EMPLOYMENT TRIBUNALS

Claimant: Mr M Ahsan

Respondent: Ministry of Defence

Heard at: Midlands West (by CVP from 1 February 2023 only)

On: 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31 January and 1, 2, 3 February 2023

Before: Employment Judge Faulkner
Mr K Palmer
Mr R Virdee

Representation: **Claimant** - Mrs D Shakoor (lay representative)
Respondent - Mr E Beever (counsel)

JUDGMENT

1. The Claimant's complaints numbered in the Agreed List of Allegations as complaints 2 to 13, 15 to 22, 25 to 33, 41, 46 to 50, 53, 55, 57, 58, 60, 63 to 71, 73 to 77 and 79 are dismissed on withdrawal.

2. The Respondent did not harass the Claimant contrary to section 40 of the Equality Act 2010. His complaints of harassment numbered in the Agreed List of Allegations as complaints 1, 14, 23, 24, 34 to 40 and 42 to 45 fail and are dismissed accordingly.

3. The Respondent did not victimise the Claimant contrary to section 39 of the Equality Act 2010. His complaints of victimisation numbered in the Agreed List of Allegations as complaints 51, 52, 54, 56, 59, 61, 62, 72, 78, and 92 to 94 fail and are dismissed accordingly.

4. The Respondent did not discriminate against the Claimant because of a philosophical belief contrary to section 39 of the Equality Act 2010. His complaints of direct discrimination numbered in the Agreed List of Allegations as complaints 92 and 93 fail and are dismissed accordingly.

5. The Respondent did not contrary to section 47B of the Employment Rights Act 1996 subject the Claimant to any detriment on the ground that he had made a protected disclosure. His complaints of protected disclosure detriment numbered in the Agreed List of Allegations as complaints 88 to 91 fail and are dismissed accordingly.

REASONS

1. Oral judgment and reasons in this case were given at the conclusion of the Hearing, on 3 February 2023. The Reasons below are provided in response to a request from the Claimant made orally on day 16 of the Hearing, 30 January, before judgment had been given.

Complaints

2. This Hearing was concerned with the complaints set out in the Claimant's Claim Forms presented on 18 March 2020 ("Claim 1") and 9 August 2021 ("Claim 2") respectively, as subsequently clarified and amended. He complained of harassment related to race and/or religion, victimisation and direct belief discrimination, contrary to the Equality Act 2010 ("the Act") and of protected disclosure detriment contrary to the Employment Rights Act 1996 ("ERA"). Claim 1 was due to be heard in November 2021, but the hearing was postponed at the Claimant's request due to both him and Mrs Shakoor experiencing ill health.

3. The Claimant has two further Claims against the Respondent ("Claim 3" and "Claim 4"). I determined at a Case Management Hearing on 1 December 2022, for reasons set out in a resulting Case Management Summary, that in this Hearing window the Tribunal would deal only with Claims 1 and 2.

Issues

4. The parties agreed in May 2022 an "Agreed List of Allegations" ("the List") which is appended to these Reasons. The List deals in part with Claim 3, about which we need say nothing further.

5. The Claimant withdrew a large number of his complaints on days 4, 6 and 7 of this Hearing. We made clear we saw no reason not to dismiss those complaints on withdrawal, specifically checking with Mrs Shakoor before doing so that none of them were also within Claim 3. She confirmed that they were not and did not wish to make any submission against the complaints being dismissed. As the Claimant was giving evidence on days 6 and 7, at our request he confirmed that he agreed with the withdrawals communicated to us by Mrs Shakoor. The complaints were dismissed accordingly.

6. It was suggested by Mrs Shakoor on day 7, perhaps in an unguarded comment, that I had invited the Claimant to withdraw some of his complaints. I made clear then and repeat here that I did not do so. The Claimant had indicated several times, at the Case Management Hearing on 1 December 2022, in writing prior to this Hearing and orally in the first few days of this Hearing, that he might reduce the number of complaints to be determined. I did no more than make clear that if he intended to do so, it would be of considerable assistance to the Tribunal – and

indeed the parties – and would aid the progress of the Hearing, to know whether he wished to do so, and in relation to which complaints, as soon as possible.

7. The Tribunal also determined on day 3 of this Hearing that certain of the Claimant's complaints should not be considered in this hearing window – see below. Taking both that and the withdrawn complaints into account, it was agreed that the issues to be determined by the Tribunal (in relation to liability only) were as now follows.

8. In relation to the complaints of harassment the agreed issues were:

8.1. Whether the Respondent engaged in the conduct set out in complaints 1, 14, 23, 24, 34 to 40 (noting that there was no allegation 35) and 42 to 45 in the List, and if so whether it was unwanted.

8.2. If so, whether it was related to race or religion (the Claimant confirmed that he describes his race as British Pakistani and that he is a Muslim).

8.3. If so, whether it had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

9. In relation to the complaints of victimisation the agreed issues were:

9.1. Whether in doing those things identified as PA1, PA6, PA7 and PA8 in the List, the Claimant did a protected act, or the Respondent believed he may do a protected act. The Respondent agreed that the Claimant did the protected acts identified as PA2 (the correct date for that protected act was 16 January 2020) and PA5 and that as a result of the matters identified as PA3 and PA4, the Respondent believed the Claimant may do PA5. Mrs Shakoor confirmed in closing submissions that it was not necessary for the Tribunal to reach any determination in respect of PA9 to PA19 inclusive.

9.2. Whether the Respondent subjected the Claimant to one or more of the detriments set out in complaints 51, 52, 54, 56, 59, 61, 62, 72, 78, and 92 to 94 in the List.

9.3. If so, whether this was because the Claimant had done one or more protected acts and/or because the Respondent believed he may do so.

10. In relation to the complaints of direct discrimination the agreed issues were:

10.1. Whether the Claimant's belief in "protecting the integrity of the employment process from taint and corruption" was a philosophical belief within the meaning of section 10 of the Act. The Respondent conceded that the remainder of the Claimant's belief set out at page 22 of the List was such a belief.

10.2. If so, whether the Respondent subjected the Claimant to one or both of the detriments set out in complaints 92 and 93 of the List.

10.3. If so, whether this was because of his belief.

11. In relation to the complaints of protected disclosure detriment, the agreed issues were:
11.1. Whether in relation to any of those matters identified in the List as PD1 to PD6, the Claimant disclosed information.

11.2. If so, whether he reasonably believed that the disclosure was made in the public interest.

11.3. If so, whether he reasonably believed that the disclosure tended to show that a person had failed to comply with a legal obligation to which he was subject and/or that information tending to show that had been or was likely to be deliberately concealed.

11.4. If so, whether the Claimant was subjected to one or more of the detriments set out in complaints 88 to 91 of the List.

11.5. If so, whether this was on the ground that he made one or more protected disclosures.

12. There were also issues in relation to time limits, though as will appear below it was not necessary for the Tribunal to determine them.

Hearing

13. It is necessary to briefly recount how the 20 days of this Hearing unfolded:

13.1. Day 1 was pre-assigned for the Tribunal to carry out some essential reading, namely of witness statements and one document identified by the Respondent, namely the "Decision Analysis" prepared by Adrian Bettridge (see below). A further half day proved necessary to read this material, which amounted to more than 200 pages.

13.2. The whole of Day 2 was taken up with agreeing the issues as set out above and then hearing the parties' submissions on a long list of case management issues – see below.

13.3. On Day 3 the Tribunal completed its pre-reading and deliberated on the various case management issues.

13.4. On Day 4 in the morning, we gave our decisions on those issues, dealt with the Respondent's application that we review one of our decisions, dealt with further disclosure issues, at their request gave the Claimant and Mrs Shakoor time to consider the withdrawal of certain complaints and then agreed the Hearing timetable.

13.5. After lunch on Day 4, the Claimant sought to persuade us that he should not start giving evidence until Day 6 (Monday 16 January), Day 5 (Friday 13 January) having originally been timetabled during Case Management at a Hearing in November 2021 as a rest day, though we had indicated on Day 2 that this might change. We were sympathetic to the Claimant and Mrs Shakoor being tired, though this was inevitable to some extent in a Hearing which had necessarily been listed for such a long period given the nature of the case being pursued. Mrs Shakoor's role once the Claimant's evidence was underway was going to be limited

principally to examination in chief and taking a note, and we had no evidence, medical or otherwise, to suggest the Claimant was not fit to commence his testimony.

13.6. We were also sympathetic to the fact that the Claimant and Mrs Shakoor would not be able to speak with each other about the case once the Claimant started giving evidence, but that is routine and they could properly have expected, on the timetable set in November 2021, to be in that position on Day 2. Further, the case having been slimmed down somewhat by the withdrawal of various complaints, there was less for the Claimant to focus on in his final preparations for giving evidence. Other tasks to be undertaken by Mrs Shakoor at that point, such as locating an email or getting other witnesses to highlight proposed changes to their statements, did not seem to us to be burdensome.

13.7. Notwithstanding the much-reduced list of allegations, we were concerned about the time that had already been lost to case management, and were conscious of the need to ensure, as far as consistent with fairness to the parties, that the case was completed, including giving oral judgment, in this window, not least in fairness to parties in other cases, the timely disposal of which might be affected if this case went part-heard. We made clear we would accommodate breaks for the Claimant as and when reasonably needed. Other than the standard mid-session and lunchtime breaks however, no further time was requested at any point. There was nothing in the Claimant's evidence that gave rise to any concern, whether expressed by him or noticed by us, that he was not fit to proceed.

13.8. Half of the morning on Day 8 was lost due to one of the lay members being delayed in arriving at the Tribunal due to a road traffic accident. Otherwise, the Hearing proceeded as planned from Day 5 onwards. In addition to his own evidence, the Claimant's witnesses were Damien Pinel (formerly employed by the Respondent as Chief Community Development Adviser ("CCDA")), Edlynn Zakers (the Respondent's Community Development Officer ("CDO") for RAF Northolt), Jean Hartshorne (CDO at RAF Cosford) and Gail Moore (CDO at RAF Shawbury). The Respondent's witnesses were Jenny Withers (the Respondent's current CCDA), Louise Short (one of the Respondent's Regional Community Development Advisers ("RCDA")), Air Commodore Adrian Bettridge and Air Commodore Alan Opie (Assistant Chief of Staff Personnel Delivery). There were some late additions to the statements of the Claimant's witnesses, which were not opposed by the Respondent; their statements otherwise replicated what they had provided to the Respondent as part of its investigation of the Claimant's grievance consisting of what became allegations 1 to 79. Alphanumeric references in these Reasons are to paragraphs in the statements, for example MA(2)12 refers to paragraph 12 of the Claimant's second statement and JW5 to paragraph 5 of Ms Withers' statement, whilst a "DA" prefix, for example DA30, refers to Mr Bettridge's Decision Analysis.

13.9. The Claimant's evidence concluded on Day 8, his additional witnesses concluded their evidence on Day 9, the Respondent's evidence ran from Day 9 to Day 14, Days 10 and 15 were rest days, and we heard submissions (around two hours for each party) on Day 16. The Tribunal then deliberated on Days 17 to 19, delivering judgment and reasons (focused on the Analysis below) on the afternoon of Day 20. This was by Cloud Video Platform due to train strikes affecting travel.

14. We made clear to the parties that prior to the commencement of oral evidence, we had only read the witness statements and the "Decision Analysis"; we had not read the annexes to the Respondent's statements, nor any documents referred to in any of the statements. That would have significantly extended our reading by at least another day and probably more. It was agreed that we would be taken during oral evidence to any documents the parties wanted us to consider. We were taken to numerous documents in that way.

15. We also made clear at the outset our concern that the Claimant's statements left a large number of his allegations unaddressed, especially those covered by complaints 1 to 79, and that they included no references to the bundles. It would not have been an efficient use of the time allotted for his evidence for us to ask the Claimant in respect of each allegation which documents he was relying on amongst what was eventually around 4,000 pages. Mr Beever helpfully put many documents to the Claimant in cross-examination and Mrs Shakoor likewise referred to numerous documents when cross-examining the Respondent's witnesses. As we said to the Claimant, it was not for us to plug gaps in the presentation of his case, though we repeatedly invited him to refer us to anything he sought to rely on. Page references in these Reasons are references to the Bundle. Where we refer to Bundle 2, or to the Supplementary Bundle (see below), we make that clear, denoting the Supplementary Bundle by the prefix "SB". Otherwise, we are referring to Bundle 1.

16. On Day 5, at the start of the Claimant's evidence, Mrs Shakoor stated that he relied on three substantial sections of documents referred to in his first statement, namely his "pack ups" (this is the Claimant's description of various bundles of documents submitted with his initial grievance), his Admissibility Statement and his Harassment Investigation Officer ("HIO") submission. Particularly given that this material covered several hundred pages, we made clear that it was for the Claimant and/or Mrs Shakoor to identify which pages we were to read within those documents, given the Claimant's much-reduced claim. In response to that direction, on Day 6 Mrs Shakoor said that other than the Claimant's grievance at pages 358 to 375, she was not seeking to identify any such material as essential pre-reading, as any further documents could be considered during oral evidence. We made clear that, from her point of view, this would need to be during re-examination of the Claimant (as he had started his evidence by then), examination in chief of his witnesses or in cross-examination of the Respondent's witnesses.

Case Management

17. There was considerable difficulty for the Tribunal in determining some of the Case Management issues put before us on Day 2, namely that we had only come to the case substantively the day before. We did not therefore at that stage have anything like the knowledge that the parties had amassed over many months. That difficulty was overcome to some extent by our completing the pre-reading referred to above before making any case management decisions, though we had not completed it when hearing the parties' submissions. It might be said that it would have been better to complete the pre-reading first, but that would only have plugged the gaps in our knowledge to a limited extent. We therefore informed the parties, before giving them our decisions on the various case management issues, that we would be prepared to revisit those decisions (on application of either party) during the course of the Hearing should something of relevance come to our

attention for the first time and should we regard it as a material change of circumstances that any such thing had been omitted from our consideration.

Scope of this Hearing

18. The Claimant submitted that allegations 80 to 87 and 94 to 97 in the List were complaints properly falling within the remit of Claim 3 and as such said that they should not be considered in this Hearing window. As noted in my Case Management Summary following the Hearing on 1 December 2022, my understanding is that Claim 3 wholly or in large part replicates the Claimant's internal Bullying, Harassment, Victimisation and Discrimination ("BHVD") complaint, initially made in February 2022, which was being considered by a third party, whose final decision has not yet been made known, though we were told it might have become available during the course of this Hearing or shortly thereafter. That was the main reason why I determined in December 2022 that Claim 3 could not fairly be heard in this window – see the Case Management Summary for the details.

19. The Claimant submitted that because in his view allegations 80 to 87 and 94 to 97 properly fell within Claim 3:

19.1. He would be prejudiced if during his own evidence or in questioning the Respondent's witnesses he was unable to refer to the investigator's final report, which may have relevant things to say about those allegations.

19.2. To isolate certain of the issues arising in Claim 3 from the rest of that Claim would also be prejudicial to him.

20. If it had simply been a case of the Claimant saying that hearing allegations together would create a better picture for the Tribunal of his overall employment situation, from which he would argue that inferences of discrimination should be drawn, we would not have been persuaded to accede to his application. In our view however, there was a risk of unfairness to the Claimant of proceeding to determine these allegations without his having sight of a report, independent of the Respondent, that may well touch directly on them. As just noted, the fact that the report had not been completed was the principal reason why I decided on 1 December 2022 that it was not fair on the Claimant to proceed with Claim 3 in this hearing window. By analogy, we concluded that it would be unfair to him to proceed to hear these allegations at this time.

21. The Respondent submitted that there was a need to deal promptly with what are, on any measure, serious allegations, given the substantial delay already incurred. We were mindful of the fact that the hearing of Claim 3 might well be up to a further year away, and so we could not say there was no prejudice to the Respondent in hiving them off to that later hearing window, but that did not in our view outweigh the need to be fair to the Claimant in the specific way identified above and to ensure that he was thus on an equal footing with the Respondent. The Respondent must also bear some responsibility for the delay in the BHVD complaint being dealt with. Further:

21.1. What the Claimant was asking to defer to another hearing was a relatively small number of allegations in the overall context of the case (particularly prior to any withdrawals).

21.2. They were, generally speaking, the more recent in time, though we did not underestimate that hearing them in a separate window might mean they fall to be heard three years or more after the events to which they relate.

21.3. They were however, unlike many of the allegations falling between complaints 1 and 79 for example, largely allegations about matters which are well-documented, whether in formal reports or communications, for example relating to the Claimant's transfer to another role.

21.4. The Respondent's witness evidence was already prepared.

22. Mr Beever also referred to my Case Management Order made in December 2022 to the effect that Claims 1 and 2 should be heard together. His point was that stripping out these allegations from this hearing window would row back on that Order. To that point, I was not aware that these allegations also formed part of Claim 3 when making that decision. It was not possible in a case involving four Claims, with numerous allegations, to be on top of all of the detail in preparing for and conducting a short Telephone Case Management Preliminary Hearing. We were satisfied that the information the Claimant drew to our attention in this Hearing, as summarised above, constituted a material change of circumstances enabling a variation of the earlier Order. Whilst it is correct that the Claimant did not identify his concerns during the December 2022 Hearing itself, it has to be acknowledged that Mrs Shakoor is not a legal professional experienced in Tribunal litigation and so some latitude has to be afforded when things are missed in such a large case.

23. We were very conscious that a substantial period of time had been allocated to the case and should be used accordingly. The Tribunal system is busy to say the least. Again however, that had to be balanced against the importance of ensuring a fair hearing for the Claimant and in any event, we were not persuaded that stripping out these allegations would materially alter the time required for this Hearing, especially given the time that had been lost at the point of making our decision. It proved to be thus.

24. Finally, we did not accept that it was artificial to separate out into two Hearings a small number of complaints that cross over with each other factually speaking. It is not ideal, but the Tribunal hearing Claims 3 and 4 can quite properly determine, for example, the question of whether a protected disclosure as opposed to a protected act influenced a particular act or omission on the Respondent's part.

