accepts that the questioning by Mr Robinson and the disciplinary investigation were unwanted conduct. They were not, however, in any way related to race. Further, a driver of a different race who had failed to deliver to a shop to which they had objected when a clerk and a manager believed there was sufficient time to do so, would also have been questioned by Mr Robinson and subjected to disciplinary investigation. There was no less favourable treatment and, again, this was nothing to do with the Claimant's race.

246 Issue 1.26. This issue relates to the Claimant's allegation to Mr Hill on 18 April 2019 that Mr Horsfall may have been under the influence. The Claimant was told by Mr

Hill that it may have been a malicious report and was suspended that day. The real issue is why he did so – was it related to or because or race in any way?

247 The Tribunal has found that the Claimant did refer to drugs and alcohol in explaining his allegation about Mr Horsfall's behaviour, the evidence for his alleged concern being that Mr Horsfall appeared overly hyped up and jovial. The Claimant, even now, does not accept that this was a serious and potentially career threatening allegation to make. Mr Skinner, when interviewed, told Mr Hill that his comments about Mr Horsfall had just been banter and not a basis for concern about drug or alcohol use, further that he had tried to stop the Claimant from reporting it. In the circumstances, there was scant evidence to support the Claimant's serious allegation against Mr Horsfall and clear reason to think that it was not genuinely held. If, as Mr Skinner said, he had tried to stop the Claimant making the allegation because it had clearly been banter and that the context was that the Claimant did not want Mr Horsfall to do the notes of the meeting with Mr Robinson, then there was a possibility that the allegation was malicious. The Claimant's expressed concern was clearly not supported by his trade union colleague. The Tribunal concludes that this was the sole reason why Mr Hill considered that the Claimant's allegation may have been malicious. It had nothing to do with his race.

248 The Claimant was suspended principally because of the apparently unsubstantiated allegation against Mr Horsfall but also because of the number of other outstanding meetings in the other internal processes which were underway. The Tribunal has accepted both reasons as genuine and neither is in any way related to race.

249 Issues 1.28 and 16.1. The Claimant complains about the length of time taken to investigate the events of 12 April 2019 (the Tonbridge delivery). The initial action was prompt with an initial investigation meeting due to take place on 18 April 2019. This did not take place as the first planned meeting, about Occupational Health, led to a dispute about the note taker, the Claimant's allegations against Mr Horsfall and his suspension. A further investigation meeting was then scheduled for 2 May 2019, but rearranged to 9 May 2019. That meeting did not take place that day because the Claimant was unwell but did happen on 30 May 2019, after his return to work. Mr Sharif was appointed to chair a disciplinary hearing on 25 July 2019 which was postponed at the Claimant's request on grounds that he had had insufficient time to prepare. A further disciplinary hearing arranged for 16 August 2019 was postponed at the request of Mr Travers, the Unite Regional Officer, pending the outcome of an investigation into whether Mr Horsfall was bullying the Claimant. The delay to the end of August 2019 was not caused by the Respondent which had acted promptly. Furthermore, the decision was taken in August 2019 before the presentation of the first ET1 which is relied upon as a protected act and therefore cannot have been caused by it.

250 It was inevitable that an investigation by a manager external to the depot would take some time to organise and arrange. The Gilbraith investigation was wide ranging and took even longer than might otherwise have been the case due to the intervening Covid-19 pandemic. It did not conclude until 1 July 2020 and found that Mr Horsfall had not bullied the Claimant. The outstanding disciplinary action against the Claimant in respect of the Tonbridge delivery should then have been re-started but the Tribunal has found that it was overlooked. When it came to Mr Sharif's attention in October 2020, no further action was taken due to the passage of time. In all of the circumstances, the delay was lengthy but the investigation was closed. The reason for the delay, however, had nothing to do with the Claimant's race but to the Gilbraith investigation which had been

requested by the Union and on the basis that the Claimant's disciplinary investigation would be postponed in the meantime. The delay applied equally to Mr Horsfall's grievance against the Claimant.

251 Issue 1.30. The grievance appeal decision was given to the Claimant orally on 17 December 2019, a delay of some six months which the Tribunal accepts ordinarily would be an unduly long time. However, Mr Sharif did not receive the grievance appeal until 15 August 2019 as it was not submitted directly but via Mr Lewington and the Claimant was invited to a grievance hearing on 11 October 2019. The four month delay is also to be seen in the context not only of ordinary matters such as periods of annual leave but also the need for a proper investigation of wide-ranging and important issues. The Tribunal has accepted these as the genuine reasons for delay and concludes that race played no part whatsoever in the delay.

252 Issues 1.31 and 1.32. In a departure from what had been agreed, the Claimant was required to undertake his bi-annual driver's assessment rather than refresher training. Mr Hill notified Mr Horsfall and Ms Shanks. The Claimant was not aware of the change until his first day back at work and was upset despite the reassurance provided by Mr Hill that there would be no pressure or adverse sanction for any issues flagged. The Tribunal has accepted that the reason for the change was Mr Hill's discovery that the Claimant was due a bi-annual assessment and that this could fulfil the same function as refresher training. The Claimant's fit note gave no reason to believe that there may need to be altered arrangements on his return to work and Mr Hill said that this would be addressed by the bi-annual assessment (which the Tribunal concludes would also have provided the updates and training on any changes during his suspension). Whilst the unexpected change was unwanted, it could not objectively reasonably have been regarded as having the prescribed effect given that he would have been in no worse a position than if it had been refresher training. Furthermore, the Claimant has not proved facts from which we could conclude that the change was related to his race in anyway. For the same reasons, in the alternative, it was not a detriment, was not due to race and a hypothetical comparator in his position would have been subject to the change also.

253 Issue 1.33. The letter dated 6 November 2019 did say that the Claimant had been absent without authorisation and that failure to contact the depot and unauthorised absences may lead to disciplinary action including termination. In circumstances where the Claimant had permission to be absent he was understandably upset to be told that he may be subject to disciplinary action. The Tribunal conclude that this was unwanted conduct. However, we have found that it was sent by reason of a genuine and innocent error by Mr Tann which was swiftly corrected and an apology offered. As Mr Green submitted, the Claimant was unable to say who it was who had harassed him in this way The Tribunal find that is because nobody did, this was entirely unrelated to race.

254 Objectively, such a mistaken letter swiftly corrected with an apology alone could not be said to have the effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The Claimant, when challenged with the possibility that this was a genuine mistake, suggested that it was in fact deliberate action by Ms Armstrong to cause him problems. Such a deliberate act, if true, could confer upon an otherwise innocent mistake the necessary proscribed effect. However the Tribunal have rejected as unfounded the Claimant's belief and have found it indicative of his inability to accept that mistakes happen but instead seeking to answer any weakness in his case by alleging an overarching narrative of deliberate and concerted management

malice towards him.

255 The Claimant had done a protected act by the presentation of his ET1 on 21 September 2019 and this is claimed as an act of victimisation. For the reasons given, the Tribunal conclude that the Claimant did not suffer a detriment as no objectively reasonable employee could have a genuine sense of grievance given that the error was corrected the very next day and a sincere apology given. Even if it were a detriment, there is no evidence that either Mr Tann or Ms Armstrong were aware that the ET1 had been presented or that it played any part in the communication error.

256 Issue 1.34. The Tribunal has found that Mr Robinson agreed to change the route within 5 to 10 minutes of it being raised by the Claimant; the Claimant did not have to wait until Ms Clark attended work as he initially alleged. In essence, therefore, the Claimant's complaint is that Mr Robinson spent a few minutes asking why the route was inappropriate before agreeing to change it. The Tribunal sees nothing objectionable in this. Given that a shop removed from the Claimant's route would have to be reallocated, it was for good reason that Mr Robinson wanted to understand the nature of the problem and consider the risk assessment. Again, this is a trivial incident but one which the Tribunal regards as telling with regard to the Claimant's case viewed holistically. The Claimant perceives it to be an act of harassment when he is asked even the most obvious question by a manager and seems to believe that because he says that a shop is appropriate, the manager is automatically bound to agree. Any challenge is seen as a sleight on his integrity. The Tribunal do not accept that being asked to explain the concern and discuss the risk assessment could reasonably be perceived as being labelled a liar (as the Claimant submitted to this Tribunal). Even if the request to explain his objection was unwanted, it was not related to race and it could not reasonably have had the proscribed effect.