25. Our decision was therefore that allegations 80 to 87 and 94 to 97 would not be considered in this Hearing window. The Respondent immediately applied for that decision to be reviewed, and our Order varied, in respect of allegation 94 only. As set out above, we had made clear that given our developing but still very much partial grasp of what was by any measure a large case overall – not least given that, in our case management, we were also seeking to have regard to Claims 3 and 4 in relation to which we were almost wholly unsighted – we may be open to further applications on the case management issues once they had been determined, specifically where a party could highlight a point we had missed. We were therefore content to hear the application.

26. The Respondent's case that allegation 94 should be heard in this window was put on the basis that the allegation challenges as acts of victimisation Adrian Bettridge's decision made in respect of the Claimant's internal grievance which consisted of what had become allegations 1 to 79 in the List. The Respondent's concern was that moving allegation 94 to be heard as part of Claims 3 and 4 would require substantial repetition of evidence during the hearing of those Claims, given that our determination of allegations 1 to 79 (none of which had been withdrawn at that point) necessarily required hearing substantive evidence from Jenny Withers and Louise Short about those allegations and making findings on the same, both factually and as to whether there was any harassment or victimisation. As Mr Bettridge's decision covered all of allegations 1 to 79, a Tribunal hearing allegation 94 would have to go over that ground again – albeit having regard to our findings of fact – in order to see whether his decision was influenced by one or more of PA1 to PA19 as the Claimant alleges.

27. Neither party had drawn this potential issue to our attention in their submissions about the scope of the Hearing on Day 2, as Mr Beever kindly acknowledged, and therefore it was not something before us as a point to consider when making the decision set out above. In taking that decision, we had considered allegations 80 to 87 and 94 to 97 as a whole. The concerns the Respondent identified having been brought to our attention, we were satisfied it was right to review our decision.

28. Having done so, we concluded it was not in either party's interests, nor in the interests of the efficient administration of justice, to have a subsequent panel substantially rehear a large number of allegations. We were satisfied that our dealing with allegation 94 would not require the Claimant to have to seek to amend Claims 1 and 2 – though of course we could not say he was prevented from making any such application – because (as Mrs Shakoor confirmed) the other alleged protected acts and protected disclosures which he says influenced Mr Bettridge's decision are within the bounds of Claim 4 and can be tested by cross-examination of Mr Bettridge in the hearing of that Claim with Claim 3.

29. The only issue which gave us pause for thought was whether the external investigation report not being completed – clearly the key factor in our overall decision about when allegations 80 to 87 and 94 to 97 should be heard – was a deciding factor in putting allegation 94 off to another hearing. Having regard to the principles set out in the overriding objective (rule 2 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules")) – and noting that the Claimant already had an interim report from the external investigator – we concluded that the possibility the investigator may say something relevant about Mr Bettridge's conclusions was substantially outweighed, in relation to allegation 94 only, by the need to avoid the cost, delay and repetition of issues which the Respondent had highlighted. We determined therefore that allegation 94 would be heard in this hearing window.

Amendment

30. The Claimant's letter to the Tribunal of 31 October 2022 appeared at paragraph 10 to make an application to amend one or both of Claims 1 and 2. Mrs Shakoor confirmed that any such application fell away in view of our decision above as to the scope of this Hearing.

Audio-visual material

31. The Claimant sought to introduce as evidence a recording (or transcript) of a meeting on 12 May 2022 referred to at length in his second statement from paragraph 88 onwards. After he left that meeting, which was intended to be an interview with Margaret Tomlin in relation to his internal victimisation complaint, the recording continued. Also present were Tracey Day (of Defence Business Services ("DBS"), which includes the Respondent's human resources function) and Emma Chivers (also of DBS) in a notetaking capacity. The Claimant's position was that what was said after he left the meeting was relevant to these Claims as it shows the Respondent's view of complaints of bullying and harassment, of protected disclosures, and indeed of him.

32. The Respondent submitted that the recording and transcript were not relevant to Claims 1 and 2 for two principal reasons. First, the meeting post-dated the complaints the Claimant makes in these Claims. Secondly, it did not show the Respondent's attitude or views, only those of Ms Tomlin, who is not the subject of any of the Claimant's allegations in Claims 1 and 2. Stephen Gill is not the subject of those allegations either, though the Claimant alleges that Mr Gill was directed by Ms Day to reach a particular conclusion in respect of the Claimant's protected disclosure grievances.

33. Having regard to the overriding objective of dealing with cases fairly and justly, including ensuring the parties are on an equal footing, dealing with cases proportionately and saving expense (which includes the public expense of Tribunal time as well as expense for the parties), we were not persuaded that it was necessary or appropriate for us to consider the recording or even the transcript, for the following reasons:

33.1. The reasons given by the Respondent in relation to who is and is not said by the Claimant to have been responsible for the alleged discrimination and detriments falling within Claims 1 and 2 were persuasive.

33.2. If the Claimant's point was that we should draw adverse inferences or reach general conclusions from what was said at the meeting, the fact that the relevant extracts were set out in his statement was a sufficient basis on which to invite us to do so. The Respondent had not adduced (and did not adduce) any evidence to suggest that what the Claimant records in his statement was not said. We therefore had the material in front of us and did not need to consider the transcript or recording for that purpose.

33.3. Those employees of the Respondent who were the alleged discriminators in this case could be asked about their view of the Claimant, their general view of complaints of discrimination and of protected disclosures, and indeed whether they share the views aired by Ms Tomlin. As it turned out and as will appear below, we carefully considered the Claimant's evidence in this respect and what Messrs Bettridge and Opie said about it.

33.4. In short, there was no prejudice to the Claimant in not allowing him to introduce the recording or transcript into the body of evidence before us.

Witnesses

34. There was some discussion about the Claimant's assertion in his email to the Tribunal on Day 1 that he had not had time to consider all of the Respondent's

statements. Mrs Shakoor confirmed at the end of that discussion that the Claimant was not seeking any action on the Tribunal's part other than to note that in the Claimant's view the recently exchanged statements on Claim 2 dealt with some issues which properly fell within Claim 1 – a point which did not seem to us apparent on the face of the statements and which was not revisited by Mrs Shakoor.

35. The Claimant expressed some surprise about who the Respondent had and had not called to give evidence. We made clear that this was for the Respondent to decide. If it had not adduced sufficient witness evidence to deal with a particular allegation, that was its choice and it was for the Claimant to ask questions of the Respondent's witnesses and/or make submissions, if he thought it appropriate, about the absence of any potential witness and any inferences that should be drawn from that. Given our decision in respect of the scope of the Hearing, whilst the Respondent had served statements for Alanah Donnell, Stephen Lock and Tracey Day, they were not called to give evidence orally and we did not take their statements into account in reaching our decision.

36. The Claimant sought to adduce evidence from Mr Pinel, for whom a statement was provided on the evening of Day 2. The Claimant had already been the subject of an unless order in relation to exchange of statements for Claim 2, an Order he had complied with. Mr Beever pragmatically said that the Respondent would not object to Mr Pinel's evidence being admitted if there was an explanation for its late provision, and helpfully conceded that there was no prejudice to the Respondent in it being allowed. We were not wholly convinced of the relevance of Mr Pinel's evidence at the time we dealt with the Claimant's application. The explanation for the delay in providing the statement was not wholly clear either, though it seemed to come down to he and Mrs Shakoor being lay people, having limited resources and being focused on finalising the Claimant's own (second) statement, all of which we accepted. Balancing those considerations, it was plainly right to allow Mr Pinel's statement and oral evidence to be relied upon.

Documents

37. The Claimant wrote to the Tribunal on 30 December 2022 seeking orders for disclosure by the Respondent of ten documents or categories of documents in total. We heard the parties' submissions on each such document or category and applied the following principles in deciding each application:

37.1. The relevant part of the Rules is rule 31 which says that the Tribunal may order any person in Great Britain to disclose documents or information to a party (by providing copies or otherwise) or to allow a party to inspect such material as might be ordered by a county court.

37.2. It was appropriate therefore to have regard to the Civil Procedure Rules. CPR 31.12 defines an order for specific disclosure as an order that party must (a) disclose documents or classes of documents specified in the order; or (b) carry out a search to the extent stated in the order; or (c) disclose any documents located as a result of that search.

37.3. There were essentially three questions to consider. First, did a document or category of document support or undermine a party's case in relation to an issue

to be decided by the Tribunal? Secondly, was it necessary for it to be disclosed for the fair disposal of the proceedings? Thirdly, should an order be made bearing in mind the overriding objective?

38. The first category of document was identified as case conference notes. It was asserted that there were case conferences involving Mr Opie and possibly also Mr Bettridge, from Autumn 2020 onwards, which included discussion of the Claimant, specifically dealing with the matters with which allegations 88 to 91 are concerned. Notes of such conferences may, the Claimant said, reveal why the decisions impugned in those allegations were taken, for example moving him to another department. The Respondent did not tell us that it had considered these notes and that it had concluded they did not contain disclosable material. As we indicated – and Mr Beever did not really resist the suggestion – it seemed to us that to the extent such notes existed, they were likely to contain such material which supported or challenged the case of one of the parties. It was agreed that the form of order, if made, should be that the Respondent should make reasonable searches for notes of case conferences chaired by Jacqui Toogood (the Respondent's Head of Secretariat) or Stephen Lock (the Respondent's Director of Resources) from 2020 onwards at which either Mr Opie or Mr Bettridge were present and should disclose such documents or parts of documents thus identified which supported or undermined either party's case. We made an Order to that effect.

39. The second category was "Records of Decisions" ("RoDs") made by DBS caseworkers exclusive to or including such decisions relating to the Claimant's complaints in these Claims. In relation to this request, we noted the following:

39.1. It was a very broad and unfocused request, not least given the number of allegations within the Claims, though the Claimant did specifically refer (see MA(2)66) to an email in October 2020 from Anise Tomkinson of DBS to Alex Jones, HR Caseworker, regarding Alan Opie's request for a case conference, in which email she sought HR advice for that case conference.

39.2. It was Mr Opie's, not Ms Tomkinson's, decisions that were impugned as discriminatory or detrimental by the Claimant. Mr Opie was a witness and could therefore be challenged as to the reasons for his decisions and asked about the advice he was given by DBS.

39.3. Furthermore, it was entirely to be expected that any such advice relevant to Mr Opie's decisions would be referred to in the case conference he requested, the notes of which would fall to be disclosed under category 1 above.

Accordingly, we did not think it proportionate or necessary to make an Order for searches for and disclosure of RoDs of HR caseworker meetings generally. Given however the focused nature of the request in relation to advice given for the October 2020 case conference, we ordered the Respondent to make a reasonable search for that advice and, if it was in its possession and contained material which supported or undermined either party's case, to disclose it.

40. The third category was Admissibility Interviews undertaken as part of the consideration of the Claimant's grievance decided by Mr Bettridge. It was agreed that these were already in the bundle.

41. The fourth category comprised three items:

41.1. The first item was a record of an interview by Stephen Gill with Paul Hughesdon of the RAF Benevolent Fund ("RAFBF"). Mr Gill was appointed in March 2022 to consider the Claimant's complaints about the matters referred to in allegations 88 to 91. Records of his interviews with Mr Opie and Mr Bettridge were apparently in the bundle but there was no record of his interview with Mr Hughesdon, though a report by Mr Hughesdon into concerns raised by the Claimant was included. Whilst we accepted that Mr Gill was not said by the Claimant to have been responsible for any alleged detriment, it was clear that the Claimant's dealings with the RAFBF lay at the heart of Claim 2 and therefore what Mr Gill was able to ascertain took place in those dealings was likely to support or undermine the parties' respective cases. The Respondent had not offered an explanation as to why records of two of Mr Gill's interviews had been disclosed but not the third. We were of course unable to say whether any such record contained relevant material but given the centrality of this issue to Claim 2, we made an Order that if any such interview record was in its possession and contained material which supported or undermined either party's case, the Respondent should disclose it.

41.2. The second item was a transcript/record of a Teams meeting hosted by the RAFBF on 15 June 2020. As will appear below, this meeting was pivotal to several of the Claimant's allegations. It seemed clear therefore that the transcript and/or record may very well support one or other party's case. The Respondent's position was that it did not have the recording of the meeting or the transcript, as the RAFBF had refused to disclose it. At MA(2)46 however, the Claimant refers to an email from Alex Jones to Mr Bettridge of 1 July 2020 in which Mr Jones said, "Thanks for sight of this recording of Monday's meeting …". It appeared to us therefore, assuming that the Claimant's statement was accurate in this regard, that the recording may well, at some point, have been in the Respondent's possession. It was therefore ordered to disclose any transcript and recording of that meeting that was currently in its possession or control.

41.3. The third item was a communication between Mr Jones and the RAFBF around November 2021. The Claimant could not say what the communication was about. We did not think therefore that he had provided a sufficient basis for an order for disclosure. The Respondent said that the communication was an enquiry about the transcript of the 15 June 2020 meeting. We did not see how that would help determine any of the issues that we were required to decide and so made no Order in respect of it.

42. The fifth category was documents requested by, and presented by the Claimant to, Alanah Donnell (who heard the Claimant's appeal against Mr Bettridge's grievance decision) on 14 September 2021. The Claimant no longer had these documents as they were provided using the Respondent's IT system to which he no longer has access. He asserted that they were relevant to allegations 87 and 91. The former was no longer to be considered in this Hearing window, whilst the latter concerned the Respondent seeking to "assimilate the substance of the Claimant's disclosure of 15 June 2020 and detriments he complained of into the investigation into his internal discrimination complaint". We did not see how disclosure of documents which the Claimant supplied to Ms Donnell would assist him in seeking to prove that complaint, or the Tribunal in seeking to determine whether the Respondent sought to join the relevant internal matters together and if so, whether a protected disclosure influenced that decision. In other words, we

did not see how such documents were disclosable. They were matters that could in any event be dealt with by way of cross-examination of Mr Bettridge and any other relevant witness.

43. Categories 6, 7 and 8 concerned who was and was not designated to hear the Claimant's grievance appeal eventually considered by Ms Donnell. Mrs Shakoor indicated that they were documents relevant to the allegations we had ruled should not be considered in this Hearing window and therefore we did not consider them any further.

44. Category 9 was a "wash up" (i.e., lessons learned) report produced at the end of Mr Bettridge's consideration of the Claimant's grievance. The Claimant asserted that the relevant policy required such a report, whilst Mr Beever said he was not aware any such report existed, though he would make further enquiries. We could see that any such report may contain disclosable material and therefore ordered the Respondent to disclose any such report in its possession or control, having made reasonable searches for the same, if it contained material which might support or undermine either party's case.

45. Category 10 was a copy of DBS advice provided to Mr Bettridge regarding his report into the Claimant's grievance, which Mr Bettridge found to be vexatious and malicious. Mr Beever said he would enquire of Mr Bettridge whether any such advice was provided that was not already in the bundle. Unlike the advice that fed into any case conference (item 2), if such advice existed it was not said that it would have been rehearsed in such a conference. It was not disputed that Mr Bettridge's decision in respect of the Claimant's grievance was central to these Claims and thus any advice he received regarding the Claimant's complaints being vexatious and malicious could well contain material that supported or undermined a party's case. Accordingly, we ordered the Respondent to make reasonable searches for such document and if it existed and contained material which would assist or undermine either party's case, to disclose it, subject of course to any privilege issues.

46. The above Orders having been made on Day 4, Mr Beever reported on Day 5 that the Respondent had conducted the required searches in relation to most of the material and no disclosable documents had emerged. We made clear that the relevant witnesses could be cross-examined about the existence of any such documents. We also requested written confirmation of the searches carried out and their outcomes, which was subsequently provided.

47. Late on Day 3 and subsequently, the Respondent produced a small number of documents. The Claimant had no objection to them being added to the bundle.

48. After we had given our decisions on the various case management issues, Mrs Shakoor produced around 200 pages of additional documents which she said the Claimant had tried to introduce into the bundle previously, without success. Encouraged by us to be pragmatic, the Respondent – whilst saying that most of the documents were already before us and not conceding their relevance – agreed to paginate them and insert them at the back of the main bundle.

49. On Day 11, Mrs Shakoor produced a further bundle, of almost 100 pages, apparently recovered from the Claimant's laptop. It was agreed that we would review any such documents within it that she wished to refer to in cross-examining

the Respondent's witnesses and determine whether they should be admitted to the bundle based on their relevance to the issues before us, consideration of why they had not been disclosed sooner and any prejudice to the Respondent and the Hearing timetable that would be occasioned by admitting them.

50. Mrs Shakoor sought to put two such documents to the Respondent's witnesses:

50.1. The first, which she had numbered pages 2838 to 2840, was a series of internal emails involving DBS concerning the Claimant's annual leave, which she wished to put to Ms Withers. The Claimant sought to link the emails to his race and/or religion in connection with allegation 51, which was an allegation of victimisation. Mrs Shakoor said the emails revealed something of the Respondent's culture. The Respondent objected to the emails being admitted in evidence, on the basis that Ms Withers could not address them because she was not party to them, and in any event their content should have been addressed in the Claimant's witness statements.

50.2. The second was numbered page 2820 and was an email from a military officer, expressing in strong and direct terms his frustration over a particular issue. This was said by Mrs Shakoor to relate to allegation 34 and was intended to contrast how the Claimant's emails to the Youth Hostels Association ("YHA") (see below) were perceived by the Respondent. She wished to put it to Ms Withers. Again, the Respondent objected to its inclusion, on the basis that it had no relevance to the allegation and neither Ms Withers, nor the Respondent more broadly, could be expected to identify the context in which the email was sent, having only seen it at that moment. It was clear to us that the email would not prove the alleged facts on which allegation 34 depended. In principle a comparison with how others were treated might have some relevance to the complaint, even though it was one of harassment only, but unlike the Claimant's exchanges with the YHA we were not told that anyone complained about the email, and neither was it sent externally, which meant that it was plainly not comparable to the Claimant's situation. There was also obvious prejudice to the Respondent in allowing a line of enquiry based on the email as it had not had opportunity to consider the context of what went before or came after it.