257 For the reasons above, the conduct of Mr Robinson could not objectively reasonably have given rise to a sense of grievance and was not a detriment for either the direct discrimination or victimisation claims. Furthermore, as will be seen in respect of routes allocated on 28 and 29 December 2019 and Ms Akram's subsequent investigation, problems with the suitability of specific shops on routes allocated by planning were common to drivers on WAPs and were not specific to the Claimant. The review of the practical operation of WAPs, particularly the ad hoc assessment of shop suitability, was applicable across the whole depot and all shifts. The Respondent had a legitimate business need to ensure the appropriate utilisation of drivers in order to ensure an efficient delivery service which was made very difficult where a driver could simply challenge a route at the point of its allocation. This was a genuine concern which the Respondent addressed by changing the system for all drivers on WAPs. There was no less favourable treatment and this was not because of race. Finally, there is no evidence from which we could conclude that Mr Robinson's question on 7 December 2019 was because the Claimant had presented an ET1, indeed the disputes about the suitability of routes was longstanding and significantly pre-dated the protected act (see the April 2019 incident).

258 Issue 1.35. The load was checked by the Claimant's manager and again by the Transport Manager as asserted in the List of Issues. However, the Tribunal has found that it was standard practice to double check to avoid loads being sent back to the warehouse unnecessarily as this would cause delay. It was not standard practice to take a driver's report at face value. The Tribunal considers this to be a further example of the Claimant's belief that his managers should have automatically accepted his assertions without even a question. This may be because his judgment was improperly challenged

by Mr Horsfall in April 2017 but the circumstances are very different. Mr Horsfall's error in April 2017 was not that he asked the Claimant how the vehicle was defective, or even to have it test driven by a manager to check, both of which would have reasonable management action. Rather, Mr Horsfall's error in April 2017 was that he was persistently dismissive of the Claimant's safety concerns and told him that he would face disciplinary action if he did not take the vehicle on the road, without properly checking the extent of the inspection and despite others test driving the vehicle and confirming the Claimant's concerns.

259 For these reasons, the conduct in double checking the load was not related to race and could not objectively have the proscribed effect. Nor was it a detriment or less favourable as it was the way that all drivers were treated, even if subjectively the Claimant perceived otherwise. It had nothing to do with the presentation of an ET1 alleging race discrimination.

260 Issue 1.36. The Tribunal has found that the Claimant was not treated differently to other drivers in the queue, only John was seen to be signed out by Mr Robinson. The Claimant does not know whether he was signed out or not, nor for the other drivers. In the circumstances, the conduct relied upon in the list of issues is not proved as a fact. To the extent that John was noticeably signed out but the Claimant was not, even if this were unwanted conduct he was not singled out and the conduct occurred irrespective of race or whether a protected act had been done by a driver (there was no evidence that the other drivers were of the same race or had also presented Tribunal claims).

261 Issue 1.37. The request was appropriate, the Claimant's complaint in evidence was that it should have been made by his line manager (Ms Armstrong) rather than Ms Clark, this was a development of the complaint contemporaneously recorded in his diary. The Claimant accepted in submission that by this stage of his employment he may have developed a tendency to look for the negative in everything. The Tribunal agree. Whilst we find that the Claimant was genuinely suspicious about the timing of the request, and later the identity of the manager, objectively considered his suspicion was not well-founded. It is not plausible that Ms Clark would have made the request and then taken no follow up action when the Claimant refused if, as he believes, this part of a plan by managers to subject him to undue scrutiny or cause problems for him. The Tribunal accepted Mr Green's submission that this was an example of the Claimant taking an extremely rigid view of process and alleging that any departure is an act of discrimination or victimisation. Whilst the conduct complained of occurred, we conclude that it had nothing to do with his race or his protected act.

262 Issue 1.38. The Claimant was told by Ms Armstrong on 24 December 2019 that he would be subject to an investigation into the three allegations set out in this issue. The Claimant's disagreement with Mr Greenhow on 23 December 2019 was not one of the allegations to be investigated but it is relevant context. Mr Greenhow had wanted to speak to the Claimant informally about potential concerns that he had left early the day before and without reporting a defect with the vehicle fridge printer. The Tribunal has found that the Claimant said that any investigation should be done formally with a trade union representative present. In other words, the letter of 24 December 2019 was as a direct result of the Claimant not agreeing to an informal discussion. As the disagreement escalated, Mr Horsfall alleged that he had seen the Claimant outside of Mr Keyworth's office with his mobile telephone held up as if he were recording them.

263 The Tribunal has found that this was the information put before Ms Armstrong at the time and gave proper cause for investigation. The Claimant accepted as much in cross-examination, his complaint being that the allegations were not true. Whether or not any of these allegations were well-founded was the very reason for the investigation and, ultimately, no further action was taken. The Tribunal rejects the Claimant's case that there was no reason for the investigation. Mr Greenhow had concerns about the Claimant's conduct the day before, the Claimant would not answer his questions informally, further cause for concern arose over the course of the day. This is the reason for the disciplinary investigation. The Claimant may disagree that he had to answer a managers questions and may consider that he had done nothing wrong but, again, managers are not required to rely upon his mere say so, they are entitled to ask questions and investigate. The Claimant has not proved primary facts from which we could conclude that this was in any way related to or because of race, or that it was because of a protected act, and we conclude that it was not.

264 Issues 1.39 and 1.40. The Claimant was allocated routes on 28 and 29 December 2019 which would have taken his working hours beyond those agreed in the WAP. This was unwanted by the Claimant. In considering whether it was related to race and/or because of race, the Tribunal has found that at the time in December 2019, there was no objective way of assessing shop suitability for drivers on WAPs and that issues arose daily with drivers challenging the route allocated. A WAP would not be deleted but could be missed. Planned routes needing to be changed at the point of despatch was a problem for the business and arose with drivers across all shifts, not just the Claimant. In other words, we conclude that the problems with route allocation and disagreements about routes affected all drivers, particularly those on WAPs, and had nothing to do with race or a protected act at all.

265 The Tribunal considered it material to the Claimant's overall case that he regarded this error by planning to be specific to him and, indeed, deliberate and malicious. However, the evidence shows that it was a common problem across the depot for a number of drivers. His subjective perception of being targeted by his managers, and even planning, is not objectively sustainable on the evidence. This fundamentally undermines his core argument that whilst on the face of it treatment may appear innocent, it was something more co-ordinated and shows that he was being harassed.

266 Issue 1.41. The Tribunal has not accepted that the emails were slanderous or showed blatant disregard for the Claimant's well-being. As for the suggestion that they were racist, the Tribunal has found that Mr Sharif deliberately misspelt the Claimant's name to avoid them being identified in a data subject access request. This was unprofessional and unnecessary and the Tribunal considered whether it was material from which we could draw an adverse inference.

267 Ms Akram found that the misspelling by Mr Sharif was unprofessional but not because of race. The Claimant's response is indicative of his approach to his allegations of discrimination overall - it was unreasonable for Ms Akram not to find it racist when he felt it was and that there should be a starting assumption that if it looks discriminatory, then it probably is. This is a fundamental misunderstanding on his part. It is not sufficient for a Claimant to feel that he has been discriminated against or that there should be a starting assumption of discrimination. It is for the Claimant to prove primary facts from which discrimination could be found. No matter how many times or how vociferously he voices his belief, without the evidence and those primary facts, the claim cannot succeed.

Furthermore, unreasonable or unfair treatment is not sufficient to show discrimination.

268 Mr Sharif had actively supported the Claimant in his desire for career development and had dealt with a number of issues where the Claimant had gone to him directly rather than to his own managers as would be normal. Mr Sharif's email on 12 April 2019 asking Mr Lewington for a meeting makes clear that he was concerned about the amount of time he was spending resolving the issues. By July 2019, there were outstanding internal grievance, health and disciplinary processes and the Claimant had made serious misconduct allegations against Mr Horsfall. The subject of the email was the Claimant's complaint about the handling of his flexible working request and Mr Sharif's belief that the Claimant had misstated the length of the delay. The Tribunal concludes that at the time he sent the email, Mr Sharif was somewhat irritated at the amount of management time being spent on issues with the Claimant and believed that the Claimant was being unreasonable. The misspelling of the Claimant's name to avoid a data subject access request, in the circumstances, is consistent with this irritation and had nothing to do with the Claimant's race. The misspelling in the other emails were typographical errors unrelated to race at all.

269 Whilst the Claimant received the emails on 29 January 2020, this was because he had made a data subject access request. The emails themselves were sent prior to the presentation of the ET1 on 12 September 2019 and, therefore, cannot have been because of the protected act.

270 Issues 1.42 and 1.43. The Claimant received a telephone call whilst on annual leave. No doubt this was unwelcome but the telephone call was made because Ms Clark did not know that the Claimant was on leave, rather she believed that the Claimant should have been at work as there was no holiday form on his file. The Claimant has not adduced sufficient evidence for which we could find that this had never happened to anybody else and was specific to him. The Tribunal relies upon its conclusions in respect of problems with route allocation and disciplinary action for lateness in rejecting the Claimant's case that it only happened to him and reaches the same conclusion on this issue also. The failure to pay the Claimant was because the leave had been incorrectly recorded. As soon as the leave form was provided by the Claimant, payment was made within a day. The Claimant has not proved primary facts from which we could find that the telephone call or the delay in payment was related to his race or that he was treated less favourably than another driver of a different race in materially the same circumstances. For the same reasons, there is no evidence that it was in any way because of the protected act.

271 Issue 1.44. The Claimant's grievance had been presented only one week before the country went into lockdown due to the Covid-19 pandemic. An agreement was made with the trade union that non-business critical cases would be paused and reviewed at the end of April 2020. The Claimant was made aware of this agreement. The pause did not apply to harassment cases. Much time was spent in cross-examination of Ms Chek about whether the Claimant's grievance fell inside or outside of the agreed pause but the dispute is not material as an invitation to a grievance hearing was sent to the Claimant on 21 April 2020. The grievance meeting was due to take place on 30 April 2020. The Tribunal concludes that a delay of six weeks, in the context of the lockdown, was not unduly long.

272 Ms Brown's decision on the grievance was not sent to the Claimant until 18 August 2020. In this period, she had investigated the eight matters about which the Claimant

complained and which covered a period of time from November 2019 to February 2020 and the involvement of at least 9 different managers (Tann, Robinson, Hill, Clark, Greenhow, Keyworth, Armstrong, Sharif and Horsfall). The Tribunal concludes that this was a complex and far-reaching investigation set against the backdrop of the pandemic and lockdown. In the circumstances, whilst a five month period between grievance and outcome may ordinarily appear long, the extraordinary effect of the pandemic leads us to conclude that it was not.

273 The Claimant does not agree that the pandemic and lockdown provide any adequate explanation for the delay. The Tribunal considers this a further example of the Claimant's desire to find reasons to criticise the Respondent unfairly. Whilst the Respondent did continue to operate throughout the lockdown as it was a critical service delivering food to supermarkets, it cannot sensibly be said to have been doing business as usual. This was a time of stock shortages caused by logistic problems and panic buying. Measures were required at the depot and at shops to ensure compliance with social distancing requirements. Some employees were required to shield, others were required to work from home. There was significant disruption consistent with the trade union agreement to pause non-business critical cases. The Claimant's case that this initial period of delay was part of an act of harassment, discrimination or victimisation targeted at him suggests an inability to see things objectively and an erroneous belief that any issue with which he disagrees is deliberate and targeted at him.

274 For all of these reasons, the Tribunal concludes that the Respondent did deal with the grievance in a timely manner and rejects the Claimant's case that there was any harassment related to race, unfavourable treatment because of race or victimisation in the time that it took to get a grievance outcome.

275 Issue 2.1. The Tribunal has not accepted that there was a failure by Ms Brown properly to investigate the grievance or that she produced a pre-determined outcome. The Tribunal has found that Mr Atkins did not influence the investigation or outcome. As a result, the conduct complained about is not made out on the facts.

276 The emails between Ms Ryan, Mr Mills-White and Ms Brown were for the purposes of obtaining relevant evidence and were not to influence or direct the outcome. In the Tribunals experience, it is not unusual for Employee Relations to be involved in ensuring that an investigation is thorough and providing advice and guidance to the manager charged with deciding the grievance. We do not read anything sinister into this. The issue included on amendment did not criticise the conduct of Mr Mills-White in the Brown grievance. However, the Claimant at the hearing expanded his case to include his involvement. For the sake of completeness, and given the broader accusations levelled by the Claimant against Mr Mills-White, the Tribunal considered whether there was anything objectionable in his limited involvement in the Brown investigation. Mr Mills-White produced a timeline at the request of Ms Ryan who was concerned that the Claimant's grievances may be submitted to delay investigations. This is in the context of the Claimant's grievance covering the events on 23 December 2019 which were relevant to the disciplinary allegations set out on 24 December 2019 and allegations that he was being harassed by managers. In the circumstances, it was entirely appropriate to look at the bigger picture as it may be relevant to whether the grievance on this occasion was genuine and well-founded. The Tribunal concludes that Mr Mills-White's limited involvement adds nothing to the Claimant's case on this issue.

277 Issues 1.45, 1.46 and 1.47. Our findings of fact make clear that the Respondent was concerned about lateness in the depot across all shifts in May 2020, with a greater focus on taking action to nip it in the bud. The process for all was set out by Mr Horsfall: anything more than an occasional lateness required a challenge, further lateness required a record of conversation and anything further required formal action. The Claimant had had more than one occasion of lateness when challenged by Ms Armstrong in the meeting held on 23 June 2020. He was permitted a period of time for improvement with a review in July 2020. At the point of the review, there had been further lateness and he received a record of conversation. There were three additional occasions of lateness on consecutive days in September 2020 which therefore triggered the formal stage. This was the only reason why the Claimant was subjected to a formal investigation and given a three month warning (verbal not written), not race or his protected act.

278 The Claimant accepted in evidence that "technically" he was late but he maintained essentially that he was not to blame as it was the fault of delays on the gate and a need to minimise time in the office as he was being harassed. By the time that the warning was issued on 15 October 2020, the Claimant also blamed Ms Armstrong saying that she had not had a daily catch up with him as previously agreed. The Tribunal found this consistent with the Claimant's approach generally. Lateness across the depot was being actively managed for all drivers. There was an agreed approach with escalating action for repeated lateness that applied to all drivers. The Claimant was late on each of the occasions relied upon but he blames managers and asserts that the warning and process were acts of harassment, discrimination and victimisation. Perfectly proper management is therefore portrayed as an improper act as part of the Claimant's firmly held view that he was being picked on by his managers. It is not the responsibility of the manager to have a daily chat with the driver to ensure that they are on time. It is the responsibility of the employee to be at work in sufficient time to get through the gate, clock on and be ready for the appointed start time. If there are repeated problems with delays at the gate, the employee should get to the gate earlier.

279 The Claimant was treated no differently from other drivers who were also repeat offenders for lateness, contrary to his assertion that action was not taken against any other drivers who were late. The disciplinary details for other drivers was not provided to the Claimant during his disciplinary process as to have done so would have been a breach of the confidentiality of those drivers. Given the Claimant's complaints about breach of his confidentiality in November 2017 when his documents were on a desk with managers present and in including his name in the 29 August 2019 email between managers about late despatches, an objectively reasonable employee in the Claimant's position could not reasonably have expected to have been provided with the information about disciplinary action against other drivers.

280 Issues 1.48 and 1.49. Based on our findings of fact, whilst Mr Hill did not reply to the Claimant's email request on 17 October 2020 within the three days relied upon, it is not fair to say that he ignored it. He did not see the email initially and had not understood it to refer to a meeting on 20 October 2020. To this extent, he overlooked rather than ignored the request. The request to work from home was refused on 20 October 2020. The Tribunal has accepted Mr Hill's reason for refusing to authorise working from home generally on days of trade union meetings, namely that if the meeting did not take all day the Claimant may be allocated other duties. The Claimant has not proved primary facts from which we could conclude that the failure to reply within three days or the refusal had anything to do with race or a protected act.

281 Mr Hill volunteered to provide the Claimant with the use of his private office for the day. Rather than see this as an attempted compromise, to provide the Claimant with a private room for the meeting to address the reason for the request to work from home, the Claimant has now incorporated it into a narrative of being harassed, suggesting that it was done in order to monitor him. To do so undermines the plausibility of the Claimant's case overall. The Tribunal concludes that the real cause of the Claimant's sense of grievance is that Mr Hill did not give him what he requested and, because he did not get what he wanted, he regards it as discriminatory. This neither logical nor legally sound.

282 Issues 1.50 and 1.51. The accident pack was not completed at the time of the accident on 21 October 2020 because the Claimant was not available to provide his account in an informal conversation as he was off sick. A driver would normally only be formally investigated if the completed accident pack showed that there may have been some element of fault or error on their part. It is understandable that in the circumstances the Claimant felt that he was being held at fault in some way when invited to a meeting.

283 The Tribunal has found that Ms Armstrong chose to have a meeting rather than an informal conversation with the Claimant as she wanted to ensure that it would be minuted. The Tribunal infers that this was to avoid as far as possible any dispute about what had or had not been said. This had nothing to do with the Claimant's race.

284 The Tribunal gave careful consideration to whether or not it was in any material way caused by the Claimant's protected act, namely his allegations of race discrimination in his first ET1 presented a year earlier. The Tribunal took into account the difficulties experienced in this hearing of the Claimant maintaining that something had been said when it had not. This is consistent with difficulties which had arisen throughout managers' interactions outside of minuted meetings with the Claimant, for example regarding career development. The Claimant was known to be keeping his own diary of interactions with managers. There had been differences in recollection between the Claimant and managers in earlier meetings, even where the Claimant had signed the minutes as accurate. Overall, it was the desire to have a record of the conversation given the history of differing recollections and the problems that caused in the workplace rather than the fact that the Claimant had done a protected act which caused Ms Armstrong to have a meeting rather than an informal conversation.