51. Neither set of documents seemed relevant to the issues we were required to decide. Pages 2838 to 2840 plainly did not relate to allegation 51 and having read them we did not think they showed anything about the Respondent's culture generally. There was moreover quite considerable other background material already in the bundle which, as will appear below, we did consider. We were also not satisfied that the Claimant had provided a good explanation for the late provision of these documents. If he had been able to access the laptop during the period covered by this Hearing, it was wholly unclear why he could not have done so weeks or months before, even accounting for his considerably lesser resources compared to those of the Respondent. The potentially significant unfairness to the Respondent was not merited by the introduction of documents which did not seem to us to assist the Claimant's case or the Tribunal.

Facts

52. Based on the documentary and witness evidence referred to above, we made the following findings of fact, doing so on the balance of probabilities where there

was any dispute between the parties and generally resolving each such dispute on its own merits rather than based on general findings about witness credibility.

53. No tribunal is required to find facts on every matter raised by the parties. We considered a large amount of material but sought to focus our findings on those matters which seemed to us to be pertinent to the issues before us. We begin with the crucial background and an overview of the key facts, including related to internal and Tribunal proceedings, before turning to deal with each individual allegation in turn.

Background and overview

54. The Claimant commenced employment with the Respondent in June 2000. He was promoted to RCDA in July 2009 and remained employed in that role, at RAF Cosford, until his dismissal.

55. The Community Development team of which he was part was concerned with ensuring that the Service Community (namely Service personnel and their families) had access to relevant and necessary support at local authority level. Many RAF Stations have a CDO who is responsible for community support for personnel at that Station. CDOs are line managed in relation to their Station by the Officer Commanding ("OC") and professionally supervised by an RCDA, who particularly helps to ensure that each CDO delivers on their annual Community Needs Analysis ("CNA"). Each CDO is nominally assigned to the Northern or Southern Region, though not always on geographical lines. Each Region is headed by an RCDA, both of whom report to the CCDA.

56. Ms Withers began working for the Respondent as a CDO in around 2003. When the Claimant was promoted to RCDA in 2009, he was thus senior to her. Ms Withers became RCDA for the Northern region, and thus the Claimant's peer, in 2016. Mrs Short was a CDO from 2009 and became RCDA for the Northern region from 2018, Ms Withers having been promoted to CCDA in 2017 in what the Claimant described as a "meteoric rise". There were no historic relational issues between the Claimant and Ms Withers or Mrs Short, though as the Claimant says, they did not work closely together before 2018.

57. The Claimant was previously managed by Mr Pinel. As can be seen at page 171, one of the Claimant's CDOs emailed Ms Withers on 4 June 2018 and mentioned that she had asked Mr Pinel for a change in line manager because she did not feel adequately supported by the Claimant. Mr Pinel told us that it was not unusual to receive such requests, for many and varied reasons. He nevertheless told us that whilst working as CCDA, he instituted the "Civil Service Restoring Efficiency" process with the Claimant because he felt the Claimant needed to be more assertive.

58. On her promotion to CCDA, Ms Withers became the Claimant's line manager. Her manager was Mr Opie. The Claimant did not apply for the role. He told us that he gave Ms Withers his full support, though he also said that Mr Pinel was more experienced, professional and empathetic than her. He says he continued to work as before, which we accept, but that unlike Mr Pinel, Ms Withers did not find his work acceptable; he describes Ms Withers' greater scrutiny of his work as "nit-picking". As noted above, Mrs Short became RCDA for the Northern region in May 2018. At LS3 she sets out how she thought she, Ms Withers and the Claimant

collectively would be able to reignite the cadre of CDOs. She perceived something of a North/South divide, which she wanted to overcome to harness all of the team's talents.

59. The Claimant's midyear review with Ms Withers for the year 1 April 2018 to 31 March 2019, is at pages 252 to 253. It is Ms Withers' view (JW4) that her working relationship with the Claimant changed after this point. One of the Claimant's developmental goals was to "improve communication and increase visibility of work undertaken", Ms Withers referring to the need to use his Outlook calendar and the need for them to be in regular communication. The Claimant says he did not understand this requirement, as Ms Withers knew what he was doing and how to get hold of him, though Mr Pinel thought it a sound objective and told us that it was legitimate for Ms Withers to raise it if CDOs had raised it with her.

60. It is evident that by the time of his April 2019 review Ms Withers thought the Claimant had improved his visibility by meeting his CDOs more regularly. Further, the Claimant provided to us after submissions a copy of his July 2019 end of year review with Ms Withers, countersigned by Mr Opie, which we read despite its late provision and found uncontroversial. In that review he was recognised as having improved, particularly in respect of his visibility to his CDOs. It remained a development goal to "improve communication and increase visibility of work undertaken" and it was noted that both Ms Withers and Mr Opie supported the Claimant signing up to the Positive Action Pathway ("PAP") which we will return to below. Further issues with his objectives soon materialised, however. He wrote to Ms Withers on 18 October 2019 (see page 348) regarding his mid-year review for the year 1 April 2019 to 31 March 2020 (we were not shown the review document itself) saying that in relation to the objective set by Ms Withers to "consider ways to improve communication both verbal and written", he did not see any deficiency in either and wanted to know how this would be quantified. This was perhaps not a well-drafted objective, and the Claimant says no examples of communication issues had been given to him, though his email communications with the YHA (see below) had by then been brought to his attention.

61. Ms Withers replied (page 346), saying that the two of them had spoken before about the importance of addressing matters verbally where possible (something Mr Pinel agreed was also a worthy objective) "to minimise the likelihood that a message could be misinterpreted or misconstrued" and highlighting her concern that the Claimant continued to send emails that upset colleagues. Mrs Short says (see page 516, her interview with Mr Bettridge on 17 June 2020 as part of the Claimant's grievance process) that the Claimant was quiet at meetings, but would then send lengthy emails, and if he disagreed with something would bring a script to a meeting which he found difficult to deviate from. The Claimant does not recognise that but agreed that if true it may well have created friction.

62. Linzi Neal, another CDO, told the HIO in her interview for the Claimant's grievance (page 674) that the Claimant was difficult to get hold of and not proactive; the Claimant strongly disagrees. Ms Hartshorne's evidence was that the Claimant was always responsive to requests for advice from her, whilst Ms Moore for her part (GM11) describes Mrs Short as very expressive and says that the Claimant struggled to demonstrate his authority as RCDA due to the strong personalities around him. She said at GM23 that the Claimant has a "learned behaviour of feeling left out by others in the past".

63. One element of Service support for which the Claimant was project lead was Poppy Adventure Breaks ("PABs"), an opportunity for children and young people from Service families to meet others and engage in outdoor education, involving a variety of residential activities off-site. They were funded by the Royal British Legion ("RBL") and at all relevant times Action for Children ("AfC") was responsible for delivering them. One of the Claimant's responsibilities was to liaise with the YHA which hosted the PABs. In March 2019, the RBL reduced its funding.

64. On 5 August 2019 the Claimant was in email correspondence with Kirsty Baylis, National Products and Partnerships Manager for the YHA. She reported, in response to an enquiry by the Claimant relating to a particular camp, that she had checked with her Head of Safeguarding and could confirm that the YHA would not be able to accommodate a 17-year-old who the Claimant wanted to attend as a young leader, nor would there be further places available. She apologised that it was not better news. The Claimant replied (page 288) "I seek a letter from your CEO to present to the Tri-Service setting out the rationale of the safeguarding … Also, please escalate to your CEO to ensure awareness that I will be formally requesting the RBL to withhold funding for 7 places … [and] as Project Lead I am recommending that as of next year the Military Services seek an alternative provider. YHA is seeking to adopt an entrenched position which frankly presents as an attitude problem". Ms Baylis replied giving similar information to before, and the Claimant replied again, concluding, "I believe that with more will and less attitude it can be done". He told us he was trying his best for the Service and wanted to be solution focused. He had earlier in the day referred some of his concerns to Ms Withers with a request that she escalate the matter – see page 2550.

65. On the same day (page 289) Ms Baylis emailed Ms Withers, forwarding the exchange with the Claimant and saying that after speaking with the YHA's Head of Safeguarding, "I won't be responding directly … I find Mo's tone to continue to be quite negative and argumentative". On the next day, 6 August 2019 (see Annex A to her statement) Ms Withers emailed Ms Baylis. Part of what she said was that she had spoken to the Claimant about the content, tone and language used in his emails to Ms Baylis and had made clear "how completely unacceptable this is. I can only apologise that you had to experience it and please be assured that we are taking it very seriously and will take the appropriate action". Ms Withers told us she meant the Respondent would be exploring what the process would be, though to our mind, what she said signalled more than that, namely that action would, or at least could, be taken against the Claimant. Also on 6 August, the Claimant, Ms Withers and Mr Opie had a pre-arranged review meeting, by which time Mr Opie had also seen the emails. The Claimant mentioned the events of the previous day. Mr Opie said to the Claimant that if he felt he had upset Ms Baylis unduly, he should call her and apologise; the Claimant did not say whether he would do so, and neither Mr Opie nor Ms Withers were made aware that he had. We find that he did not. For Mr Opie, it was the manner of the Claimant's emails to Ms Baylis that was of concern, particularly the "more will and less attitude" comment.

66. On 7 August 2019 (page 2715), the Claimant asked Mr Opie to raise with the YHA at senior level the issue of allocation of places on the PABs. Mr Opie replied (page 2717) to say that they should await the outcome of the Claimant's email to Ms Baylis (he told us he meant resolving the upset Ms Baylis had raised) before considering pressing the YHA at a more senior level, adding that Ms Withers'

forthcoming meeting with the YHA was a good opportunity to do so. On 8 August 2019 (page 291), Ms Withers emailed Alex Jones in DBS in terms which show that she had told the Claimant that the YHA were unhappy with his emails and that she was considering what to do next. She asked Mr Jones to advise whether any misconduct had taken place "and, if so, at what level". The Claimant does not accept that Ms Withers should have referred the matter to DBS, saying that instead she should have given him the right of reply. On or around 13 August 2019 Ms Withers met with the YHA and discussed some of the substantive issues the Claimant had raised, including allocation of places, the use of young leaders and accommodation of children and young people with additional needs. It was not a comprehensive discussion, as the PABs were still taking place.

67. Ms Baylis sent Ms Withers an email on 15 August 2019 (page 320) setting out an overview of the 2019 PABs to that point and also expressing concerns about her and her colleagues' dealings with the Claimant, describing him as difficult to get answers from, and saying that he had provided "very curt and often deliberately rude responses", culminating in their exchange of 5 August, which she described as "completely unacceptable", "incredibly rude" and "in some instances bordering on aggressive". The Claimant does not accept that Ms Baylis's email to Ms Withers was a complaint. He says Ms Baylis simply did not understand what he was requesting, he was having to push her for answers, and she only complained to protect herself because her role was to secure business for the YHA, and she wanted to cover her own failings. He believes Ms Withers encouraged Ms Baylis's complaint (see his grievance at page 367) on the basis that it took the Respondent some time to construct a potential disciplinary case against him. Ms Withers denies seeking or encouraging the email. We accept what she says, on the basis that there is no evidence for the Claimant's contention. We also note, as indicated above, that the YHA's Head of Safeguarding, who was Ms Baylis's manager, had contacted Ms Withers on 5 August (it appears by telephone) to express serious concern about the tone and content of the Claimant's emails (see Ms Withers' note to the Claimant to this effect on 21 August 2019 at page 323). He was keen to formalise an overview of the PABs and the YHA's concerns about Ms Baylis's interactions with the Claimant.

68. On 16 August 2019, Ms Withers and the Claimant spoke. She told us she did not share the email from Ms Baylis as she was still getting advice from DBS. On 23 September 2019, Ms Withers emailed Mr Jones again (page 328) to say that she and Mr Opie considered that the Claimant's actions constituted serious misconduct but would "prefer to consider informal action in this situation".
On 7 October 2019 (pages 1878 to 1882) the Claimant sent Ms Withers his own "Poppy Breaks Overview" for 2019, dealing with such matters as newly centralised booking arrangements and take up of places. His draft overview of 2018 is at pages 2709 to 2714 and included a statement about the importance of exploring all feasible options for young people with additional needs "because we are a public body, and we need to ensure that our service provision is compliant with equality legislation".

69. At a CDO Conference on 8 and 9 October 2019 at RAF Wyton, Mr Opie told the Claimant that he was planning to deal with the YHA complaint informally, which meant there would be nothing on the Claimant's record, and confirmed he was taking DBS advice. Mr Opie told us DBS had pushed for formal action, but he wanted to deal with it informally, which we accept considering Ms Withers' email to Mr Jones just referred to. As a follow up to that conversation, on 15 October

2019 Mr Opie emailed the Claimant (pages 344 to 345) informing him of the complaint and saying that the Claimant's dealings with the YHA had contravened the Civil Service Code for Integrity "whereby Civil Servants should always act in a way that is professional and that deserves and retains the confidence of all those with whom they have dealings". Mr Opie went on to say that the Claimant had exceeded his authority in saying to the YHA that funding would be withheld and that he would be recommending the Respondent seek an alternative provider. In his oral evidence, Mr Opie said that the Claimant exceeded his authority because he represented his own views on the question of withholding funding and changing provider as the views of the Respondent, which they were not. He stated in his email that the matter would be dealt with informally by way of a development plan, with no record on the Claimant's file.

70. On 16 October 2019 (pages 343 to 344) the Claimant emailed Mr Opie in reply asking if there were any other "recordings" related to the YHA issue and wanting clarification that Ms Baylis's email was the only complaint against him. The Claimant went on in that email to refuse the informal action option, telling us that Mr Opie had said things in the past which he had not then actioned. He said he would be filing a grievance about how the YHA communications had been dealt with, describing it as part of a pattern of endeavours to make his position untenable. Two days later, on 18 October 2019, he emailed Ms Withers (page 348) saying that he would not engage with his mid-term objective setting. On 21 October 2019 he emailed Mr Opie again to clarify that he did "not wish to engage with the informal action" (page 342).

71. On 22 October 2019 (page 346) Ms Withers emailed the Claimant regarding his mid-year review, referencing the communication objective mentioned above and telling him that Rebecca Pickwell, another CDO, no longer wanted to be involved in delivery of Offsite training (something we return to in detail below) because of how he had communicated with her when he had made comments on her feedback during the consultation process that he had led on a review of that training. On 29 May 2019 the Claimant had agreed he would contact Ms Pickwell, but by the time of a follow up meeting with Mrs Short and Ms Withers on 5 August 2019 he had not done so. As with Ms Baylis, the Claimant does not accept that Ms Pickwell had any reason to be upset with him, telling us he had not apologised because he did not want Ms Pickwell to be even more upset and make further allegations, her mental health not being good. We do not need to determine whether that was his dominant motive for not contacting her.

72. On 23 October 2019 (pages 350 to 351) the Claimant emailed Ms Withers and Mrs Short, in separate emails. The email to Mrs Short was briefer but incorporated everything of substance communicated to Ms Withers. These emails are PA1. He referred to the Offsite Training Review, PABs and "Miscellaneous Differential Treatment", saying that he had drafted a grievance under the Respondent's Bullying and Harassment Procedure. He stated, "It is with some regret I must conclude that in the absence of any plausible explanation for my adverse/differential treatment, then your behaviour towards me is motivated by my obvious and protected characteristics". He said he would not therefore be engaging in his mid-year review, adding, "I seek that you please provide any line management directions to me in writing". Ms Withers was very upset about the email. She believed the reference to protected characteristics denoted the Claimant's race and religion, as did Mrs Short.

73. On 24 October 2019, Mr Opie confirmed that formal action was to be initiated against the Claimant in relation to the complaints by the YHA given his refusal of informal action. Mr D Turl was appointed on 6 November 2019 as Decision Maker ("DM"), though he was later replaced by Paul Stoddard. On the same day, Wing Commander Nikki Parr emailed the Claimant in response to him having informed her that he felt he had been bypassed in relation to a complaint about a CDO in his region – see allegation 59. Ms Parr said that the Claimant should "take the emotion out of this" (page 352) and wrote to Ms Withers saying she did not appreciate the Claimant's "tone or aggression" (pages 354 to 356).

74. On 11 November 2019, the Claimant made a formal complaint, which neither Mr Opie nor Mr Bettridge saw, to Mr A Brittain, Director of Resources, about Ms Withers and Mr Opie instigating misconduct proceedings – see pages 358 to 376. The Claimant refers to this as his Poppy Breaks Grievance. He said:

74.1. Ms Withers and Mr Opie were seeking to institute misconduct proceedings in bad faith.

74.2. It was he who had signed the Respondent's Memorandum of Understanding ("MOU") with the YHA, which recorded that he was authorised to act on the Respondent's behalf.

74.3. There had been appalling customer service from the YHA. Ms Withers had asked him to seek additional places, but this was met with resistance and there was also a late change to the cut-off time for online bookings. This was a wholly unreasonable and unnecessary stance by the YHA, who could in fact have accommodated additional places.

74.4. He was professionally qualified in the field, and it was reasonable to require Ms Baylis to escalate his concerns and confirm YHA policy.

74.5. It was inconceivable that Ms Withers and Mr Opie should say he was acting beyond his remit in recommending that the Respondent seek out alternative providers, as this was already being researched.

74.6. He had a duty to safeguard charitable funds and a professional obligation to retain Service families' confidence, which superseded "the desirability of maintaining a wholly non-confrontational stance".

74.7. Ms Withers had not provided Mr Opie with a full account of events and was not impartial because she was implicated in the issues the Claimant was raising, as Mr Opie should have known. She induced Ms Baylis to put her complaint in writing, with the agenda of undermining the Claimant.

74.8. Mr Opie could not offer a plausible explanation for the proposed informal action, which was a way of averting examination of the facts. It should have been clear the YHA was being defensive so as not to lose coveted business.

74.9. He acknowledged that his email to Ms Baylis was "in part, more strongly worded than is usual for me; notwithstanding, I do believe this was necessary and justified given my role and responsibilities and in the particular circumstances". He was simply saying in the emails that he was dissatisfied with the YHA's service and intended to remedy it.

74.10. He sought, amongst other things, full vindication and consideration of Ms Withers' and Mr Opie's actions. He wanted the complaint considered alongside the misconduct allegations, by an independent investigator.