285 Issue 1.52 rota. The Tribunal has found that the planning team made an error in the rota produced for the Claimant which had not been corrected despite his raising it in good time. The Tribunal understand the frustration and irritation of the Claimant in being contacted at very short notice and told that his rest day was being changed for the very problem that he had raised and which had not been corrected. This was unwanted conduct. In deciding whether or not it was related to race and/or a protected act, the Tribunal took into account the other issues upon which a minor issue which was common to many drivers was interpreted by the Claimant as being malicious or targeted at him. We also took into account that Ms Armstrong had acted to address the Claimant's concern by referring back to the planning team who then got the position wrong. There is no evidence as to who the specific member of the planning team was or why it might be found that their mistake was materially because of race, nor that they were aware that the Claimant had done a protected act. The Tribunal regards this as an example of a minor issue, whilst irritating, that happens from time to time in the workplace but which the Claimant has incorporated into his firmly held belief that he was being targeted for a

reason related to race or his protected act.

286 Issue 1.53. The interview took place on 4 December 2020 because it was believed that the Claimant may have relevant evidence. He was repeatedly assured that he was not being implicated in any wrongdoing. This should have been a simple thing to arrange but had taken a long time to set up due to the Claimant's reluctance to attend. Employees with potentially relevant evidence are routinely invited to interviews, indeed many had been interviewed in the investigation of the Claimant's grievance. The Tribunal regard it as utterly implausible that the decision was in any way related to race or a protected act. Nor could it sensibly be said to have the effect prescribed by section 26 or to be a detriment. The fact that the Claimant relies upon it in his claim is indicative of his approach of taking every act with which he disagrees, turning it into a criticism and then labelling it as an act of harassment, discrimination or victimisation. The Tribunal concludes that it clearly is not.

287 Issue 1.54. The Claimant was put on paid suspension leave by Mr Hill on 24 March 2021. Again, the Tribunal accepts that this was unwanted by the Claimant. The information provided to Ms Ryan in her interviews with Mr Hill and the managers was seriously concerning if true. The Claimant had made clear to Mr Mills-White on 4 February 2021 that he did not accept that there was a breakdown in the working relationship as he was not to blame. The Tribunal accepts that there was a genuine need to investigate and seek to find a way to resolve the situation. By this date each of his grievances alleging bullying had been rejected after being considered by more senior managers not involved in the day to day operations at the depot. Mr Mills-White had looked at the situation and concluded that the relationship had broken down but the Claimant was resistant to redeployment. An impasse had been reached, the status quo was untenable as it was adversely affecting both the Claimant and managers. Action was required. The sheer number of managers involved meant that it was not practicable to suspend each of them and, as we have concluded, all investigations to date showed no wrongdoing on their part whatever the Claimant still believed. In these circumstances, the Respondent chose to put the Claimant on paid suspension. Whether or not it was fair, it had nothing to do with his race or his protected act, and would have happened to any other driver in the same situation irrespective of race or protected act.

288 Issues 1.55, 2.2 and 2.3. Mr Mills-White showed the Claimant the folder on 27 April 2021 in the hope that he would be able to understand how his managers felt and see both sides of the difficulties which had arisen. Given the firm and long-held belief of the Claimant that he was the victim of concerted management abuse of power, it was highly unlikely that the Claimant could have been expected to react positively to reading what they had said about him. Having read the statements, the Tribunal can understand that the Claimant would be upset to read his managers' perception of his behaviours but we have found that it was not done for this purpose by Mr Mills-White.

289 The comments are said by the Claimant to be inaccurate, offensive, racially stereotypical or biased, scurrilous and contain information about his Tribunal claims which should have been kept confidential. The Tribunal has summarised above the contents of the notes of interviews on the files. They disclose a common theme of the Claimant being difficult to manage and acting disingenuously (playing games, trying to trip them up, creating confusion, attempting to frustrate processes) to get what he wants but being managed in the same way as other drivers, if anything more favourably as the managers were more lenient due to the fact that interaction led to grievances and Tribunal claims.

The Tribunal does not accept that any of the comments in the statements (and we read them all) were racially stereotypical or racially biased. The Claimant may disagree with the accuracy but the Tribunal accepts that this was the genuinely held view of the managers. Just because the Claimant disagrees, it does not mean that the statements are false. In the same way, the Claimant was able to set out his views of his managers, accusing them of bullying and harassment, without the Respondent treating them as false when they were not subsequently upheld after investigation.

290 The Claimant relies on references in the interview notes to his Tribunal claims, appearing to suggest that any reference to his claims or the issues raised in them was indicative of victimisation. The Tribunal disagrees. An employer is entitled to resist claims brought against it and, in order to do so, will have to gather necessary information from managers named in the allegations. It will also require communication between Employee Relations and legal advisers. It is not a detriment for an employer to defend a claim by an existing employee. The statements of Mr Horsfall and Ms Cieslik refer not only to Tribunal claims but also to grievances and complaints. Only Mr Horsfall refers to race, objecting to being called racist. Overall, the Tribunal concludes that the relevance of the protected act and the grievances generally was that the managers were less likely, not more likely, to challenge the Claimant's behaviour. This is consistent with the November 2017 disciplinary process being stopped despite there being a case to answer, the April 2019 disciplinary process being put on hold whilst the allegations against Mr Horsfall were investigated and then ultimately dropped due to passage of time and the times where the Claimant's conduct was not relied upon as the basis for possible disciplinary action when it could have been, in particular his conduct on 23 December 2019. In conclusion, the comments in the statements had nothing to do with the Claimant's race or the protected act, they were entirely about the working environment and the managers' perceived difficulties with the Claimant which were genuinely held.

291 Overview. Having considered each issue as set out above (and indeed cross-referred between them in our deliberations), the Tribunal reminded itself of the need to step back and look at the case holistically to see whether there is some underlying theme or common thread to the treatment of the Claimant from which we could infer that there was harassment, direct discrimination or victimisation.

292 The Claimant's overarching case is, as we have set out at various points above, that there were a series of acts or omissions by his managers which were an abuse of power as they were targeting him unfairly. He says that little things were picked up for scrutiny and disciplinary action which would not have been acted upon for any other driver. The Tribunal does not accept that this is so.

293 The Tribunal has accepted that Mr Horsfall handled the April 2017 disagreement badly, even though this was not due to race. Looked at overall, the Tribunal concludes that this then infected the Claimant's views of any manager with whose decision he disagreed. It was evident by as early as December 2017 that there was a dysfunctional working relationship between the Claimant and Mr Horsfall. Over time this spiralled to the point where any action with which the Claimant disagreed was perceived as being targeted at him, an act of harassment, discrimination or victimisation. By the end of his employment, he had brought grievances against Mr Horsfall, Ms Shanks, Mr Robinson and Ms Armstrong. In his appeal against Ms Brown's grievance decision, the Claimant alleged that Mr Keyworth had attempted to, and may have succeeded in, directing the outcome. In other words, Mr Keyworth, the depot manager, was now part of the group of

managers behaving improperly towards him. Before this Tribunal, his allegations have expanded to include Mr Hill, Mr Sharif and Mr Mills-White.

294 The Claimant took issue with Mr Green's suggestion that he had complained about every manager and the Tribunal asked him to identify those managers on the day shift about whom he had not complained. The Claimant answered Mr Greenhow and Mr Cieslik. However, the Claimant had complained about the conduct of Mr Greenhow on 23 December 2019 in his March 2020 grievance and gave evidence to the Tribunal that he had been harassed by Mr Greenhow and describing Mr Greenhow's account of events as being untruthful. Ms Cieslik was the sender of one of the emails which the Claimant saw on 29 January 2020 and which he says showed a blatant disregard for his well-being and is relied upon in issue 1.41. For her part, Ms Cieslik gave a statement to Mr Gilbraith which stated that she did not want to manage the Claimant because of his behaviours. The Claimant nevertheless, even in his evidence, maintained that there were no issues in his professional relationship with Ms Cieslik. This suggested a lack of insight by the Claimant and an unreliability to the central thrust of his case.