75. On 12 December 2019 (pages 392 to 393), Mr Turl wrote to the Claimant regarding the alleged misconduct and its investigation. The allegations were that the Claimant had contravened the Civil Service Code, exceeded his level of authority, and failed to follow a reasonable management instruction. The allegations arose from his email exchanges with the YHA and his refusal to engage in an informal misconduct process. Stuart Talton had been appointed on 3 December 2019 as Investigation Manager, as the letter confirmed.

76. On 16 January 2020, the Claimant lodged a formal complaint of Bullying and Harassment (page 412, known as Annex F) against Ms Withers and Mrs Short – this is PA2. On 22 January 2020, ACAS contacted the Respondent as part of Early Conciliation – this is PA3. The Respondent accepts that at this point it believed the Claimant might do the protected act of bringing a Tribunal claim. On or around 29 January 2020, Ruth Thompson, Head of Secretariat and Civilian Workforce, wrote to the Claimant (there is a draft at page 427) to say that Air Vice Marshall (AVM) Chris Elliott, in her capacity as Deciding Officer for the complaint, would decide if an HIO was required. In the meantime, the misconduct proceedings and the Claimant's Poppy Breaks Grievance would be suspended. This was confirmed by Mr Stoddard on 4 February 2020 (page 438).

77. AVM Elliott announced her retirement in January 2020. At her request, Mr Bettridge became the Deciding Officer for the Claimant's complaint, as she was not being immediately replaced. He obtained DBS advice that he was sufficiently senior to take that role, because he was deemed equivalent to Senior Civil Service Grade 1 and so two grades above the most senior respondent, namely Ms Withers. The procedure seems to be that the Deciding Officer conducts initial interviews (Admissibility Interviews) with a view to the complaint being resolved as quickly as possible. If this is not possible, or either party requests it, an HIO is appointed. On 20 February 2020 Mr Bettridge conducted an initial interview with the Claimant (pages 444 to 460) and asked him to provide more detail and specifics of his complaint. By February/March 2020, Mr Opie was considering whether the Claimant and Ms Withers/Mrs Short should be separated. The Claimant says (MA16) that he could still work with them but wanted checks and balances in place such as monitoring.

78. On 26 February 2020 ACAS issued an Early Conciliation Certificate – this is PA4. Again, the Respondent accepts it had the requisite belief that the Claimant would do the protected act of bringing a Tribunal claim. The Claim Form in Claim 1, which is PA5, was presented on 18 March 2020 (see page 4). On 31 March 2020, the Claimant amended his Bullying and Harassment complaint (see pages 475 to 484). He amended it again on 29 May 2020 (pages 488 to 498).

79. On 18 March 2020, Mr Bettridge identified a temporary transfer for the Claimant to Army Welfare Services ("AWS") – see Allegation 78 below. On 2 April 2020 (page 2774), Mr Opie emailed Anise Tomkinson and Alex Jones to say that the Claimant had declined the offer of a temporary placement. Mr Opie said this put the team and the Claimant in an "untenable position" as he was refusing to be managed by Ms Withers and not engaging in the delivery of outputs. Mr Opie

could not himself professionally supervise the Claimant, and so the only alternative Mr Opie saw was for the Claimant to be temporarily suspended, pending resolution of his grievance and misconduct cases.

80. Where the Respondent cannot itself provide certain types of support to the Service community, it invites charities such as the RAFBF to fill the gap; those charities rarely deliver such services directly, most often contracting them out. One such example is the engagement of Station Youth Workers ("SYWs") who were funded by the RAFBF and employed at RAF Stations by AfC.

81. In April 2020, AfC announced that all except five SYWs would be furloughed: this was the start of the Covid-19 pandemic and the national lockdown. On 20 April 2020 (see pages 505 to 506), the RAFBF wrote to the Respondent setting out how children and young people would be supported online during the pandemic and explaining how it had been decided which SYWs to retain. The next day, Ms Withers cascaded that information to the Community Service team (page 504), announcing AfC's decision to furlough staff and stating that the five SYWs being retained were "selected based on their expertise in this area of provision", namely their digital skills, to launch and work on a flagship digital platform. All five were in the Northern region. The Claimant was not the only employee of the Respondent to express disquiet at the decision being taken without prior discussion – see MA(2)15 to 17.

82. On 12 June 2020, the Claimant emailed the RAFBF and Ms Withers expressing disquiet about the process adopted for selection of those stations which retained their SYWs (page 594). This is PD1 and PA6. He said, "It has been flagged in Southern AOR [meaning Area of Responsibility] that our Stations were seemingly excluded from any consultations as regards the furlough of the SYWs and I share those concerns" and expressed disquiet about the process of selection, "the exclusion to the inherent opportunity, and the rationale behind it". Mr Bettridge did not see that email at the time. The Claimant asked that the subject be put on the agenda for a Joint Operations Board meeting to be held three days later.

83. On 15 June 2020, that meeting was held using Microsoft TEAMS. The Claimant, Ms Withers and Ms Short were present, along with representatives of the RAFBF (one of which was Mr Pinel) and AfC. During that meeting, the Claimant raised what he describes as "concerns about impropriety in the selection of SYWs for furlough and the impact on inclusion, equality of opportunity and equality of access to resources". This is PD2 and PA7.
Mr Pinel's account of the meeting was that towards the end the Claimant made the point strongly that staff in his AOR had raised questions about the handling of the SYW selection process. In response it was said that the retention was not a promotion, not permanent and accrued no advantages to those retained. The Claimant pursued the question, and it was discussed that it would be better handled outside of the meeting as it was clear more information was required. After the meeting (pages 563 to 564), the Claimant emailed Mark Davis at AfC referencing the meeting and saying, "I was (and am) seeking to know from yourself, as the person liaising with the RAFBF, when and with whom agreement was reached with RAF Community Support to run the funding with those Stations selected to retain their SYWs. I seek to know what, if any, regard was had to the particular needs of the Stations and the methodology used to assess the existing digital competence of those SYWs retained".

84. On 15 and 16 June 2020, the Claimant exchanged emails with Mr Bettridge, asking for a copy of the Teams recording of the meeting to be preserved and saying he was "interrupted, excluded and undermined [by a representative of AfC] with the objective of seeking to cover the tracks of what has taken place with the respondents [that is Ms Withers and Mrs Short]", so that the meaning of his concerns (about the retention of SYWs) and those of his AOR were not taken on board, adding that Ms Withers did not intervene to seek to correct this conduct (see pages 507 to 514). The first email in this trail, at page 514, is PD3 and PA8. The Claimant says at MA(2)5 that the meeting was "capable of evidencing the context of one of the strands of my ongoing discrimination complaint".

85. As can be seen at page 508, after the Claimant chased Mr Bettridge about a copy of the recording of the meeting, Mr Bettridge said he had just realised that it bore no relation to the complaint for which he was Deciding Officer, "unless I have missed something". He had thought the Claimant was making allegations about Ms Withers and Mrs Short but on re-reading the Claimant's emails concluded he was not. He then concluded, following the Claimant's email reply of the same day (page 507), that the Claimant was in fact asking him to look at it the events of 15 June as part of his investigation. The Claimant stated in that email that the recording related directly to what is now allegation 72 in these proceedings. He stated that Ms Withers had wilfully failed to correct misconceptions held by the RAFBF and AfC and suggested that Ms Withers and Mrs Short had coerced AfC to give preference to their physical locations in deciding which SYWs to retain.

86. The Claimant told Mr Bettridge that this was separate to what he had asked Mr Opie to consider, namely AfC's behaviour towards him in the Teams meeting.
On 16 June 2020 (page 593) he wrote to Mr Opie, "I wish to raise my experience with you. In raising those issues around equal access to resources/support and equality of opportunity, I did not feel at all 'heard, safe or supported' …My experience was that of exclusion, interruption and undermining from Action for Children and the behaviour of its Head of Commercial towards me particularly, indicates scrutiny". This is PD4. Mr Opie thanked the Claimant for sharing his concerns and said he would discuss with colleagues the most appropriate manner of investigating them. On the same day, Mr Opie emailed Anise Tomkinson, forwarding the Claimant's email to AfC referred to above and saying that the current working arrangements were "simply untenable" (page 562). Mr Opie does not see this as inconsistent with his also helping the Claimant write a letter to the RAFBF raising his concerns about the 15 June meeting (see further under the heading, "Protected Disclosures" below). Whilst holding the view that the team in which the Claimant was employed could no longer function, he did not want to suppress the Claimant's concerns about what took place on 15 June. In other words, he was trying to help the Claimant if he wished to make a complaint, whilst also saying to colleagues that the team was not working. He did not think it wrong for the Claimant to raise concerns about the furlough selections but had concerns with how he went about it.

87. On 17 June 2020, Mr Bettridge interviewed Mrs Short. On 18 June 2020 he emailed the Claimant, directing him to contact Mr Opie to implement his transfer to the Directorate Children and Young People ("DCYP") (page 1956 – see below). Mr Bettridge interviewed Ms Withers on 23 June 2020. The Claimant's transfer to DCYP took effect from 6 July 2020 (see FB, page 208). On 10 July 2020 Mr Bettridge emailed Alex Jones, commissioning an HIO to investigate the Claimant's bullying and harassment complaint (page 565). On 14 July 2020, he issued a

"Notification of Next Steps" to the Claimant, Ms Withers and Mrs Short (SB, page 90A). He informed them that he had decided to commission an independent investigation, and that because not all parties to the complaint had agreed to the use of a military HIO, there was likely to be several months' delay. He said, "You should all be aware that this investigation could lead to administrative, disciplinary or misconduct action being taken against you". The Claimant says (MA51) that this was a veiled threat to withdraw his complaint and (MA54) that it shows Mr Bettridge had already determined to find the complaint vexatious and malicious. The Respondent's case is that whilst usually this notification is only addressed to respondents who do not acknowledge what they are accused of, the Claimant was also given this notice because issues about lack of evidence for his complaints and delay in producing it and in clarifying the nature of the complaints had led Mr Bettridge to wonder whether the complaints might be vexatious.

88. The Claimant wrote a letter (pages 596 to 602) on 5 August 2020 to AfC concerning the 15 June 2020 meeting. He said that the "behaviours towards me demonstrated a hostility and aversion to the points I was trying to make … Had a fair and transparent process been adopted, inclusive of all SYWs attached to the 25 impacted Stations, then the outcome of such selection process would unlikely have correlated with the geographical outcomes. I feel that the unwillingness to acknowledge this is an egregious omission by all parties. The MoD is a public body; this point underpins all of the other issues raised … The rationale as put forward by AfC for selection of those SYWs to be retained has been widely and repeatedly questioned within my AOR … There is disquiet within my AOR that the selection of the SYWs to be retained was indeed based on physical location and undue influence … The RoDs produced by RAFBF on 14 July do not fully capture the dialogue with regards to the issues as raised at the said meeting of 15 June …". This is PD5 and PA11.

89. Glen McDermott was appointed as HIO on 17 September 2020, the delay being a result of availability of HIOs. On the same day, the Claimant presented to Stephen Lock, Director of Resources and Civilian Workforce Advisor, a formal grievance about his transfer to DCYP (see pages 567 to 571) asserting that the real reason for the transfer was his protected disclosures.

90. Mr McDermott made his first contact with the Claimant on 29 September 2020 and on 5 October asked the Claimant for details of his witnesses – page 2730. As can be seen at pages 575 to 576, on 30 September, the RAFBF produced a report setting out its HR Panel's investigation into the meeting of 15 June 2020, which was disclosed to the Claimant by Alan Opie on 7 October 2020 (page 603). The report said that the record of the meeting was made outside of TEAMS and was of poor quality. It did not uphold the complaint, stating, "any allegation of discrimination is unfounded … there are no direct statements to individuals … that could be considered under the protected characteristics for discrimination". Mr Opie informed the Claimant that he would forward the RAFBF report to Anise Tomkinson and Mr Bettridge because it was germane to the Claimant's bullying and harassment complaint; he could not explain to us why that was the case, although we note that in his letter of the next day (see below), the Claimant agreed that it was.

91. On 8 October 2020 the Claimant wrote a letter to Mr Opie in response to the RAFBF report – pages 1985 to 1988. This is PD6. He made clear he was not content for his grievance about the inappropriate behaviour he said he experienced

on 15 June to be closed. He also said that the RAFBF's finding that there was no discriminatory behaviour was irrelevant to his complaint, which had not referred to discrimination: his complaint was of rudeness, not racism. He asked that Mr Opie request the RAFBF to review the recording of the meeting and reconsider its findings. On the same date, the Claimant sent an email to Mark Davis at AfC chasing a response to his complaint regarding the furlough decisions (page 1989).

92. Between 26 November and 14 December 2020, Mr McDermott interviewed the Claimant, Ms Withers and Mrs Short, together with ten other witnesses (see pages 607 to 751, though we record that we did not read these interviews, except for those extracts drawn to our attention during oral evidence). The interviews with the Claimant took place on 30 October and 2 November. On 30 November, the Claimant provided Mr McDermott with "a comprehensive narrative". Mr McDermott's initial report was disclosed to the Claimant on 18 December 2020.

93. On 2 December 2020 (see page 1990), Mr Opie wrote to the Claimant, with an apology for the delay in responding to his note of 8 October, which he said was due to taking DBS advice. He said he had seen the RAFBF's response to the Claimant's complaint and was "confident that the Investigation Panel followed the due process of the RAFBF in considering your complaint", so that Mr Opie had done all he could on the Respondent's behalf to facilitate the investigation. He concluded by saying the Claimant had the right to contact the RAFBF for a further review if he wished. The Claimant did not do so.

94. On 22 January 2021, Mr McDermott reported to Mr Bettridge (pages 752 to 761, a document we did not read). Mr Bettridge produced his formal decision on 4 March 2021 (pages 769 to 772), which attached various appendices, including his Decision Analysis document at pages 931 to 981. As indicated above, his decision dealt with what are now allegations 1 to 79 in these Claims. We will come back to the decision in more detail when dealing with allegation 94 but note here that one of Mr Bettridge's conclusions was that the Claimant's complaint had been vexatious and malicious, which the Respondent then treated as a disciplinary matter. The Claimant appealed the decision on 18 March 2021 (see FB page 230). It was considered by Ms Donnell but is not relevant to the matters we have to determine and so we say nothing further about it.

95. On 28 April 2021 the Claimant applied to amend Claim 1 (page 110). Amendments were permitted by Employment Judge Richardson on 10 May 2021 (pages 138 to 142). From this point onwards, not all the background factual narrative is strictly relevant to the issues we had to determine, but we add a few further paragraphs to complete the picture and to deal with some additional matters which were drawn to our attention.

96. By an email to Mr Lock dated 4 May 2021, the Claimant requested an update regarding the outcome of his transfer grievance and cited a continuing detriment – see page 2696. As noted at MA(2)79 he requested an independent decision-maker and said, "I have remained removed from my substantive post for 10 months now and I believe that there is credible evidence to support my contention that my Protected Disclosure referenced in my said grievance and my inherent Protected Belief (my 'Whistleblowing') may have been either the cause of, or a significant factor in the decision to remove me from my substantive post". He then referred to his harassment and victimisation complaint and said, "this 'whistleblowing'

element is deemed by the Employment Tribunal (and seemingly now by the MOD) to be a separate matter".

97. On 18 May 2021 Mr Lock informed the Claimant that his transfer grievance would not be considered until the appeal process regarding Mr Bettridge's decision had concluded. On 28 May 2021 the Claimant submitted to the Respondent a formal complaint of victimisation regarding Mr Bettridge's decision, relying also on his September 2020 grievance having not been progressed. On 2 June 2021 he contacted ACAS regarding Early Conciliation for Claim 2, on 10 July 2021 ACAS issued an Early Conciliation certificate and on 9 August 2021 the Claimant filed Claim 2 (see FB page 1).

98. The hearing of his appeal against Mr Bettridge's decision took place on 13 September 2021, chaired by Ms Donnell (see FB pages 257 to 270, though this is another document we did not think it necessary to read, having not been taken to it in evidence). The outcome was communicated to the Claimant on 17 November 2021 (see FB pages 279 to 294, again not read by us).

99. On 19 November 2021, the Claimant asked Mr Lock to progress his transfer grievance. Mr Gill contacted the Claimant as decision maker in respect of that grievance on 31 January 2022. The Claimant presented a further victimisation complaint to the Respondent on 8 February 2022, asserting that his original complaint to Mr Bettridge was not taken seriously (FB pages 317 to 329, not read by us) and regarding the suspension of his Poppy Breaks Grievance and his transfer grievance. In the face of protests from the Claimant, Margaret Tomlin was appointed Decision Maker.

100. On 9 February 2022, the Claimant was notified of a disciplinary investigation, concerned with his conduct towards the YHA and his refusal to accept informal action, which was said to be a failure to comply with a reasonable management instruction. On 17 March 2022 he attended a grievance meeting with Mr Gill. On 28 April 2022, James Henniker, Contract Manager, prepared a report (Bundle 2, pages 427 to 437) into the allegations of misconduct against the Claimant. He said:

100.1. In relation to whether the Claimant had exceeded his authority, it was unreasonable to expect him to know his level of authority if it had not been clearly articulated to him. The Claimant was empowered to request that funding be withheld from the YHA. The Claimant only said he would be "recommending" a review of the providers, not ending the relationship with the YHA. There was thus no case to answer on this point.

100.2. As to the Claimant's emails to Ms Baylis, they were of "poor tone", which could be seen to be breaking the Civil Service Code in terms of the requirement for dealing with others professionally. There appeared to have been no impact on the Respondent's relationship with the YHA.

100.3. It was unreasonable of the Claimant not to engage with Mr Opie and a failure to follow a management instruction.

100.4. The Claimant also failed to follow Ms Withers' reasonable instructions by repeatedly not updating his diary.

101. Ms Tomlin interviewed the Claimant on 12 May 2022, remotely. There were technical issues, and the Claimant left the meeting. According to MA(2)88, which we accept as an accurate account, the recording continued after the Claimant left and Ms Tomlin said, "He's a little fucking, cheeky cock isn't he?". Emma Chivers of DBS said, "Just needs to get rid then, yes it needs to happen" and Ms Tomlin then said she had a report on "what we thought was a serious misconduct and might now be a minor misconduct. It's Ok – he's got two other things in the ET, and then I also have a gross misconduct that I'm hearing on him". She then said, "I don't know how these people get away with it", Ms Chivers adding, "Honestly, I don't know how people think that they can act in that manner and get away with it. It's not normal …". Mr Opie in his evidence described Ms Tomlin's comments as completely inappropriate. Mr Bettridge described them as disgraceful and told us he has raised concerns internally about them, making clear he does not consider Ms Tomlin suitable to consider the matters before her. We accepted that he has done so.

102. On 9 June 2022 the Claimant asked Mr Gill to hear both the Poppy Breaks Grievance and transfer grievance together. He refused. On 15 June 2022 (Bundle 2, pages 640 to 642), Margaret Tomlin wrote to the Claimant with the outcome of the disciplinary meeting which had eventually taken place on 6 June 2022. The letter covered the matters dealt with by Mr Henniker and with Mr Bettridge's finding (upheld on appeal) that the complaint against Ms Withers and Mrs Short was vexatious. The Claimant was given a first written warning in respect of the matters covered by Mr Henniker. Ms Tomlin said that the Claimant "rightly brought up" the YHA's failure to cater for young people with additional needs but the way he did so "was not professional and fell short of the standards expected in the Ministry of Defence and the Civil Service. I do not believe you exceeded your authority, or that you failed to follow a reasonable management direction". He was dismissed for the second allegation of misconduct, namely that his complaint investigated by Mr Bettridge had been vexatious. Nothing further need be said about the dismissal. On 8 September 2022, Tracey Day of DBS told the Claimant that the Poppy Breaks Grievance was subsumed in his bullying and harassment complaint. On 14 September 2022, the Claimant was sent Mr Gill's decision not to uphold the transfer grievance. The Claimant appealed and was informed that the Poppy Breaks Grievance and transfer grievance appeals would be heard together.

103. We now turn to our findings of fact on each specific surviving allegation, dealing first with those related to PABs and the Claimant's dealings with the YHA, then with those relating to the Offsite Policy and Training Package, before then following the remaining issues in the order set out in the List. There will inevitably be some crossover with the overview just given.

Allegation 23 – Ms Withers withheld management facilitation to the Claimant to enable him to lodge a counter complaint to the YHA

104. This is an allegation of harassment, and in the List is dated from August to 22 October 2019. The Claimant's complaint is both that he wanted Ms Withers to raise concerns within the Respondent about the YHA and that he wanted a right of reply once Ms Baylis's complaint was received, telling us Ms Withers should have outlined his options. He does not see the offer of informal action by Mr Opie as a valid option, saying it was unjustified performance monitoring. When Mr McDermott raised this allegation with the Claimant at the grievance interview (see page 634 paragraph 5(ix)), the Claimant told him that further examples of Ms

Withers withholding facilitation would follow and that Ms Withers knew he would have wished to lodge a counter-complaint as he had already asked her to escalate his concerns about the YHA's standard of service (see his email of 5 August 2019 at page 2550 referred to above).

105. In support of his case that the Respondent encouraged the YHA's complaint, the Claimant says that at his meeting with Ms Withers and Mr Opie on 6 August 2019 he offered to apologise to Ms Baylis but was told to wait for the complaint to come in. We did not think that likely to have happened, given the contemporaneous emails from the Claimant which asserted in the strongest terms that his communications were reasonable and justified. What the Claimant appeared to us to be misremembering is Mr Opie's email of 7 August 2019, suggesting that they await the outcome of the Claimant's exchanges with Ms Baylis before taking up the Claimant's concerns with the YHA. The Claimant also asked us to note that each of Ms Baylis, Ms Pickwell and Ms Parr used the same words about him, namely "tone" and "aggression", which he believes indicates that their complaints were in some way elicited by Ms Withers, though he also told us that "aggressive" is a word Ms Parr is prone to use, having used it about CDO Valley.

106. Ms Withers says (JW37) that the Claimant did not in any way suggest to her that he wished to lodge a counter-complaint, though she would have advised not doing so as the YHA's complaint seemed to her reasonably justified. She believes that it was reasonable for the matter to be dealt with internally. Mr Bettridge noted at DA105 that the Claimant did not dispute he had not asked Ms Withers to enable him to lodge a counter-complaint.

107. As to how the alleged conduct related to race and/or religion, the Claimant said in evidence that maybe Ms Withers did not support him in this way because she thought that as an older Asian man, he would cause issues. He also referred us to an email (page 2676) from Anise Tomkinson of HR to one of her colleagues to the effect that his English was not very good, a document we will return to in our analysis. He says that this email shows that as an Asian man the Respondent felt he would not be able to articulate his complaints so that it would be a waste of time enabling him to do so.

Allegation 24 – Ms Withers withheld from the Claimant the letter of complaint against him from the YHA thus prejudicing him and denying him a right of reply

108. This is an allegation of harassment, also dated in the List from August to October 2019. The Claimant's case is that Ms Withers withheld the YHA complaint (which we took to be Ms Baylis's email to Ms Withers of 15 August 2019) until Mr Opie sent it to him on 15 October 2019, having mentioned it to him at the CDO conference around a week beforehand. He says he assumes Mr Opie consented to Ms Withers withholding it.

109. Ms Withers says (JW38) that it was reasonable for the matter to have been dealt with internally and not to become a series of exchanges between the Claimant and the YHA. A copy of the complaint was provided to the Claimant as part of the informal misconduct process (see FB pages 340 to 341). Ms Withers told us the complaint was not provided sooner because she and Mr Opie were awaiting DBS advice, Mr Opie took leave in September, and he wanted to speak with the Claimant about it rather than emailing cold. Mr Opie confirmed that

account, adding that he had to take time to consider his own views on the matter and read the Civil Service Code. Mr Bettridge agreed (DA107) that it was reasonable for the content of the Claimant's email exchanges with the YHA to be addressed internally.

110. The Claimant says this conduct was related to race and/or religion because he feels that if he was important enough it would have come much sooner rather than when the details had been explored.

Allegation 34 – Ms Withers and Mrs Short asserted that the Claimant is "aggressive" and/or "troublemaking" to disguise the underlying motive

111. This was also an allegation of harassment, dated in the list from April to 22 October 2019. According to the Claimant's pack up at page 1617, it seems to concern both his dealings with the YHA and the Offsite Training Package (see later allegations in respect of the latter). The Claimant could not however point to emails or other communications, though he said there were some, where Ms Withers or Mrs Short labelled him in this way. We noted his interview with Mr McDermott at page 640, paragraph 7(i), where he said such emails would be provided and that the Claimant accepts that he did not produce any. Mrs Shakoor alerted us to pages 2015 to 2022. This is a table produced by DBS, seeking to summarise concerns that had been raised about the Claimant, including regarding his dealings with the YHA. There are two comments referable to the Claimant's emails in which, in the column headed, "Policy and Breach of Standard Expected for consideration", it is said, "is [the Claimant] being passive aggressive …?". These were clearly not comments written by Ms Withers or Mrs Short and there is nothing referred to in the table quoting either of them which states that they described the Claimant as aggressive or troublemaking.

112. Ms Withers (JW48) denies ever using such language, though she accepts she had said that the Claimant's emails could be perceived as aggressive. Mrs Short says (LS21) that she never made that assertion.

113. For completeness, we add that Ms Zakers' evidence (EZ17) was that she never witnessed the Claimant being aggressive or troublemaking, nor Ms Withers or Mrs Short labelling him as such. Ms Moore too (GM17) says she had never witnessed the Claimant behave in such a way, as does Ms Hartshorne (JH31), though she adds that Mrs Short had made the Claimant look stupid and Ms Withers had challenged him directly in a public forum despite the Claimant visibly struggling to speak. This is something we will return to below.

114. Mr Bettridge concluded (DA142 to DA144) that there was a common consensus that the Claimant is mild-mannered, reserved and quiet in person, but there was a pattern of silence at meetings being followed up by lengthy email rebuttal of outcomes which others perceived as having been agreed, often in a style that could be perceived as aggressive. He said there had been several complaints about the tone of the Claimant's emails, including from the YHA and he noted that Ms Withers had raised the need for the Claimant to work on communication skills in his 2018-19 review. The Claimant told Mr Bettridge he did not need to respond to Rebecca Pickwell, who had also complained about his communications as she "is unstable and [his] email [we take this to be that of 6 April 2019 at pages 270 to 272 regarding the Offsite training consultation – see below] ought properly not to have triggered such a reaction". Mr Bettridge also

noted that the Claimant maintained that his communications with the YHA were appropriate. He concluded that Ms Withers and Mrs Short did not use the words this allegation attributes to them.

115. The Claimant says that this conduct related to race and/or religion because it was typecasting him as a Muslim and Asian man. He said that maybe Ms Withers and Mrs Short thought that he treats women as submissive to men.

Allegation 36 Ms Withers wilfully omitted to correct the erroneous perceptions of the YHA that were within her own knowledge with regards to the alleged acts and/or omissions of the Claimant in the planning, organisation and delivery of the Adventure Poppy Breaks

116. This is an allegation of harassment, dated in the List from August 2019 to 30 January 2020. The Claimant's complaint is that some of what the YHA said in communications with the Respondent about their dealings with the Claimant was known by Ms Withers to be incorrect, for example that he was asking for a 17-year-old to mix with children at a PAB, when in fact he was asking that they be present as a young leader. The Claimant says that these issues got subsumed in the complaint about his tone.

117. Ms Withers' evidence (JW49) is that the complaint was brought to her by the YHA, she did not consider it to be erroneous in its perception of the Claimant and it was a complaint by an external provider. Mr Bettridge concluded (DA146-7) that there had been a developing disagreement between the Claimant and the YHA relating to unfilled places on some camps and the Claimant's intent to ensure every financed place was filled. The YHA was concerned from a safeguarding perspective about age ranges and ratios of staff to young people. Its complaint was about the Claimant's tone, attitude and the threats it perceived he made about its future relationship with the Respondent. Mr Bettridge concluded it was for Ms Withers to determine whether there was a reason to seek compensation from the YHA for failure to deliver a service. He found that the Claimant had been neither professional nor reasonable.

118. The Claimant told us that the effect of Ms Withers' failure to correct the YHA's "erroneous perceptions" was reputational in that he lost his ability to deliver what he had been doing for some time. Further, it meant that Mr Opie (and DBS) did not have a full picture when making decisions about what course of action they should take.

Allegation 37 – Ms Withers was complicit with the inaccuracies in the complaint made against the Claimant by the YHA

119. This is an allegation of harassment, dated in the List from August 2019 to 30 January 2020. It was agreed that it is the same complaint as allegation 36 in different words. Ms Withers said at JW50 that she had no input into the complaint made by the YHA, adding that she had no reason, on reading the email of 15 August 2019, to think it was in bad faith.

Allegation 38 – Ms Withers ignored inconvenient facts and relevant considerations in presenting the facts and issues to Mr Opie which were germane to the complaint made against the Claimant by the YHA

120. This is an allegation of harassment, dated in the List from August 2019 to 30 January 2020. The slight difference between this and allegations 36 and 37 is that it concerns Ms Withers allegedly failing to make Mr Opie aware of errors in the YHA's communications and dealings with the Claimant, such as that the Claimant was working to a very tight timetable for the PABs in question and needed to keep parents informed. Thus, the Claimant says, Ms Withers withheld important context from Mr Opie.

121. Ms Withers says at JW51 that she presented Mr Opie with the facts, had no influence over the complaint made by the YHA and did not ignore any inconvenient facts. She disagrees with the Claimant that there was nothing wrong with his communications with the YHA. She also says that she did mention contextual matters to Mr Opie such as the pressure to fill places on PABs.

122. The Claimant says that the conduct he relies on for each of allegations 36 to 38 related to race and/or religion because Ms Withers probably thought he would not question her omissions or "raise his head above the parapet", adding that if he had to point out everything himself, it would have made him look like he had a "vendetta".

Allegation 39 – Ms Withers asserted that an email communication which the Claimant sent to the YHA lacked integrity

123. This is an allegation of harassment, dated in the List from August 2019 to 30 January 2020.

124. Whilst Ms Withers says at JW52, "This is correct and was to be addressed as part of subsequent misconduct proceedings", the Claimant was not entirely clear on the nature of this complaint. He told us it concerned Ms Withers saying he did not have the authority to tell Ms Baylis that the Respondent would look at different providers for PABs. This is mentioned in her email to Alex Jones on 8 August 2019 (page 291) in which she said, "I feel that through this [the Claimant's emails to Kirsty Baylis of 5 August 2019] Mo misrepresented the MOD to our partner organisation the YHA, exceeding his level of authority with a potentially negative impact on MOD's reputation and business". The Claimant told us both that there was no email where Ms Withers mentioned integrity and that there was an email from her headed "Integrity". He could not take us to it.

125. The Claimant also referred us to page 344, Mr Opie's email to him of 15 October 2019, when with reference to Ms Baylis's email of 15 August 2019, he said, "This contravenes the Civil Service Code for Integrity, whereby Civil Servants should always act in a way that is professional and that deserves and retains the confidence of all those with whom they have dealings". Mr Bettridge said (DA152) that he could find no statement from Ms Withers stating that the Claimant lacked integrity and that whilst Mr Opie's email of 15 October 2019 referred to "The Civil Service Code for Integrity", which contains references to expected behaviours, none were synonymous with honesty.

126. The Claimant did not tell us how he says this conduct was connected to race and/or religion.

Allegation 40 – Ms Withers asserted that the Claimant exceeded his level of authority in informing the YHA of his intention as Project Lead to recommend

that the Tri-Service Community Support use an alternative provider to deliver its Adventure/Activity Breaks

127. This is an allegation of harassment, dated in the List from August 2019 to 30 January 2020. It too seems to relate to Mr Opie's email at page 344, where he said, "Carrying out this statement [in the Claimant's email to Ms Baylis, that he would recommend seeking an alternative provider] would have exceeded your authority as RCDA(S)". The Claimant pointed out that following Mr Henniker's disciplinary investigation, he was found not to have exceeded his authority, as he had signed the MOU with the YHA. That is of course correct (see Bundle 2, pages 427 to 437), and we will come back to its significance in our Analysis. The Claimant also told us that he had a right to make recommendations and it was then for management to decide how to act. He said the YHA needed to be told.

128. The Claimant also said that Ms Withers had written to the YHA saying he had exceeded his authority, but again could not take us to any such email, other than page 291 where Ms Withers relayed to Alex Jones that she had said this to the YHA by telephone. The Claimant accepts that it could be that management genuinely believed he had exceeded his authority but says he was open about what he wrote and did it in good faith.

129. The Claimant says this conduct related to race and/or religion because Ms Withers was showing contempt for other equality and diversity issues which she thought would not be challenged. He says she failed to follow the correct processes to see if he had in fact exceeded his authority.

Allegation 42 – Ms Withers made prejudicial and defamatory remarks about the Claimant in verbal and written communications with the YHA

130. This is an allegation of harassment, dated in the List from August 2019 to May 2022 when the List was prepared. The Claimant says it is different to allegation 40 because it concerns damage to his reputation but could not identify for us any written communication on which this allegation is based, although he believes there were other communications beyond the YHA's email of 15 August 2019 confirming that Ms Withers had told them he had exceeded his authority. As to that, Ms Withers told us she thinks she told Ms Baylis, as well as Ms Baylis's manager, that the Claimant did not have authority to say the Respondent would withhold funding. We heard no evidence from the Claimant linking this alleged conduct to his race or religion.

Allegation 43 – Ms Withers excluded the Claimant as Project Lead from planning and evaluation discussions and meetings with the YHA about the Adventure Poppy Breaks

131. This is an allegation of harassment, dated in the List from December 2018 to July 2020. The complaint is that the Claimant was excluded from dealings with the YHA after his August 2019 email exchanges with Ms Baylis.

132. Ms Withers told us (JW56) that the Claimant was involved in all planning meetings relating to PABs from December 2018 to August 2019, but as would have been expected given the misconduct charges against him, he had no further dealings with the YHA thereafter. Mr Bettridge concurred, saying (DA157) that there was no evidence of the Claimant being excluded from discussions or meetings prior to the August 2019 complaint. He felt that it was reasonable to

exclude the Claimant from such meetings and discussions until the misconduct case was resolved.

133. The Claimant accepted in oral evidence that he no longer attended meetings with the YHA because of its unease about what had taken place. He was unable to say why this was related to race and/or religion.

Allegation 44 – Ms Withers and Mrs Short excluded the Claimant as Project Lead from the consultation and planning process with the Tri-Service, potential funders and service providers and service users in relation to future Adventure/Activity Breaks

134. This is an allegation of harassment, dated in the List from April 2019 to July 2020. The precise nature of what the Claimant says he was excluded from is not entirely clear. He says he was excluded from everything regarding service design and delivery of the new Tri-Service (i.e., involving all three military services) policy regarding adventure and activity breaks, though the allegation also concerns the centralisation of allocation of places for PABs because, the Claimant says, this departure from a tried and tested approach meant many CDOs did not want to be involved in them.

135. Ms Withers says (JW57) that in early 2019 decisions that needed to be made in relation to the PABs were time critical. The RBL withdrew funding in March 2019, just before the Claimant was on leave from 1 April to 10 May 2019. Discussions were held and decisions made in his absence, so the PABs could go ahead as planned. Once PABs are completed in the summer, they are not really picked up again until the new year.

136. Ms Hartshorne gave evidence (JH33) that on 1 November 2019 she wrote to Ms Withers asking for clarification about PABs for 2020 as Ms Hartshorne was exploring alternative funding when RBL could no longer provide it. On 13 November 2019, Ms Withers emailed Ms Hartshorne to say there was a Tri-Service paper that had been submitted to the DCYP Board meeting scheduled for 10 December 2019 and that she too was exploring alternative funding options. Ms Hartshorne says that this created confusion as Ms Withers did not have a definitive answer. She also says that Ms Withers clearly had a plan she had not shared previously, which in her view only served to exclude the Claimant. Mrs Short's evidence (LS23) was that she was not involved in this matter at all, having had nothing to do with the planning process for Tri-Service delivery.