295 Even when not an issue in the case, where the Claimant is faced with a decision with which he does not agree, the decision maker is incorporated into his narrative and the decision is said to be pre-determined or an attempt to protect other managers' wrongdoing. Good examples of this are his approach to Ms Brown's grievance decision and Mr Gilbraith's investigation conclusions. Supportive management actions are re-interpreted to be part of the plan to do him wrong, for example the allegation that Mr Hill allowed him to use his office only in order to spy on him. Much of his case is internally contradictory, for example he did not really believe that Ms Shanks had done anything wrong but he decided to allege that she had harassed him, intentionally created an environment where he was attacked by other managers and displayed rudeness and hostility to him. However, he also claimed that Ms Shanks had refused to undertake a disciplinary investigation into his conduct because she knew that it was improperly motivated and was not prepared to play any part of it and his evidence that there had been no problems when she was his Team Manager.

296 Overall, the Tribunal concludes that the Claimant had a perception that he was treated differently and interpreted ordinary management interaction as part of a targeted campaign against him. Mr Wiseman said in the grievance meeting with Ms Brown on 30 April 2020 that this possibly caused the Claimant to read more into things than was necessarily there. The Tribunal concludes that this is exactly what happened.

Constructive Dismissal

297 In considering the constructive dismissal claim, the Tribunal bore in mind that whilst the same conduct was relied upon by the Claimant, the legal test is different – looked at individually and cumulatively, was any such conduct by the Respondent without reasonable and proper cause and was it calculated or likely to destroy or seriously damage the relationship of trust and confidence.

298 Issues 1.1, 1.2 and 1.3. As set out in our conclusions on the Equality Act claims, on 25 April 2017 Mr Horsfall was annoyed with the Claimant's perceived intransigence and dismissive of his safety concerns, pressuring him to take the defective vehicle back out on the delivery and referring to possible disciplinary action if he did not. The Tribunal conclude that Mr Horsfall handled the situation badly. There was no reason to doubt the

Claimant's professional judgment after a couple of legitimate initial questions and Mr Horsfall failed to check with Pullmans the extent of the inspection or nature of the possible defect. There was no reasonable and proper cause for the heavy handed way in which Mr Horsfall dealt with the Claimant, even if the latter was being intransigent, he had good reason to hold firm and refuse to take the vehicle back on the road. It was conduct which seriously damaged the relationship of trust and confidence not least as it appears to have been the start of the Claimant's developing belief that Mr Horsfall, and later other managers, were targeting him and trying to cause problems for him, including what he regarded as groundless disciplinary investigations.

299 The Claimant's sense of distrust was exacerbated by the way in which Mr Rymer handled his grievance. Essentially, deciding that it could be resolved by way of an apology without even hearing from the Claimant and then focusing upon the fact that Mr Horsfall had not known that only a visual inspection had been undertaken which had started the disagreement rather than addressing the Claimant's complaint about the way in which Mr Horsfall had treated him as it progressed. We conclude that an objectively reasonable employee in the Claimant's position would have regarded this as conduct without reasonable and proper cause and which damaged the relationship of trust and confidence.

300 The Claimant's distrust was compounded by the delay in being given a decision on his appeal. Ms John was aware that the Claimant was anxious to have a swift response and had indicated at the appeal meeting on 19 July 2017 that he would get a decision the following week. Whilst there was reasonable and proper cause for some of the delay, Ms John took no steps to inform the Claimant that there would be a delay due to annual leave and investigation. The Claimant did not take any steps to chase an outcome. This is not to excuse the delay but it is material to many of the Claimant's subsequent complaints that he focuses entirely on the Respondent's failures without recognising that trust and confidence is a mutual obligation and that the employment relationship is based upon a degree of give and take on each side.

301 Issue 1.4. The Tribunal has not found that the Claimant's confidential personnel file was open on a communal table or that its contents were being discussed on 11 November 2017. The only document on the table and being discussed was the single trade union request form. The Tribunal have found that Mr Horsfall checked the Claimant's file as it was unusual to see a driver in the office at that time of the morning. The Claimant's request form and its authorisation was relevant, not least as the Claimant's request had been to shadow another union representative and Mr Horsfall was aware that no other union officials were in the office that day who could be shadowed. There was reasonable and proper cause for Mr Horsfall and Ms Clark's actions and a reasonable employee in the Claimant's position could not have regarded it as conduct likely to damage the relationship of trust and confidence.

302 Issues 1.5 and 1.6. For the reasons given in our conclusions on the Equality Act claims, we have accepted that Mr Horsfall did start the investigation, did review the CCTV evidence and that he did not detail the allegations against the Claimant at that time. The disciplinary investigation was not, we have found, unwarranted or in bad faith but was caused by clear evidence that the Claimant had left work early and without permission. In other words, there was reasonable and proper cause for the disciplinary investigation and for reviewing the CCTV evidence. The Claimant was told the detail of the allegations by Ms Shanks who, as his line manager, was the appropriate person to do so. Given that the

investigating manager's decision that there was a disciplinary case to answer had been overturned by a more senior manager without a reason being given, Mr Horsfall's email asking for the rationale was, in the circumstances, for reasonable and proper cause.

303 Issue 1.7. The Tribunal has found that Mr Rymer did not know that Mr Horsfall was the subject of the grievance and that neither the Claimant nor his trade union representative raised any objection until the grievance hearing, at which point Mr Horsfall accepted that it would not be appropriate for him to hear it. The grievance was then passed to Mr Sharif. We conclude that this was a simple misunderstanding born of a lack of clarity in the Claimant's complaint and subsequent conduct. This is an example of the Claimant criticising the Respondent without recognising that his own conduct in part caused the problem. There was reasonable and proper cause for passing the grievance to Mr Horsfall as the next level manager and the misunderstanding was not something an objectively reasonable employee could regard as contributing to a breach of the implied term of mutual trust and confidence.

304 Issue 1.8. Mr Sharif's offer of mediation rather than finding whether there had been a data protection breach was a judgment call based upon the discussion in the grievance meeting. The Claimant maintained then, as he has done during this hearing, that there was no breakdown in the working relationship as he was the innocent victim of the manager's abuse of power. However, the context was the email from Mr Lewington making clear the Claimant's view that all Team Leaders and Transport Managers were working together against him and the discussion in the grievance hearing about the possibility of a breakdown in the relationship and how it may be restored. Mr Lewington's reference to a breakdown of communication and mistrust on both sides was objective evidence supporting Mr Sharif's conclusion that this grievance could be resolved best by mediation rather than an attribution of blame in a grievance decision. This conclusion was objectively reasonable in the circumstances and, indeed, Mr Lewington welcomed mediation as the best way of moving forward. A reasonable employee in the Claimant's position in those circumstances could not have regarded the offer of mediation as a form of resolution as conduct damaging the relationship of trust and confidence; quite the contrary it was mutually agreed as a way of re-establishing trust.

305 It took almost four months from the presentation of the grievance to the communication of the outcome. However, a large part of this was because it had to be re-allocated from Mr Horsfall to Mr Sharif and, as a result, the grievance meeting took place on 8 February 2018 rather than as planned on 11 January 2018. The delay between that meeting and the outcome was because Mr Sharif needed to speak to Mr Horsfall and Ms Clark and this took some time due to holiday commitments. Overall, the delay was not significant and was for reasonable and proper cause and could not objectively be seen as contributing to a fundamental breach of the implied term of trust and confidence.

306 Issue 1.9. The Tribunal has set out in our Equality Act conclusions that we consider that the "no confidence" email was not the appropriate way of addressing concerns about the conduct of a trade union official. It was sent because Mr Horsfall was intensely frustrated by the Claimant copying the email to more senior managers without prior discussion with him. The Tribunal has found that there was a degree of malice in the Claimant's conduct and that he was trying to portray Mr Horsfall in a poor light to the senior managers. The Tribunal concludes that this issue demonstrates conduct by both Mr Horsfall and the Claimant which was likely to damage the relationship of trust and confidence, indeed it shows that there was little trust between the two men already.

Overall, the Tribunal concludes that looked at objectively, an employee can have little grounds for complaint where their own malicious email provokes an emotional response of this sort. It may have been different had Mr Horsfall taken steps to pursue a no confidence vote calmly and deliberately thereafter but he did not, this was a single email sent in a moment of intense frustration.

307 Issue 1.10. The Tribunal has found as a fact that Mr Horsfall did share the change.org petition in his Facebook post. We have concluded that the post was not inherently racist and the petition showed only that Mr Horsfall supported Mr Yaxley-Lennon's release from prison for contempt when trying to report on a court case, not necessarily his views on people of non-white ethnicity or non-Christian religion. The post was brought to the Claimant's attention by another driver in his capacity as trade union representative. Looked at overall, the Tribunal concludes that sharing the post was unacceptable and that a reasonable employee in the Claimant's position (particularly of non-white ethnicity) would be concerned that by endorsing the petition, Mr Horsfall may share the race based views of Mr Yaxley-Lennon. Although not itself sufficient to amount to a breach of the implied term of trust and confidence, the Tribunal accepts that it is capable of contributing towards such a breach when looked at overall.