137. Mr Bettridge concluded (DA160) that the Claimant had been extremely vague regarding the meetings from which he was excluded. He surmised that discussions doubtless took place between Ms Withers and Mrs Short but said that the Claimant also had such discussions with Ms Withers, so that he was fully able to express his views on the full range of business.

138. The Respondent referred to emails at pages 1864, 1866, 1876 and 1902, which suggest Ms Withers did seek to involve the Claimant in such discussions or at least make him aware of them; that at page 1876 was dated 8 August 2019, shortly after the Claimant's exchanges with Ms Baylis, and attached a document related to Tri-Service Residential Breaks. The Claimant did not deny that, but questioned whether decisions that were made reflected what had been discussed at meetings he was involved in and said also that he was excluded from YHA/RAF

safeguarding meetings, which were said to be for Heads of Service, but which were attended for the Navy by a CDO.

139. The Claimant led no evidence as to why this conduct was related to his race and/or religion.

Allegation 1- Ms Withers gave the Claimant voluminous "tokenistic" work in reviewing an Off-Site Policy and Training Package to complete over the Christmas/New Year break 2018/19

140. This is an allegation of harassment, dated in the List from December 2018 to January 2019. It is agreed (JW12) that Ms Withers asked the Claimant to review this policy and training package. The policy concerns the Respondent's procedures for planning, organising and safely conducting offsite educational activities. Ms Withers had asked the Claimant to work on it over Christmas/New Year 2017 as well, emailing to him on 15 December 2017 the existing training package, with an AWS Policy. The Claimant makes no complaint about that. It can be seen from page 196 that on 11 December 2018, Ms Withers emailed both the Claimant and Mrs Short asking about their intentions for Christmas and saying that if they intended to work at all, she needed to consider where they would do so and "what your intended auditable outcomes will be" in accordance with the Respondent's Christmas Grant guidance which she attached. The Respondent has a policy that civil servants choosing to work over the Christmas break should be given specific work to do. The Claimant chose to do so.

141. By December 2018, the focus was on turning what was a two-day training course into two separate one-day courses, there having been limited progress on the review in 2018 (JW14). On 19 December 2018 Ms Withers asked the Claimant, as project lead, to review an updated AWS policy (which she sent him) and update the training package for use with the RAF, by February 2019 – see pages 195 to 248, though we did not consider those pages in any detail. Ms Withers says (JW16) that the work was in line with the Claimant's job description (page 176) and was a genuine requirement of the Service. The Claimant did not utilise the template policy. He sent Ms Withers an initial draft of a policy on 14 January 2019 and a draft training package a week later.

142. Ms Withers and a colleague presented the training in February 2019 at a venue where they could not use PowerPoint. By force of circumstance therefore they trialled a workshop approach which Ms Withers thought went well. On 25 February 2019 (page 1361), Ms Withers indicated to the Claimant that further work was required and asked him to coordinate a meeting with key CDO stakeholders involved in delivery of Offsite training and provide an update at a meeting scheduled for 20 March 2019. The Claimant sent a meeting invitation to CDOs on 4 March 2019, but had to cancel it due to limited take up. As a result, the Claimant requested feedback by email, which resulted in various exchanges with his colleagues, including Rebecca Pickwell (pages 257 to 272).

143. Ms Withers told us that over Summer 2019 there was some discussion of use of a workshop format for a course being run in September, but it did not materialise into anything further. The policy and package were discussed at the October 2019 CDO conference at Wyton, at an after-hours session led by the Claimant. The Claimant subsequently circulated his response to the feedback he had received,

which he had used for leading his session at the conference (see page 1413). We will return to these matters below.

144. A Tri-Service policy was discussed in December 2019, at a Tri-Service Leads Meeting, which had been arranged in September or October though with the agenda being fixed later. It was attended by Ms Withers and by Rebecca Wakefield for the AWS (their Navy equivalent was off sick). Ms Withers told us she did not know about the Tri-Service review at the time she gave the work to the Claimant in December 2018 and that in any event, whilst there was to be a Tri-Service policy, each Service would have its own policy as well and its own training package. Even in January 2023 no Tri-Service policy had been introduced. Mr Bettridge concurred, finding (DA1) that all that was agreed was that there should be a Tri-Service policy, ten months after Ms Withers had asked the Claimant to carry out the review, something which would create efficiencies both in terms of time and cost of future training.

145. The Claimant agrees that the policy and package required regular review and that what Ms Withers gave him was an appropriate task. He nevertheless told us that colleagues were uneasy about him not taking leave at Christmas, though his point is that nothing happened with the work he did, because the Respondent was considering an alternative workshop approach instead of the style of delivery he prepared, which was more a PowerPoint-based presentation. In other words, he says he was given the work just to keep him busy. He says Mrs Short indicated that she knew in December 2018 that the training would be on a workshop basis in future, which Mrs Short denies. We preferred Mrs Short's account, not least because it is clear Ms Withers stumbled across the idea of a workshop approach in February 2019 as described above. The Claimant had no evidence Ms Withers knew of the Tri-Service review in December 2018 but says the workshop approach was so far advanced when he became aware of it several months later, that she must have known about it at the time.

146. The Claimant says that this conduct was related to race and/or religion because if he had taken leave and was European, he does not think giving him this work would have featured in Ms Withers' thinking. In other words, he says that it was because he was a Muslim that he had to do the work.

Allegation 14 – Mrs Short and Ms Withers meddled with the Claimant's consultation process in his review of the Offsite Policy and Training Package

147. This is an allegation of harassment, said in the List to date from February to October 2019. It concerns the consultation which Ms Withers asked the Claimant to undertake in March 2019 as set out above, regarding the review of the Offsite policy and training. The Claimant's case (DA59) is that Mrs Short and Ms Withers manipulated the consultation process to promote a style of delivery they preferred (the workshop approach) over what he had proposed, though both he and Mrs Short had nominated CDOs from their regions to be part of the consultation group.

148. The Claimant accepts he had discretion over how he presented his review. His complaint focusses on how the training was to be done, and whilst he accepts Ms Withers was entitled to say she preferred a workshop approach, he says all options should have been looked at before he produced his review of the training package. His case was that those CDOs who said they preferred a workshop approach were briefed to do so by Mrs Short.

149. Ms Withers' account was as above. At JW29 she reiterates that there was a difference of opinion in the team as to how to deliver the training. Mrs Short was one of those who gave feedback. The Claimant had proposed that the meeting to discuss the training (which as stated above was eventually cancelled) take place at Cosford. Of ten people who were to attend, six do not live or work nearby. In her email to the Claimant of 7 March 2019 (page 1370) Mrs Short supported a suggestion made by one of the CDOs that it be held by a "dial-in". She added that if the Claimant asked for written comments, she would be happy to prompt and collate responses.

150. As noted under allegation 1 above, after the written consultation, the review was discussed at the CDO conference in October 2019 at RAF Wyton. Ms Hartshorne (JH14) says that the conference was dominated by Ms Withers and Mrs Short, such that the Claimant's Offsite review had to be considered after hours. She did not realise that he was offered the opportunity to do a CNA workshop at that conference but suggested Mrs Short should do it instead. Ms Hartshorne also says that Mrs Short directly challenged her as to why she attended the after-hours meeting. Mrs Short says she asked a question about Ms Hartshorne's attendance because she thought only those who had delivered the updated package would be attending and Ms Hartshorne had not done so; she also says she asked this question before the conference and not on the day. We preferred Mrs Short's recollection to that of Ms Hartshorne in this respect, given that, as we will set out below, Ms Hartshorne clearly has some difficulties with Ms Withers and Mrs Short in regard to their respective promotions to CCDA and RCDA and cannot be said therefore to be an entirely impartial witness as far as those two individuals are concerned, though we do not doubt that she recounted to us events as she sought to recall them. She told us she felt lots of initiatives were more focused on the Northern region, which she believes was to make the Claimant fail.

151. Ms Withers agrees that after-hours was not an ideal slot for the Claimant's presentation at Wyton, but says it was a late addition to the agenda, which we accepted as unchallenged evidence. As indicated above, the Claimant produced a ten-page consultation note to discuss with CDOs (pages 1413ff). There is a dispute, which we did not need to resolve, about whether Ms Withers advised him not to use it. In any event, on 11 October 2019 (page 1919) he emailed several CDOs with his presentation, highlighting actions required of particular individuals, and setting a two-week deadline.

152. On 17 October 2019 (page 1918), Mrs Short emailed the Claimant expressing concern about tasks being allocated to people who were not present at the after-hours meeting at Wyton, and about the Claimant's comments in the document on some of the feedback he had received in the consultation. She described to us how Rebecca Pickwell was offended to be directed by the Claimant to carry out a task when, as described above, she no longer wanted to be involved in Offsite training delivery and had not been present at the meeting at Wyton. Mrs Short denies seeking negative feedback, or directing the content of the feedback, from her CDOs, though some CDOs had told her they could not respond by the deadline the Claimant had set. We accepted her evidence, as although she had said she was willing to collate feedback, there was nothing before us to suggest that she had directed her CDOs what to say.

153. The Claimant said that the emails at pages 1437 and 1439 showed Mrs Short tasking Southern CDOs without his input. Ms Withers told us she sometimes asked the RCDAs to seek feedback from all CDOs, and so it was legitimate to do so when the three of them had discussed it. That is what these examples seem to have been. The Claimant by contrast had tasked selected CDOs in relation to a project which Ms Pickwell at least did not want to be part of. Mrs Short gave a similar account, saying she emailed all CDOs when she wanted to see who wished to be involved in a particular working group or if it was agreed that she would do so. She accepts she did not always forewarn colleagues that she would be asking them to do something but points out that the email at page 1437 was copied to the Claimant who had been present when it had been agreed she would ascertain the team's views on the issue. She did not object to the Claimant tasking colleagues, but to how he had done so, on what she thought was already a contentious piece of work.

154. Mr Bettridge found (DA59 to DA72) that the Claimant preferred a PowerPoint slide deck approach to the training, whilst Ms Withers and Mrs Short thought a workshop approach was better. He accepted it would have been excluding the Claimant if ideas for improvement were not shared with him, but Ms Withers introduced the idea of a workshop in her email to the Claimant of 25 February 2019 (page 1361). Mr Bettridge concluded that the Claimant "set himself against the idea". He went on to find that the consultation meeting did not take place because CDOs were working on their CNAs. Mrs Short was critical but professional in reviewing the Claimant's work, suggesting changes, and saying the number of slides should be reduced. Ms Pickwell referred to "death by PowerPoint", which Mr Bettridge accepted was likely to cause irritation for the Claimant and she was also personally critical of him. In further exchanges, Ms Pickwell apologised for one of her comments. Mr Bettridge did not think that Mrs Short was manipulative or evasive as the Claimant alleged. The Claimant had replied to her comments in a way which Mr Bettridge said introduced competition between their respective regions and criticised her directly, sending a similar reply to Ms Pickwell who was his junior.

155. Mr Bettridge concluded that the most significant obstacle to the consultation process was the Claimant's ways of working and his adopting an occasionally unreasonable tone. The Claimant says – in the only specific detail he was able to give us when explaining this allegation – that Ms Withers raised with him that some CDOs were unhappy about being given tasks and was thereby saying what he did was wrong.

Allegation 45 – Ms Withers and Mrs Short excluded the Claimant as Project Lead from the Tri-Service Review of the Off-Site Policy and Training Package

156. This is an allegation of harassment, dated in the List from March 2019 to 22 October 2019. The Claimant says he would have expected to have been told of the Tri-Service review given he was Project Lead for reviewing the policy and training. His counterpart in the Army was involved and he believes his counterpart in the Navy was aware of it too.

157. Ms Withers' evidence in relation to this allegation (JW12 to JW16) is as set out above in relation to allegation 1, to which this allegation is obviously connected. Mrs Short (LS24) was not involved in the Tri-Service review and was not aware of it.

158. Mr Bettridge found (DA162 to DA165) that Ms Withers attended a meeting with Rebecca Wakefield, then Head of AWS, on 18 December 2019, but there was no requirement for the Claimant, or his equivalents in the other Services, to attend. It was agreed at that meeting that there would be an overarching Tri-Service policy for Offsite activity, but this did not remove the need for the RAF to have its own Standard Operating Instruction and training package. Whilst he said it would have been better practice for Ms Withers to inform both Mrs Short and the Claimant that she was pursuing a Tri-Service option, Mr Bettridge found no evidence that she shared this information with Mrs Short before sharing it with the Claimant on 6 February 2020.

159. The Claimant did not explain why the alleged conduct under either of allegations 44 and 45 was related to race and/or religion.

Protected acts

160. We have set out the accepted and alleged protected acts in the "Background and Overview" section above. We note in addition here that the Claimant says he had raised his concerns about how he was being treated before PA1. He refers to pages 2726 to 2727, an email to Ms Withers on 8 July 2019 in which he told her he was tired of "batting", fending off people whose primary objective was self-promotion, specifically referencing PAB delivery (and the sifting process which had taken place whilst he was on leave and which Mrs Hartshorne could not participate in as cover for him, because she could not access the meeting remotely – see allegation 51 below) and the Offsite policy and training review. In relation to the Offsite policy and training review, the email recorded the Claimant as having apologised to Mrs Short for his email comments on her feedback. He also expressed regret for any offence caused by his emails to Ms Pickwell, though it defied logic, he said, that she should be upset at being included in an email from him to Mrs Short. He did not accept he had done anything inappropriate or beyond his remit.

161. Mr Shakoor also referred to pages 1423 to 1429 as a "preamble" to PA1. As already set out, on 11 October 2019 the Claimant sent his presentation from the Wyton conference to a small number of CDOs, setting out actions and seeking a response in 14 days. This was followed by Mrs Short's response of 17 October 2019 (again see above). The Claimant sent a holding response on 18 October 2019 (page 1423), on the same day that Ms Withers asked for a meeting to discuss the issues. He replied (page 1426) saying that he did not want to meet and that "I am concerned not to further expose myself to being misconstrued or misquoted whether unintentionally or otherwise". Ms Withers suggested this be added to their next one-to-one meeting.

Allegation 51 – Ms Withers set up the Claimant to try to make him fail by placing an unreasonable condition upon his annual leave entitlement that he nominate CDO cover to assist her and Mrs Short in producing the consolidated report on the Station CNAs and Mrs Short was coercive in Ms Withers placing the condition (the Claimant relies on PA1)

162. This is an allegation of victimisation, dated in the List to 15 January 2020. According to Ms Withers (JW65), as the Claimant's line manager she would usually have expected him to arrange cover when leave was taken, as was made clear in

her email to the Claimant of 15 January 2020 (page 409). The Claimant was responsible for producing the consolidated report on Station CNAs and so Ms Withers deems it reasonable to have asked him to arrange cover to progress that work in his absence.

163. Mrs Hartshorne (JH13) had previously been asked to cover the Claimant's leave in Spring 2019 (she could not say whether the Claimant offered this opportunity to all Southern CDOs), but whilst providing that cover, she felt excluded by Ms Withers and Mrs Short from work being done on PABs. She could not attend a meeting about the allocation of PAB places and funding remotely (she had believed it was to be in person), and so it went ahead without her. She agreed the task was urgent and it seems clear from the emails at pages 1139 and 1140 that it could not be deferred to the following week because Mrs Hartshorne was herself on leave. Mrs Hartshorne felt devalued and not listened to. She told us, and we accept, that the Claimant apologised to her about this experience and said to her that he felt going on leave would be detrimental to his role.

164. Referencing the Claimant's leave in Spring 2019, Mr Bettridge noted (DA16 to DA18) that the Claimant was unhappy with the outcome of the PAB places allocation exercise on his return from leave. As to his leave in January 2020, the Claimant told Mr Bettridge he felt the CNA work could have awaited his return, and that he did not feel able to take the leave when asked to nominate cover. Mr Bettridge concluded that other options for holding the meeting in 2019 involving Mrs Hartshorne should have been explored, though those involved were motivated by an intent to get the job done quickly. In any event, he found that this earlier experience was not a sufficient reason to refuse to nominate a deputy the following year which, whilst a change from Mr Pinel's approach, Mr Bettridge thought was a perfectly reasonable request.

165. The Claimant did not give any evidence as to why he says what is alleged was because of a protected act or a belief about the same.

Allegation 52 – Ms Withers denied recognition of the Claimant's achievements by the withholding of development objectives and exposure to corporate opportunities in support of him securing a place on "Positive Action Pathway", thus negatively impacting his access to opportunities for promotion and/or further training (the Claimant relies on PA1 to PA5)

166. This is an allegation of victimisation, dated in the List from 23 October 2019 to May 2022 when the List was prepared. The PAP is an initiative to help people from minority groups move into higher grades. Both the Claimant and Mrs Short were allocated places. The Claimant questions who had line management responsibility for him and thus who was required to support him in relation to the PAP, after his email to Ms Withers of 23 October 2019 in which he made clear that he did not wish to meet her to engage in his review.

167. Ms Withers says (JW21) that she only provided details of the PAP to the Claimant via email on 30 May 2019, one day before the deadline to apply for it (page 277), because as she said in the email, she had not realised the revised deadline had been set. The Claimant applied and was able to secure a place. More broadly, Ms Withers says there was no requirement for her to do anything proactively for either Mrs Short or the Claimant in this regard and neither of them requested any support. She told us that the Claimant's mid-year review would

have been an ideal time to discuss any support he required, but he did not want to meet her, and she did not want to chase him about it because she thought it would lead to further complaints. They had discussed on 23 or 24 September 2019 the possibility of the Claimant leading a CDO event. The October 2019 event was already arranged, but Ms Withers was supportive of looking for such opportunities thereafter. She says (JW21) that this was shortly before the 23 October 2019 email, "so no further discussions took place". We accept Ms Withers' account as set out in this paragraph as unchallenged evidence.

168. The Claimant suggests that Mrs Short was involved in organising other events, which was something he wished to do himself. Ms Withers told us that because the Claimant refused to meet them, she and Mrs Short had to organise things between them, which seems clear. One event in Leicester in April 2020 was also a means of CDOs visiting one of the main supporting charities. Mrs Short confirmed that her only engagement with Ms Withers regarding the PAP was when she asked for Ms Withers' agreement to her applying to join it.

169. Again, the Claimant did not give any evidence as to why he says what is alleged was because of a protected act or a belief about the same.

Allegation 54 – Mrs Short sabotaged the Claimant's project by coercing the field force (CDOs) in the Northern region to abort a planned Off-Site training event at RAF Linton to be delivered by CDO Valley (Southern region), which the Claimant had endorsed as Project Lead (he relies on PA1)

170. This is an allegation of victimisation, dated in the List from 23 October to November 2019. CDO Linton, based in the Northern region, needed to undertake some Offsite training, as identified by Mrs Short, who asked him to speak with the Claimant to see if there was any such training planned. He had approached CDO Valley about it, based in the Southern region; others at RAF Linton were also to join the training; it would take CDO Valley away from his Station for two days. On 27 September 2019, CDO Valley raised it with the Claimant (as his RCDA, see page 1462) and the Claimant said he was content with the arrangement if CDO Valley had capacity.

171. Mrs Short's evidence (LS30) is that when the arrangement was raised at her next supervision meeting with CDO Linton, she questioned its efficiency. On 30 September 2019 (page 1459) she emailed CDO Linton, copying in the Claimant, suggesting to CDO Linton that he liaise with more local CDOs to see if they could deliver the training, in the interests of cost and time saving. She plainly did not know that others at RAF Linton were also to be trained, given that she asked about that in the email. The Claimant questions whether the training actually took place; Mrs Short says CDO Valley said he could deliver it remotely.

172. Mr Bettridge found (DA78 to DA81) that Mrs Short's motivation was to reduce taxpayer costs, which was appropriate. When asked how he dates this allegation after Mrs Short's email of 30 September, the Claimant told us there was a pattern of undermining him. In re-examination, when asked what he had done that might have led to the cancellation of the training, he referred to several of his protected acts, beginning with PA1.

Allegation 56 – Ms Withers and Mrs Short sabotaged the Claimant's project by postponing or cancelling a planned Off-Site training delivery at RAF Cosford with no plausible rationale (the Claimant relies on PA1 to PA5)

173. This is an allegation of victimisation, dated in the List from 6 February to July 2020. It relates to an Offsite training course the Claimant had arranged for 25 and 26 February 2020. It had previously been cancelled by Mrs Hartshorne in November 2019 for lack of attendees (page 1492), but in February 2020 it was over-subscribed. On 6 February 2020 Ms Withers emailed the Claimant, copying in Mr Opie (page 1510) saying that it would have been helpful to discuss dates before disseminating them; that there was a general move to reduce courses to one day for efficiency reasons; and he was therefore asked to postpone the course so that it could be rescheduled when the new training package was confirmed.

174. The Claimant emailed relevant colleagues on 10 February 2020 (page 1512) communicating the cancellation and saying that the timing was "incredulous". Mr Opie had emailed the Claimant on 7 February 2020 (page 1511) explaining the general initiative to reduce courses (known as Programme SOCRATES) and asking that he please cancel the Cosford course until a one-day version could be delivered. The Claimant points out this was more than a month after the December 2019 Tri-Service review meeting took place and that this was the first he had heard of Programme SOCRATES. On 7 February 2020, he emailed Ms Withers and Mr Opie (page 1920) complaining about the cancellation and saying it was another instance of Ms Withers undermining him.

175. Mrs Short says (LS32) that she was not responsible for cancelling this training. When the Claimant had emailed to say the course would be held in February, she had emailed him on 29 January 2020 for clarification as she understood training would be delivered on the basis of two sessions in each region per year (page 1507), saying it "would have been beneficial to have been involved" in discussions about when the Claimant's AOR were hosting training sessions so that she could prepare additional training in her own AOR. Mrs Short told us she wrote the email because she was not aware the Claimant had arranged the course, and neither were all CDOs. We accept that evidence, given the email from one of the CDOs at page 1508.

176. Ms Withers did not reply to the exchange between Mrs Short and the Claimant on 29 January as she was busy travelling to Stations to resolve nursery issues and was focused on that. At JW70 she says that she asked that the session be postponed as she became aware of it too late and it was due to be held over two days, not one, something which, as Ms Withers says, had been discussed before. Given the state of her relationship with the Claimant at this point, she spoke with Mr Opie who agreed that the course should be cancelled.

177. The Claimant says it is not plausible that the course could be delivered in one day if it was to be health and safety compliant, his point being that the explanation the Respondent gave for the cancellation was manufactured. Ms Withers told us that risk assessment training has been delivered using another course online (provided by the National Youth Agency), whilst Mr Opie told us that back in 2020, local training providers or the Station Health and Safety Officers could provide it. Both dispute that the Respondent was putting people at risk because of the lack of such training, as CDOs retain the responsibility to verify who is competent to be involved in offsite activities.

178. The Claimant also told us there was another reason Ms Withers did not give him a plausible explanation for cancellation, namely that the Programme SOCRATES mandate to reduce courses did not apply to civilian staff, though he accepts that a one-day course was ideal. Ms Withers told us her understanding was it should apply to the whole Force. Mrs Hartshorne agrees in her statement that Ms Withers had mentioned to her that the Respondent was looking at reducing the course to one day and removing a test at the end of it, also putting it online to save cost and said that she later learned of Programme SOCRATES from Mr Opie. She nevertheless felt that the cancellation of the training, which she was to help deliver, was detrimental to the Service as some SYW training was out of date. In her statement she says that the reasons given to her for the cancellation were not plausible, but she could not explain to us why she thinks that was the case.

179. Mr Opie told us that SOCRATES principles apply to all RAF training, not just to military staff training as asserted by the Claimant. The Programme itself was about military training but there was an Airforce Board direction that what it espoused should apply to all. He sent to the Claimant on 7 February 2020 an Airforce Board paper from March 2019 setting this out (see page 1511). He gave two examples of other civilian courses also reduced in length – the first a mental fitness course reduced from six hours to three, and the second a multi-day welfare support training course for HR professionals also cut in half and placed online. Programme SOCRATES had also been mentioned in the Respondent's community magazine. The rationale he had for cancelling the Cosford course was that it could be done in one day and his email was a request to cancel it until it could be done on that basis. Mr Bettridge stated (DA85 to DA86) that the whole of HQ Air was under a general remit to reduce face-to-face training. We will come back to the parties' conflict of evidence about Programme SOCRATES in our Analysis.

180. The Claimant could not explain why Mrs Short is said to have cancelled the course and accepted this complaint was not properly against her. As to its connection to his protected acts, he told us it would not have happened if the course had been scheduled to take place in the Northern region, adding that this was targeted at Mrs Hartshorne and if management did not see her in a good light either, she was another reason to cancel it. The Claimant was not sure whether Ms Hartshorne had done a protected act. We saw no evidence that she had or to suggest the Respondent believed that she would.

181. Ms Hartshorne told us that shortly after the cancellation, Mrs Short and a colleague delivered face-to-face training in the Northern region. After checking her Outlook account, Ms Withers confirmed to us that there had been one face-to-face training day in October 2021 at a SYW conference and one Offsite training day in January 2021 online; otherwise, since the start of the Covid-19 pandemic, all training has been delivered locally. Mrs Short confirmed she had provided a one-day pilot course in February 2019, and then in late 2019 a bespoke course for SYWs, in both cases adopting the work the Claimant had done, with some changes.

182. The Claimant seeks to highlight inconsistency in the Respondent's approach, suggesting that on the one hand it says there was a drive to reduce face-to-face training and expenditure whilst at page 1534 and other places there are documents suggesting there were arrangements for face-to-face gatherings and the spending

of quite considerable sums to facilitate them. Mrs Short says she became aware of a particular central fund for a CDO conference to be held at a smart venue; she also highlights the need for CDOs to complete several days of CPD per year. Mr Opie says he would not have sanctioned this event anyway and could only recall all CDOs meeting together in person twice since 2020. These were visits to RAF charities to see how they deliver their services and spend their funds. He felt that some Stations were not running all the potentially available projects and so meeting the funders was thought to be a great benefit to Service families. These visits were combined with CDO conferences.

Allegation 59 – Ms Withers undermined the Claimant by referring a complaint received from HIVE concerning CDO Valley to the Station OC BSW at RAF Valley within the Claimant's AOR, without notifying him as professional supervisor to the CDO or seeking his input (the Claimant relies on PA1 to PA4)

183. This is an allegation of victimisation, dated in the List from 23 October 2019 to February 2020. The complaint is that Ms Withers passed on a complaint about the CDO at Valley to Ms Parr (Valley OC and therefore the CDO's line manager) without referring it to the Claimant, who was CDO Valley's RCDA.
184. Ms Withers says at JW73 that the Head of HIVE (an information network available to the whole Service community) emailed her on 30 October 2019 to report a concern regarding CDO Valley. She says that given the Claimant had said in his email on 23 October 2019 that he did not want her to contact him, she dealt with the matter directly with the Station, and that the Station wanted to settle the issue at the lowest possible level. In oral evidence Ms Withers gave some more detail, saying that she was on leave when the complaint came to her and so the Head of HIVE contacted Ms Parr directly, who called Ms Withers, and left a message. They spoke after Ms Withers returned from leave and she told Ms Parr that she did not feel CDO Valley had been unprofessional. She told us she did not inform the Claimant as she thought the matter resolved. As mentioned in the "Background and Overview" section above, the Claimant subsequently contacted Ms Parr about the matter directly; she then complained about his email to Ms Withers on 30 October 2019 (page 354) after emailing the Claimant (page 352).

185. Mr Bettridge decided that this complaint was unfounded (DA113 to DA114) as Ms Withers had not forwarded the complaint to Ms Parr. As he says, the circumstances of the complaint were clearly put to the Claimant by Ms Parr in her email at page 352, in which she said, "I received a confidential email complaint from someone at the Conf [sic] ...". He added that in any case, CDOs work directly for their Station OC.

186. The Claimant says that this incident shows he was left out, because he was not allowed to support his CDO. He could not say how what he alleges was linked to any protected act. In re-examination, he said that before the email exchange with Ms Parr, he was going to submit Claim 1. He suggested this might have induced her email to Ms Withers.

Allegation 61 – Mrs Short undermined the Claimant by making a visit and arrangements to visit RAF Cosford where the Claimant is based without informing him, but instead informing Ms Withers who also undermined him by not informing him (he relies on PA1)

187. This is an allegation of victimisation, dated in the List to 4 December 2019. It concerns Mrs Short's email to Mrs Hartshorne and Ms Withers on 4 December 2019 at page 1567, in which she mentioned that she would be making a social visit to Cosford (where the Claimant was based and where Mrs Hartshorne was CDO) and wanted to let Mrs Hartshorne know out of courtesy so that she did not find out later and question why.

188. Ms Withers says at JW42 that it was normal practice and courtesy that if visiting a particular region, she would inform the relevant RCDA, but says at JW75 that there was no requirement to inform the Claimant of Mrs Short's visit, though she told us that with hindsight it would have been right to include the Claimant in the email. She did not herself inform him of the visit because it was a very busy time of year, she did not consciously notice who the recipients were and so it did not occur to her to pass it on to him. Mrs Short also says (LS15 to LS16) that there is no policy which requires her to notify the Claimant. She told us that she copied in Ms Withers as a matter of course when emailing Mrs Hartshorne because she is never sure how Mrs Hartshorne will respond.

189. The Claimant accepts that the visit in question was of a social nature only and that Mrs Short had no obligation to inform him, but questions why Mrs Hartshorne and Ms Withers were informed and not him. As to why it was related to a protected act, he told us maybe he was singled out because he is Asian, and perhaps Mrs Short thought this meant he was not interested in a Christmas social visit.

Allegation 62 – Mrs Short undermined the Claimant by sending an email to the field force inferring delay on the part of the Claimant and thus creating unwarranted time pressure for him in which to produce the minutes of the Wyton CDO Conference; Ms Withers then further undermined the Claimant by withholding distribution to the field force of the minutes which he produced (he relies on PA1 to PA5)

190. This is an allegation of victimisation, dated in the List from December 2019 to July 2020. As we have noted several times, there was a CDO conference on 8 and 9 October 2019. The Claimant was tasked to produce the minutes. He expected it would take a couple of months to do so, which was the time Mrs Short had taken to produce minutes for the previous year's conference.

191. The email from Mrs Short which the Claimant refers to is that of 25 November 2019, sent to all CDOs, which she began by saying, "Ahead of receiving the notes from the CDO Training Event …", going on to attach and briefly mention several documents (though not the minutes) relevant to the conference that some CDOs had asked her about. At least one such document related to completion of the CNAs. It is the comment in quotes above that the Claimant complains about, as he says it was very sarcastic and suggested that he had delayed in producing the minutes. He told us he had no comment to make on why he says this was because of a protected act. He then said it was further evidence of him having to "bat", by which he means defend himself in relation to Mrs Short's involvement in things. In re-examination he said that perhaps this (and Allegation 61) were because he had made a Bullying and Harassment complaint, and this was one way of getting back at him.

192. Mrs Short did not know the time the Claimant had been given to produce the minutes. As she says at LS36, she had delivered a workshop at the Conference

on CNAs. She sent the email to help CDOs when developing their CNAs, many of whom started drafting them in December. She says her email did not suggest delay and she was not responsible for setting any time frame for the Claimant.

193. The allegation against Ms Withers concerns the circulation of the minutes. Her evidence at JW76 is that she had asked the Claimant to produce the minutes prior to the Christmas break and the Claimant sent her a draft late on Christmas Eve. They required significant amendment and editing prior to distribution (see pages 397 to 404, though we record that we did not think it necessary to read the minutes themselves to make our decision). She acknowledged receipt on 10 January 2020 and said to the Claimant that she would review them. Ms Withers had also amended Mrs Short's notes of the previous year's conference, though to a lesser extent. She could not tell us when the minutes were sent out to colleagues, though it is agreed that Mrs Hartshorne chased Ms Withers for them on 20 July 2020, just before the next CDOs meeting, and Ms Withers sent them to all CDOs on 21 July 2020. Although no definitive finding is necessary, it seems likely to us that this was the first and only time the minutes were circulated.

194. In explaining in her oral evidence why she had delayed in circulating the minutes, Ms Withers referred to having been contacted by ACAS (she and Mrs Short were originally respondents to Claim 1) and said that whilst she was aware of the Claimant's grievance she had not been formally notified of its contents or directed as to how she should be interacting with the Claimant. She expressed to us having had significant concern about how the Claimant's behaviour, by which she meant his acting independently of her, without discussion, was impacting on the team's ability to deliver an effective service and she was also concerned about its impact on Mrs Short's wellbeing. She raised both concerns, citing three examples of the Claimant not carrying out a reasonable management request professionally, in her email of 11 March 2020 to Alex Jones (page 461). Ms Withers told us it was a conscious decision not to send the minutes with a view to the fact that the separation of the parties to the Claimant's grievance might be imminent. She also told us she was nervous, having amended the minutes, that distributing them might lead to a further complaint, in other words she thought her doing so would create an added element of unhappiness for the Claimant. She summarised her concern to be that she was being asked to manage the Claimant without sight of what he was doing until he had done it.

195. It was stated to us by Mrs Shakoor that all the Claimant's minutes had been circulated to colleagues late, since November 2018. The Claimant does not accept that much needed changing or even checking in his draft. He said that Ms Withers delayed circulation because she did not think his English was good.

196. For Mr Bettridge's part (DA119 to DA122) he concluded that he would expect minutes to be produced within a week, after a couple of hours of focused work. The two and a half months given by Ms Withers was not in his view unwarranted time pressure. He described the minutes produced by the Claimant as poorly expressed in places, and longer than needed, adding that Ms Withers should have provided the Claimant with a one-week deadline.

Allegation 72 – Mrs Short and Ms Withers excluded the Claimant by coercing AfC in its selection process for the furlough of its RAFBF funded Station Youth Workers, so as to secure preference in the developing and launching of a digital youth platform for those Stations outside of the Claimant's AOR

and in closest proximity to their respective physical bases (the Claimant relies on PA1 to PA5)

197. This is an allegation of victimisation, dated in the List from April 2020 to the date on which it was prepared, namely May 2022. As indicated in the "Background and Overview" section above, the Claimant's concern was that not all SYWs were consulted about being selected to remain in work for the digital initiative, as opposed to being furloughed, but his complaint is that Ms Withers and/or Mrs Short nominated them, saying it is implausible that all of those retained were in Mrs Short's region; in his view she was trying to get profile for her area. He felt undermined, having had no input himself and says that several CDOs made representations to him about it, which we accept they did.

198. On 16 June 2020, Mark Davis of AfC emailed the Claimant (page 1958) and said:
198.1. Furloughing was not solely AfC's decision but was done after very senior level discussions with the RAFBF. Initially all SYWs were to be furloughed.

198.2. He had then proposed retaining a small number of SYWs, identified by him and his team.

198.3. They did not consider which region the retained SYWs were based in.

198.4. They did not consult SYWs because of the short timescales involved in making the decision and because the discussions with the RAFBF were confidential.

198.5. The selection decisions were based on who could hit the ground running as quickly as possible. Three of the SYWs were already delivering digital provision as a team, which is why three stations in one county were chosen.

199. Consistently with what Mr Davis said, whilst she was engaged with AfC on the question of how they might continue to provide support to children and young people during the pandemic lockdown, Ms Withers says (JW86) that she had no authority over AfC's decision as to which SYWs it furloughed and no input into that decision. Mrs Short says (LS43) that she had absolutely no influence over AfC's decision about which SYWs they chose to fund. She was also on annual leave at the time of that decision. She attended the Operations Board meeting on 15 June 2020 and told us she arguably agreed with the Claimant's concern that the selections had not been consulted about; she also felt that expertise in other regions could have been garnered by the AfC. Her concern about the Claimant's conduct at that meeting was thus not the substantive points he was making but his unwillingness to listen to others' views.