308 As for Mr Sharif's handling of the Claimant's complaint about the Facebook post, for reasons set out above, we have found that Mr Sharif asked him for some evidence so that he could investigate. No evidence was provided and no investigation took place. In the circumstances, Mr Sharif had reasonable and proper cause for taking no further action and the Tribunal regards this as another example of the Claimant failing to recognise that he also had a responsibility to help maintain the mutual relationship of trust and confidence.

309 Issues 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17 and 1.21. We refer back to our conclusions and more detailed analysis in the Equality Act claims as the basis for our conclusion that the conduct relied upon in these issues did not take place in the way the Claimant alleges. Insofar as career development was concerned, his managers were universally supportive of his aspirations. At most, on the evidence that we have found and as the Claimant's case developed, his managers did not make all of the practical arrangements for shadowing opportunities and asked him to do so directly. No reasonable employee could object to being asked to do so. Nor could a reasonable employee object to a manager informing him that a temporary rota adjustment to accommodate caring responsibilities would end unless a flexible working request was made and agreed. It is not suggested that Mr Robinson was trying to dissuade the Claimant from making the application, quite the contrary he raised it as a way in which a permanent rota change may be obtained and Ms Shanks told the Claimant that it was just a formality. This was supportive and constructive management which the Claimant has now misinterpreted as part of his overarching narrative of management malpractice.

310 The same is true of the comments made at the meeting on 9 April 2019. All the Claimant was told was that the Respondent could not accommodate an adjustment of ad hoc refusal of a shop based on the Claimant's assessment on the day of the delivery. The fact that alternative adjustments were discussed is indicative of managers trying to find a compromise solution, balancing the needs of the Claimant with the operational needs of the business. The operational problems arose because there were a number of drivers on similar WAPs and it is clearly set out in the emails sent between Mr Morrison and Mr Hill in December 2019. An employer is entitled to take reasonable steps to ensure

operational efficiency even if it may adversely affect an employee, as we say, it is a balancing act. It is a feature of this case that in the many issues arising out of the WAP and route allocation, the Claimant does not demonstrate any sense of the need for sensible compromise, the ordinary "give and take" of the workplace. As a result, minor irritations became inflated into his firmly held view that he was being targeted and maltreated, resulting in grievances and, we conclude, an intransigence on the part of the Claimant which made managing him and the operation very difficult.

311 Nothing in these issues is capable of contributing to a breach of the implied term of trust and confidence.

312 Issue 1.18. The flexible working request process was put on hold until the Claimant's grievance against Ms Shanks was concluded. Throughout the period, the Claimant continued to benefit from his amended rota with earlier start times such that the delay caused the Claimant no disadvantage at all. Between April 2019 and July 2019 there were a plethora of other outstanding internal processes involving the Claimant (health, grievances and disciplinary) which required meetings and the Claimant was suspended from work for a key part of this. The Tribunal infers that the flexible working request process was not regarded as critical until the other processes were resolved, in particular the health reviews and grievance against Ms Shanks, as they were all interlinked. This was the reason for the delay and it was for reasonable and proper cause.

313 Issues 1.19, 1.29 and 1.30. These issues arise out of the Claimant's grievance against Ms Shanks. The Tribunal relies upon its findings of fact and analysis in our conclusions in the Equality Act claims and, for the same reasons, concludes that there was proper investigation and an appropriate outcome without undue delay. The appeal effectively took four months to conclude as Mr Sharif was not provided with the grievance until 15 August 2019. Whilst the Tribunal considers that four months is on the longer side for a grievance appeal to be heard, the Tribunal has found that this was caused by holiday leave and the need for a proper investigation of wide-ranging and serious allegations.

314 In considering the effect of the handling of the Claimant's grievance and appeal upon the relationship of trust and confidence it is significant that by his own admission, these were allegations of a very serious nature against Ms Shanks made as a calculated attempt to provoke an investigation of the underlying issues about his WAP and rota adjustment whilst the Claimant believed that it would be surprising if she had done the things he alleged. To suggest, as the Claimant did, that Ms Shanks should not have been upset or affected as she had done nothing wrong shows a remarkable lack of insight on the part of the Claimant and an apparent failure to understand that the obligation of trust and confidence upon which he relies is mutual. The Claimant is quick to criticise the Respondent for making disciplinary allegations even where there was primary evidence to suggest possible wrongdoing (November 2017 and April 2019 for example) yet could see nothing wrong in his doing likewise in respect of Ms Shanks. Nor could the Claimant fairly feel aggrieved in delay in getting an appeal decision when he believed that Ms Shanks had done nothing wrong. The Claimant's conduct in this grievance was a substantial and material cause in the breakdown in the relationship of trust and confidence with his managers and which led to his resignation; the Respondent's conduct was not.

315 Issue 1.20. For the reasons set out in our findings of fact, we conclude that Ms Clark had reasonable and proper cause to ask the Claimant about the damage when he was the last driver of the vehicle. The Claimant's suggestion that it was an act of

discrimination or contributed to a breakdown in trust and confidence is indicative of his tendency throughout his employment after April 2017 to make a significant issue out of something entirely trivial and unremarkable. A reasonable employee in the Claimant's position could not have regarded this as conduct contributing towards a breach of the implied term of trust and confidence.

316 Issues 1.22, 1.23 and 1.24. The Tribunal has found that the Claimant was not forced to take a defective vehicle on the route. There was a disagreement between the Claimant and his managers about the suitability of the route allocated. A disagreement of itself is not indicative of conduct which is likely seriously to damage the relationship of trust and confidence. On the facts, the managers had good reason to disagree with the Claimant given that the risk assessment did not suggest any particular problem and the operational problems caused by ad hoc refusal at the point of despatch. Moreover, the Claimant has not proved on balance that the route was inappropriate. Whilst the Claimant may disagree with his managers, ultimately a manager has the right to issue reasonable instructions and expect compliance from the employee. This is just such a situation and the Tribunal concludes that it shows that the Claimant was resistant to any management instructions with which he disagreed. There was no conduct capable of contributing to a breach of the implied term of trust and confidence.

317 Issues 1.25 and 1.27. For reasons given in considering the Equality Act claims, the Tribunal concludes that there were reasonable and proper grounds for the disciplinary investigation and Mr Robinson seeking to speak to the Claimant about the failed delivery. The Claimant had objected to the very shop to which he subsequently refused to deliver in circumstances where the clerk and manager on duty felt that he had sufficient time. It was proper for Mr Robinson to find out more before an investigation commenced. There was no conduct capable of contributing to a breach of the implied term of trust and confidence.

318 Issue 1.26. Mr Hill had reasonable and proper cause for suspecting that the Claimant may have made a malicious allegation against Mr Horsfall. The Claimant had provided little evidence to suggest genuine concern, Mr Skinner's evidence flatly contradicted him and the allegation was made by the Claimant in the context of not wanting Mr Horsfall to take the notes in a meeting which was about to take place. Given the nature of the allegations made by the Claimant and the effect upon Mr Horsfall, who subsequently submitted his own grievance against the Claimant, it was objectively appropriate for there to be a brief period where he was not in the workplace whilst this, and other outstanding issues, were considered. Neither the disciplinary allegation nor the period of suspension could reasonably be seen as conduct evincing an intention not to be bound by the contract in the circumstances.

319 Issue 1.28. It was proposed by the trade union that the disciplinary process be paused whilst an investigation by an external manager took place into the conduct of Mr Horsfall towards the Claimant. As set out in our conclusions on the Equality Act claims, it was inevitable that such an investigation would take some time to organise and arrange and the delay was exacerbated by the effect of the Covid-19 pandemic. The disciplinary investigation was not re-started in July 2020 when Mr Gilbraith found no evidence of bullying by Mr Horsfall. When it came to light in October 2020, no further action was taken due to the passage of time and, therefore, it is not correct to say that it had not yet been concluded or closed. Ordinarily, the Tribunal would accept that an 18-month period for a disciplinary investigation was unduly long. However, in the circumstances the delay was due to the complexity of the background issues and it was agreed that there would be a

stay pending that investigation. There is no evidence of the Claimant or the trade union seeking to progress the disciplinary investigation before the outcome of the Gilbraith report or after its receipt. Looked at objectively, therefore, on the facts of this case that the delay in concluding the disciplinary investigation was for reasonable and proper cause and was not capable of contributing to a breakdown in the relationship of trust and confidence. If anything, it worked to the Claimant's benefit as the allegations against him were all dropped.

320 Issue 1.31 and 1.32. Whilst it was a change to what had been agreed, there was reasonable and proper cause for the change and it was entirely coincidental that in arranging the refresher training, Mr Hill became aware that the biannual assessment was due. The Tribunal does not accept that there was any detriment to the Claimant in being required to attend an assessment as he employment would not have been in jeopardy. The Tribunal consider that the Claimant's reaction to the change was indicative of his unreasonably inflexible approach to minor matters. Even if he genuinely had expected there to be refresher training, it could not have been made more clear to him that the biannual assessment, a process with which he was familiar, was intended to be supportive and that the assessor had been specifically made aware of the Claimant's particular needs. The biannual assessment would have been an appropriate forum for providing the Claimant with the necessary updates and changes. To interpret the change as an act of bullying or harassment as the Claimant does is not objectively reasonable but symptomatic of his tendency to read ill intent into an innocuous issue.

321 Issue 1.33. Mr Tann sent his letter because he did not know that the Claimant had permission to be absent. As soon as he became aware, he apologised. This was done in a very short timescale. We have not accepted the implausible suggestion now made by the Claimant that the error was caused with malicious intent by Ms Armstrong. This is conduct which could only be mildly objectionable at most, it is not something which could go to the heart of the relationship and we do not accept that it is capable of contributing to a breach of the implied term of trust and confidence in all the circumstances of this case.

322 Issues 1.34 and 1.35. The route on 7 December 2019 was changed after 5 to 10 minutes of the Claimant objecting as Mr Robinson deferred to the Claimant's view. There is nothing objectionable in a manager asking why a shop is not appropriate and then agreeing when a reason is provided. As set out in our analysis of the Equality Act claims, there was reasonable and proper cause for Mr Robinson to check before reallocating the route. It was standard practice to double check loads to avoid loss of time due to unnecessary returns to the warehouse. Both were trivial incidents which the Claimant has subjectively blown out of proportion. It is another example of him objecting to being asked to explain a concern and an apparent suggestion that his managers should simply accept without any query the Claimant's view about the appropriateness of a shop, route or load. Both of these incidents are materially different to the challenge to his judgment in April 2017. There would have been nothing objectionable in Mr Horsfall asking the Claimant why he believed that the vehicle was defective, just as there is nothing objectionable in checking why a shop is inappropriate or whether a load is wrong. The difference is that Mr Horsfall pursued the dispute in April 2017 dismissively and with threats of disciplinary action, neither of which applied in December 2019. Objectively considered, there was reasonable and proper cause for both checks and a reasonable employee in the Claimant's position would not have considered them to have any adverse effect on the relationship of trust and confidence.

323 Issue 1.36. The conduct alleged has not been proved by the Claimant.

324 Issue 1.37. Whilst we find that the Claimant was genuinely suspicious about the timing of the request, and later the identity of the manager making it, objectively considered his suspicion was not well-founded. It is not plausible that Ms Clark would have made the request and then taken no follow up action when the Claimant refused if, as he believes, this part of a plan by managers to subject him to undue scrutiny or cause him problems. The request was entirely appropriate.

325 Issue 1.38. The Tribunal accepts that the Claimant's conduct was a genuine cause for concern which required investigation. Moreover, if the Respondent had been trying to build a disciplinary case against the Claimant, as he asserts, then it would have included his behaviour on 23 December 2019 and, in particular, his refusal to leave Mr Keyworth's office when repeatedly asked to do so. The Respondent had reasonable and proper cause to investigate those particular issues due to the fact that there was initial concern about the events on 22 December 2019 which had not been able to be explored informally on 23 December 2019 due to the Claimant's refusal to answer Mr Greenhow's questions. There was a credible report that the Claimant had been filming managers in Mr Keyworth's office. Objectively considered, this was not conduct capable of contributing to a breach of the implied term of trust and confidence.

326 Issues 1.39 and 1.40. It is not in dispute that there was an error made by the planning team due to a problem recording WAPs on the system then in place. This was a problem common to many drivers, across the depot and shifts, who were on WAPs. It was swiftly remedied by Ms Armstrong when the Claimant brought it to her attention. Whilst not ideal, it is not conduct capable of contributing towards a breach of the implied term of trust and confidence when looked at objectively. Again, this was a trivial issue and objectively a reasonable employee in the Claimant's position could not have thought that it impacted in any way the relationship of trust and confidence.

327 Issue 1.41. The Tribunal has not accepted that the emails relied upon contained anything slanderous, racist or showing blatant disregard for well-being. They were perfectly ordinary emails between managers dealing with issues which had arisen in the management of the Claimant's flexible working request and need for a WAP. There was reasonable and proper cause for the queries and an objective employee in the Claimant's position would not have regarded them as objectionable. The Claimant does not rely on the misspelling of his name in order to avoid a data subject access request as part of this issue and we have concluded that it was not racist.

328 Issues 1.42 and 1.43. The Claimant received a telephone call whilst on annual leave. No doubt this was unwelcome but the telephone call was made because Ms Clark did not know that the Claimant was on leave, rather she believed that the Claimant should have been at work as there was no holiday form on his file. There was reasonable and proper cause for the telephone call in such circumstances. The failure to pay the Claimant was because the leave had been incorrectly recorded. As soon as the leave form was provided by the Claimant, payment was made within a day. Whilst there was no reasonable and proper cause for the late payment (the Respondent should have correctly recorded the leave in the first place), the error was swiftly remedied. This was mildly objectionable conduct but the Tribunal accepts that late payment would concern a reasonable employee in the Claimant's position. To this extent, the late payment whilst not of itself a breach of the implied term is conduct which is capable of contributing to such

a breach.

329 Issue 1.44. For the reasons given in our analysis of the Equality Act claims, the Tribunal concludes that the Respondent did deal with the grievance in a timely manner given the effect of the pandemic and need for investigation with many managers to be interviewed given the range of the subject matter in the grievance.

330 Issue 2.1. The Tribunal has not accepted that there was a failure by Ms Brown properly to investigate the grievance or that she produced a pre-determined outcome. The Tribunal has found that Mr Atkins did not influence the investigation or outcome. As a result, the conduct complained about is not made out on the facts.

331 Issues 1.45, 1.46 and 1.47. The Tribunal relies upon our conclusions in the Equality Act claims as the reason for the disciplinary action taken against the Claimant. Lateness across the depot was being actively monitored for all drivers with an escalating response to be applied by managers. The Claimant was undoubtedly late, there had been previous informal action taken and no improvement. Whilst the lateness may have been only a few minutes, it was on three consecutive days and arose from the Claimant's persistent failure to get to the gate in enough time to enter the site and clock in on time. This was perfectly proper management action to manage lateness and there was reasonable and proper cause for the formal investigation and three month verbal warning.

332 Issues 1.48 and 1.49. Mr Hill did not ignore the Claimant's request to work from home. The Tribunal has accepted that he had not seen the email initially and did not understand it to relate to a meeting only three days later. Given that the Claimant did not expressly refer to this particular meeting, the Tribunal concludes that there was no reason for Mr Hill to think that it required immediate response and he simply overlooked it. The Tribunal has accepted Mr Hill's reason for refusing to authorise working from home generally on days of trade union meetings, namely that if the meeting did not take all day the Claimant may be allocated other duties. This was reasonable and proper cause even if the Claimant did not agree with it. Far from acting in a manner likely to seriously damage the relationship of trust and confidence, Mr Hill tried to address the stated reason for the need to work at home, namely the lack of meeting rooms. Mr Hill allowed the Claimant to use his office and relocated himself to the open Team Managers area. This was a pragmatic attempt at a compromise and is indicative of a desire to maintain trust and confidence, not to destroy or seriously damage it.

333 Issue 1.50 and 1.51. The accident pack was not completed at the time of the accident because the Claimant was off sick and so could not provide his account. An investigation meeting was held rather than an informal conversation, something which would ordinarily only happen if it was believed that there may be some element of fault by the driver. The investigation meeting was chosen because Ms Armstrong wanted to have a record of what was said to avoid as far as possible any dispute about what had or had not been said. By this date, there had been a number of interactions where there was a disagreement about what had been agreed and (as shown in the managers interviews with Ms Ryan) they were aware of the Claimant making his own notes in his diary of interactions with the managers. In all of the circumstances, Ms Armstrong had reasonable and proper cause to have a minuted meeting rather than an informal conversation. Indeed, on 23 December 2019 the Claimant had made it clear to Mr Greenhow that he preferred a formal meeting at which he could have a trade union representative to an informal conversation. In the circumstances, the Tribunal concludes that the decision to

hold an investigation meeting was indicative of the breakdown in the relationship of trust and confidence, it was not a cause of it.

334 Issue 1.52. For the reasons given in our findings of fact and conclusions on the Equality Act claims, the Tribunal has accepted that this issue arose out of a mistake made by planning. No doubt it caused the Claimant some frustration and irritation, especially as he had proactively raised the problem in good time. Whilst not sufficiently serious of itself, the Tribunal accepts that it was capable of contributing to a breach of the implied term of trust and confidence looked at overall.

335 Issue 1.53. Mr Hill wanted to speak to the Claimant as a potential witness to misconduct by another driver, this was a reasonable and proper cause for holding the interview. The Claimant was repeatedly assured that he was not implicated and this should have been a straightforward and swift process. The Claimant's resistance to meeting was obstructive and unhelpful, no doubt delaying the conclusion of the disciplinary process for the driver alleged to have committed the misconduct. Objectively considered, a reasonable employee in the Claimant's position could not have regarded this as having any harmful effect on the relationship of trust and confidence.

336 Issue 1.54. In considering whether Mr Hill had reasonable and proper cause to put the Claimant on paid suspension on 24 March 2021, the Tribunal carefully looked at the nature of the working relationship especially as the Claimant maintained then, as he does now, that the relationship had not broken down rather he was the victim of management misconduct. On the one hand, the Claimant had raised a number of grievances against managers alleging a wide range of misconduct which had been investigated and largely not upheld. Many of the allegations made by the Claimant were that the managers were acting in concert or upon the direction of Mr Horsfall, deliberately and to his detriment. Mr Horsfall had put in a grievance against the Claimant which appears not to have been resolved. On the other hand, the information provided to Ms Ryan in her interviews with Mr Hill and the managers was seriously concerning if true. As the Tribunal has accepted in our analysis of the Equality Act claims, there was a genuine need to investigate and seek to find a way to resolve the situation in circumstances where the Claimant was resistant to redeployment and the status quo was untenable. Suspending all of the managers in circumstances where no allegations had been upheld against them was not practicable. As Mr Green submitted on behalf of the Respondent, they had run out of options. In the circumstances, there was reasonable and proper cause for the suspension of the Claimant on 24 March 2021.

337 Issues 1.55, 2.2 and 2.3. As set out above, Mr Mills-White showed the Claimant the folder on 27 April 2021 in the hope that he would be able to understand how his managers felt and see both sides of the difficulties which had arisen. This was unlikely to be successful given the Claimant's firm belief that he was the victim and the managers were the perpetrators, it was upsetting for the Claimant but it was not done deliberately. There is nothing in the comments made by the managers which is racially stereotypical or biased. As set out in our analysis of the Equality Act claims, they disclose a common theme of the Claimant being difficult to manage and acting disingenuously. We have found that they are the genuinely held view of the managers. Just because the Claimant disagrees, it does not mean that the statements are false. In the same way, the Claimant was able to set out his views of his managers, accusing them of bullying and harassment, without the Respondent treating them as false when they were not subsequently upheld after investigation. This was the last straw which caused the Claimant to resign.

338 The Tribunal concludes that in trying to get the Claimant to understand the views of the managers, Mr Mills White hoped that the Claimant would appreciate that his working relationship with the day shift at Thurrock had broken down. This was in the context of their discussions about possible redeployment as a solution. Far from being an act tending to show that the Respondent no longer intended to be bound by the contract of employment, it was conduct which was intended to have the effect of maintaining the Claimant's employment with the Respondent but without the problems that had clearly arisen. This would have been to the benefit of both the Claimant and the managers, as well as the business. There was reasonable and proper cause to show the Claimant the folder and of itself this would clearly not breach the implied term of trust and confidence.

339 The Tribunal reminds itself, however, that the last straw does not need to be a breach of contract. A relatively minor act may be sufficient and the correct approach is to look at the series of acts or incidents which could contribute, no matter if trivial, and decide if taken together they amount to a repudiatory breach of the implied term of trust and confidence. As made clear in **Omilaju,** although the final straw may be relatively insignificant it must not be utterly trivial, it must have the quality of an act in a series whose cumulative effect is to amount to a breach of the implied term. There is, however, no need for it to be characterised as unreasonable or blameworthy and even if it is unreasonable, it may be so unrelated to the obligation of trust and confidence that it lacks the essential quality required.

340 Having reached the conclusions set out above, and having regard to the nature of a final straw, the Tribunal answered the **Kaur** questions as follows:

> (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, her resignation?
>
> The final straw was seeing the contents of the file shown to the Claimant on 27 April 2021. Whilst well-intended, the effect of seeing the comments of his managers upset the Claimant and led him to believe that the relationship of trust and confidence had been destroyed. It was an act in a series of disputes between the Claimant and his managers over a four year period: he believed that they were targeting him unfairly and they believed that he was unmanageable. The contents of the file added to the Claimant's belief that his managers were motivated by some sort of ill will towards him. The Tribunal concludes that it did have the quality of a final straw even if there was reasonable and proper cause for it and it was neither blameworthy nor unreasonable.
>
> (2) Has he affirmed the contract since that act?
>
> Clearly not, the Claimant resigned promptly thereafter.
>
> (3) If not, was that act (or omission) by itself a repudiatory breach of contract?
>
> There was reasonable and proper cause to show the Claimant the contents of the file and a reasonable employee in the Claimant's position, in the context of an attempt to maintain the employment relationship not end it, could not objectively have concluded that it was a breach of the implied term of trust and confidence or showing an intention no longer to be bound by the terms of the contract.

(4) If not, was it nevertheless a part (applying the approach explained in **Omilaju**) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the **Malik** term? (If it was, there is no need for any separate consideration of a possible previous affirmation).

The Tribunal has rejected much of the Claimant's case in respect of the 58 issues relied upon as cumulatively amounting to a breach of the implied term. We have, however, found that there was some conduct by the Respondent which, considered, objectively had some adverse effect on the relationship of trust and confidence. These are: (1) Mr Horsfall's conduct on 25 April 2017; (2) Mr Rymer's handling of his subsequent grievance about that conduct; (3) the delay in dealing with the appeal against that grievance decision; (4) Mr Horsfall's Facebook post in May 2018; (6) the delayed payment of wages on February 2020 caused by inaccurate recording of the reason for absence; (7) the rota error in November 2020, and culminating in (8) the last straw on 27 April 2021 when shown the contents of the file which had the effect of enabling the Claimant to rely upon the earlier matters by removing any question of affirmation.

It can be seen that the conduct occurred over a very long period of time, with significant gaps in between and involving different people. The most serious are in 2017, the 2020 matters are relatively trivial administrative errors. The last straw arose from the Respondent's belief that the relationship of trust and confidence had broken down irretrievably (even though the Claimant continued to maintain that it had not). The Tribunal reminds itself that the cumulative effect of these incidents must be such that a reasonable employee in the Claimant's position would consider that the Respondent had acted in way which had the effect of destroying or seriously damaging the relationship of trust and confidence. Looked at objectively, the Tribunal does not consider that the entirety of the incidents found had such an effect. Not everything in an employment relationship need be perfect, there will inevitably be mistakes and miscommunications from time to time and it is not enough to show conduct which causes some damage to the relationship of trust and confidence. The relationship must be seriously damaged or destroyed. To put it another way, the conduct must be so damaging as to go to the heart of the relationship and amount to a fundamental breach. The Respondent's conduct was not, objectively considered, so serious as to satisfy that test. Insofar as there was destruction of the relationship of trust and confidence, it was caused by the Claimant's conduct, in particular his grievance against Ms Shanks, his allegations against Mr Horsfall and his challenges to perfectly legitimate management action and instruction. The cause of the Claimant's conduct and resistance to management may well have been Mr Horsfall's initial treatment of him in April 2017 but it was his subsequent conduct and not that of the Respondent which led to the fundamental breach of the implied term of trust and confidence.

(5) Did the employee resign in response (or partly in response) to that breach?

We have concluded that there was no such breach by the Respondent.

Final remarks

341 Employment Judge Russell apologises for the delay in providing this Judgment and

Reasons even though the facts and conclusions were dictated during the deliberation days. It is a very lengthy document and much time was required in proof reading to ensure that it did not become even more so. To have simply recited every bit of evidence heard and dealt with every dispute would have created a Judgment of unwieldy length. As is often the case, it takes longer to produce a shorter, more concise document than a lengthy, unfocused one.

342 No doubt the Claimant will be disappointed to read our Judgment and Reasons. He may well decide to appeal, as is his right if he believes that he has grounds to do so. It is in many ways a sad case as the Claimant does genuinely believe that he was discriminated against and constructively dismissed. However, his belief is not sufficient no matter how fervently held. The Claimant said on more than one occasion that he expected the Tribunal to look in the bundle for the evidence which would support his claims. The Tribunal has in fact looked at the evidence which both he and the Respondent brought to our attention and has concluded that his belief is not objectively supported by that evidence. It is for these reasons that all claims fail and are dismissed.

Employment Judge Russell

23 February 2023