200. Ms Hartshorne expressed dissatisfaction to Mr Opie about how the decision had been reached and communicated, stating to us that the fact all five retained SYWs were in the Northern region was in her view aimed directly at the Claimant in an attempt to make him fail because it meant that neither the Claimant nor the Southern region would play any part in building and delivering the new digital platform for youth service delivery.

201. As for Mr Bettridge, he found (DA166 to DA168) that the Claimant had provided no evidence of coercion. Whilst the RAFBF did not consider the

discussion on 15 June 2020 productive and Ms Withers had not provided an authoritative view on behalf of the RAF, he was entirely satisfied that there was no input provided by the RAF on the furlough decisions.

202. The Claimant does not believe Mr Davis' explanation to have been wholly true, though he did not say precisely in what respects, believing he received direction from someone in the RAF, which could only be Ms Withers or Mrs Short, as he could not have made the retention decisions without their input. The Claimant could not tell us why he says the conduct he complains about was connected to any of his protected acts, except to say that Ms Withers and Mrs Short were aware of the protected acts and wanted to "get at" him and "do a disservice" to his region. In re-examination he referred to contacting ACAS and his first ET1 and, after much prompting, his email to Mr Opie regarding a complaint to the RAFBF, as the relevant connections.

Allegation 78 – Ms Withers and Mrs Short subjected the Claimant to abuse/misuse of power by collaborating and exerting improper influence in seeking to effect the transfer of the Claimant to Army Welfare Services (the Claimant relies on PA1 to PA5).

203. This is an allegation of victimisation, dated in the List from 23 October 2019 to June 2020. It relates to discussions about the Claimant being moved to another role, which the Respondent says first arose in February/March 2020. The Claimant says there would have been discussions before that, hence the date of this allegation, but he produced no evidence of that at all. His complaint is both about the notion of a transfer generally and the suggestion that he should transfer to AWS, where he says the manager was a known bully, so that the transfer would have made things worse.

204. As indicated above, the decision in question was relayed to the Claimant on 18 March 2020 (see pages 2013 and 2014) by an email from Mr Bettridge in response to the Claimant's request for immediate action to remove Ms Withers and Mrs Short from his line of command. Mr Bettridge said, "I have also concluded that you do not have the level of trust necessary for there to be a productive working relationship between you and your current line management whilst the current procedures take place". He therefore identified a temporary transfer to AWS saying it would give the Claimant breathing space and reduce his stress levels, with his current role remaining open for him depending on the outcome of the then current procedures. We noted that the email did not mandate the move. The Claimant says (MA43) that Mr Bettridge knew that 18 March 2020 was the deadline for his submission of Claim 1, which appears to have been an invitation to us to draw a connection between that and the sending of the email.

205. In his interview with Mr McDermott at page 715, Mr Opie said that it was he who made the decision that the Claimant should be transferred, as it had become obvious to him by February/March 2020 that the Claimant would not work productively with Mrs Short or Ms Withers. This led him to raise the matter with Mr Bettridge and take advice from DBS, which was in summary that Ms Withers or the Claimant would have to be moved because Mrs Short was shortly to depart on maternity leave. Mr Opie had no knowledge of the Claimant's concerns about the AWS manager's historic conduct.

206. The Claimant accepts Mr Opie made the decision but says it was based on input from Ms Withers and Mrs Short. As we have noted, in his email of 23 October 2019 the Claimant requested that any management requests from Ms Withers be put in writing and said that he did not want to meet with her. By March 2020 she felt the position untenable, as set out in her email to Alex Jones of 11 March 2020 at page 461 referred to above. In her oral evidence she cited to us, as examples of what she meant by untenable, the Claimant taking annual leave without requesting it, sending an email to a wider group of colleagues than he should have regarding an event called Airfest, and arranging the Cosford training event in February 2020 without her knowledge. She knew under the Respondent's Bullying and Harassment Policy that parties to a complaint could be separated, so she raised it with Mr Opie as her line manager. It was she who suggested AWS and DYCP as possible options for the Claimant, on the basis that there are community and welfare professionals working within both. She was aware of complaints against the AWS manager, but her understanding was that she had been cleared and was back in post. Ms Withers' focus was on the work the Claimant could do and she did not consider how he might feel about working for this manager; in any event, the decision as to who to transfer was still to be made, and not by her.

207. Mrs Short states (LS47) that she played no part in this decision. Mr Bettridge when dealing with this allegation (DA183 to DA184) said that the decision to direct the transfer was his, as the Respondent's Bullying and Harassment Policy directs that a Deciding Officer consider it. He decided after his initial interviews that it was likely to be in the parties' best interests that they be separated. He confirmed that Ms Withers recommended the AWS post. Mr Bettridge himself was not aware that the Claimant had encountered any difficulties with the manager in question. When the Claimant mentioned it, Mr Bettridge halted the process.

Protected disclosures

208. All the Claimant's alleged protected disclosures in these Claims were concerned with the issue of the retention of the five SYWs who were not furloughed in June 2020. He describes his concern in MA(2)10, as being about "the strong inference of improper influence by employees of the MOD in relation to the integrity of employment and equality processes of a contractor funded by charitable money to perform public functions on behalf of the MOD". At MA(2)11, he says that AfC, the RAFBF, Ms Withers and Mrs Short had failed to comply with the Public Sector Equality Duty ("PSED") under section 149 of the Act in relation to posts funded by charitable money benefitting a ministerial agency, going on to say that the RAFBF needed to be cognisant of its equality duties as part of its responsibility to ensure charitable funds were utilised lawfully. He also says at MA(2)18 that the information he disclosed tended to show a failure to comply with equality and employment law and that information tending to show that failure had been or was likely to be concealed by the Respondent, AfC and the RAFBF, given what he saw as the implausibility of the explanation for the decisions.

209. We will of course return to the Claimant's explanations as to why he says he made protected disclosures when we come to our Analysis. Mr Opie was however very clear that the Respondent is not a beneficiary of the funds the RAFBF raises; the beneficiaries are Service personnel. He also said that whilst the Respondent would write into contracts a requirement to comply with the Act (as part of its PSED), the relevant contract was between the RAFBF and AfC and did not involve the Respondent. His evidence was also that AfC was carrying out charitable, not

public functions. We accept Mr Opie's evidence on these points as both unchallenged and the logical explanation of the arrangement which both parties confirmed existed and why.

210. PD1, as set out above, was the Claimant's email at page 594, sent to the RAFBF on 12 June 2020, ahead of the Operations Board meeting. As already noted, there were principally two elements to it, namely first that Southern AOR Stations had been excluded from consultation about which SYWs to retain and secondly the process for selecting them. The Respondent says the latter element was not a disclosure of information. The Claimant accepts that the Respondent's management would have had no reason to be aggrieved about anything in this email.

211. As also set out above, PD2 was what the Claimant said orally at the meeting on 15 June 2020. We have already summarised it. Here we note in addition that pages 506D to 506G, produced by the Respondent during this Hearing, are the RODs of the meeting, prepared by the RAFBF. At 506F they record the Claimant as questioning the furloughing of staff "particularly within his AOR" and expressing "concern about how he felt the furloughing of staff had been carried out, in relation to equal opportunities". The Claimant agrees his primary concern was his region being disadvantaged, SYWs in his region being denied what was afforded to those in the North. He says that the legal obligation he believed AfC was breaching was the requirement to involve the whole field force and that he believed this was in the public interest because public authorities and those they work alongside should conduct themselves free from taint and corruption and he suspected both, because of the outcome of the selection process.

212. As again set out above, PD3 is at page 514, the Claimant's email to Mr Bettridge of 15 June 2020 after the Airplay Operations Board meeting. Essentially this disclosure was about the conduct of others attending the meeting, specifically a representative of AfC, and the Claimant's belief that this behaviour was designed to cover up the impropriety of the selection of SYWs, about which he believes Ms Withers and Mrs Short had colluded prior to the meeting, that is to influence the selections. The Claimant insists his concern was not just about his region but about his CDOs, about the whole workforce having an "equal bite of the cherry". He says he believed this was in the public interest because no consideration was given to equality and diversity issues.

213. The Claimant then sent an email to Mark Davis on 15 June 2020 (see pages 563 to 564), the reply to which we have summarised above, seeking to know how the SYW selections were made. This is not an alleged protected disclosure. The next day, as briefly mentioned in the "Background and Overview" section above, Mr Opie sent this email to Anise Tomkinson (see pages 562 to 563) saying that the Claimant's email was highly inappropriate in tone and mirrored the communications with the YHA, asking that the opportunity for him to work in DCYP be "considered as promptly as possible". The email indicates Mr Opie had taken soundings from DCYP in late May or early June – he told us he/DBS did not give DCYP details of the circumstances that led to the soundings, but just asked about meaningful work.

214. PD4 is at page 593 and is also dealt with in the "Background and Overview" section above. It is the email to Mr Opie on 16 June 2020. Mr Bettridge did not see this email until preparing for this Hearing. Having received the email, on 23 June 2020 (page 592), Mr Opie emailed Paul Hughesdon of the RAFBF asking

him to investigate the Claimant's concerns about the 15 June meeting. On 5 August 2020 (page 590), Mr Opie forwarded to Mr Hughesdon the Claimant's email to Mark Davis of AfC about the selection of SYWs and again asked that it be investigated. What he forwarded was PD5 – the letter of 5 August at pages 596 to 602, as again summarised under "Background and Overview" above. Mr Opie helped the Claimant write the letter, which the Claimant appreciated, though as he says at MA(2)41, Mr Opie told the Claimant his grievance would be more effective if he centred his complaints on his treatment at the 15 June meeting and omitted reference to retained SYWs being close to Ms Withers/Mrs Short's Stations. This was because Mr Opie believed the complaint to be about how the Claimant was treated on 15 June. He says it was only a suggestion and in the end the Claimant's letter did challenge the selection process, and Mr Opie forwarded it including those elements, though he felt raising this point was a distraction. He was confident that the RAFBF and AfC as large charities with experienced trustees would have dealt with the selections correctly and took the 20 April 2020 letter from the RAFBF at face value. Paragraph 20 of the Claimant's 5 August letter to Mark Davis (pages 601 to 602) stated that the focus of his grievance was the behaviour directed to him on 15 June, which he said could be summarised in five key points, the first of which was "equality and inclusion".

215. We have also set out PD6 in the "Background and Overview" section above; it is the letter from the Claimant to Mr Opie dated 8 October 2020 at pages 1985 to 1988. He stated, "my Grievance [of 16 June 2020] is centred on the inappropriate behaviour which I felt was directed towards me in relation to issues which I sought to raise around generic equality and inclusion", which he went on to describe as "exclusion, interrupting and undermining". He expressed disquiet that the RAFBF had perceived that he was raising a complaint of discrimination, making clear that he was not alleging that the RAFB or AfC had engaged in "behaviours which could properly be considered under protected characteristics".

216. The Claimant drew to our attention several further communications regarding his alleged protected disclosures:

216.1. At MA(2)36, he refers to Anise Tomkinson's email of 22 June 2020 to her colleagues in DBS, Stuart Keen and Alex Jones, in relation to the Claimant's comments about the furlough of SYWs, in which she said, "Please see the attached complaint [from Mr Opie] against Mr Ahsan's current performance, which is a repeat of the initial performance last year". Ms Tomkinson must have been referring to Mr Opie's email at pages 562 to 563.

216.2. He refers at MA(2)43 to Ms Tomkinson's further email to Messrs Keen and Jones on 29 June 2020 in which she said the Claimant was "questioning the contractor's right to run their business … [Mr Bettridge] has already directed that Mr A is temporarily transferred to DCYP until all the issues have been resolved effectively without further frustrations of this sort".

216.3. He cites at MA(2)66 another email from Ms Tomkinson to the same recipients, this one dated 16 October 2020, after the Claimant had chased AfC for a response to his complaint, in which she said, "His actions are now straying outside of the RAF and impacting upon the reputation of MOD with outsiders".

217. We now turn to Allegations 88 to 94, all of which Mrs Shakoor confirmed lie at the feet of Mr Bettridge, notwithstanding the multiple other alleged discriminators referred to in the List in respect of these complaints.

Allegation 88 – the Claimant was directed to move from his substantive post to another department

218. This is an allegation of protected disclosure detriment, dated in the List from 18 June 2020 to the date on which the List was prepared, namely May 2022.

219. On 18 June 2020 (page 1956), Mr Bettridge wrote to the Claimant, "Following the issues which you have reported following the meeting on Monday [that is, 15 June 2020], I have concluded that separation of the parties to your Bullying and Harassment complaint is now essential". He said he had given thought to who should be moved and described it as a neutral act, where the primary consideration was the Respondent's business needs. He went on to say, "I have reluctantly come to the conclusion that in this case it is you who must now accept a transfer", saying it was in the Respondent's business interests that Ms Withers remain in post. He directed the Claimant to discuss this with Mr Opie and said it was not voluntary but "does not indicate the outcome of the Bullying and Harassment Complaint".

220. Within the Respondent's Bullying and Harassment Complaints Procedure there is provision for separating the parties – see page 2046, paragraph 5.15. The Deciding Officer may take this step at any time, it is said to be a neutral act in the interests of all parties, and it may depend for example on the risk of the alleged bullying or harassment being repeated, the risk of interference with witnesses or the investigation, or of anyone else being victimised. The Claimant says (MA(2)25) that the transfer was in purported reliance by Mr Bettridge on separating the parties, but no investigation had been announced and Ms Withers had not even been interviewed by that point.

221. At page 506C there is an email from Ms Tomkinson to Mr Bettridge dated 5 June 2020, to say that DBS had advised the Claimant be moved for his wellbeing and for business reasons, "to enable the business to move ahead without any further obstruction, frustrations or allegations", adding that the Claimant should also be moved under the Bullying and Harassment Policy as separation of the parties, "due to the seriousness of the situation – bullying and harassment allegations and two employment tribunal claims". Mr Bettridge told us he disagreed that the Tribunal claims and the internal complaints were reasons to move the Claimant. That is borne out in our view by his reply at page 506A, in which he asked why it was being said that the Claimant was to be moved and whether, if he was, it would pass challenge.

222. On 30 June 2020 (page 564C) Alex Jones emailed Mr Bettridge and others with answers to questions asked by Mr Bettridge. Mr Jones said that separation of the parties to the Claimant's complaint was already being considered before 15 June 2020 because it was a close-knit team and Ms Withers was reporting continued difficulties in securing his engagement. He said Mr Bettridge had been advised that "there was no confidence that the business of the CCDA would progress if the Claimant was the only senior member of staff left in the organisation".

223. In an email to Mr Jones and the Government Legal Department ("GLD"), Mr Bettridge said on 1 July that in his interview with Ms Short on 17 June 2020 he had mentioned to her that he would be asking the RAFBF for the recording of the meeting two days before and that she had replied, "I would welcome that, it will provide a good example of Mo's behaviour that Jenny and I have encountered in previous meetings". In his email, Mr Bettridge described Mrs Short as "visibly stressed" by the meeting on 15 June. He went on to say that given the late stage of her pregnancy, with complications, "I judged that it was imperative that all further sources of avoidable workplace stress were removed immediately. Given that the complainant had also complained about the meeting I was able to conclude without ascribing responsibility to either side, having not seen the recording, that contact at work was causing harm to both sides". Mr Bettridge then said that continued contact at work was causing avoidable stress to Ms Withers as well, "who was tearful when talking about the same episode". He told us that he had decided prior to interviewing Ms Withers that the Claimant would need to be moved, but she was also clearly stressed by the same issue.

224. Mr Bettridge had not taken an immediate decision to separate the parties, notwithstanding the reported concerns about the functionality of the team. He was originally reluctant to move the Claimant after receipt of his complaint, viewing it as an undesirable option, and given that the Covid-19 lockdown was keeping the parties largely separate anyway, but the events of 15 June had led to both the Claimant and Ms Withers/Mrs Short reporting what they regarded as unreasonable behaviour. As to why the Claimant was moved, Mr Bettridge said that because Mrs Short was pregnant, being moved would not be practicable for safeguarding her wellbeing and safety. Her need for continuity in line management as she went on leave was also significant in his view. Mr Bettridge said at AB6 to AB14 and in his oral evidence that Mrs Short's pregnancy was complicated, and he thought that if she were moved it would put her under intolerable pressure. It was not felt Ms Withers' role could be left empty or adequately covered by the Claimant. DCYP had confirmed it had plenty of meaningful work for someone of the Claimant's extensive experience, identifying two areas where he could make a substantial contribution.

225. Mr Bettridge did not consider arranging for someone to transfer over from the Army to cover Ms Withers' role; the Claimant did not suggest that, either to Mr Bettridge or to anyone else. Ms Toogood supported the decision when the Claimant objected to it and so on 6 July 2020 he transferred "under protest". The aspects of the Bullying and Harassment Policy Mr Bettridge relied on for separating the parties were the risk to the Claimant of being subjected to more of the behaviours he was complaining about and the wellbeing of both the Claimant and Mrs Short; Mr Bettridge was already moving towards the decision for business reasons, but these welfare issues determined it.

226. The Claimant says (MA34) that Ms Withers and/or Mrs Short could have been moved "to break the cycle and the dynamic. Alternatively, I could just have been given time out to safeguard my health and stress levels and to prepare my submissions in the investigation of my complaint". Mr Bettridge did not consider simply granting time out as he thought that could be seen as reflecting negatively on the Claimant. Ms Withers says (JW92 to JW3) that transferring the Claimant was not her decision. She does say however that the Claimant raising with AfC its decisions in respect of furlough of SYWs, when she had made clear it was AfC's decision, "put me in an impossible position of speaking out against what he was

saying". She says that after the Claimant's August 2019 email to Ms Baylis at the YHA, trust and confidence was an issue not least due to his failure to appreciate the impact of his actions on his colleagues, his refusal to apologise or follow her instructions on dealing with conflict, and the reputational damage to the Respondent arising from his emails to the YHA and the meeting on 15 June 2020.

227. Mrs Short also says (LS47) that she had no role in this decision. Mr Bettridge says (DA183 to DA184) that the decision to direct a transfer was his, the Respondent's policy directing that the Deciding Officer consider it. As already set out, he had decided after the initial interviews for the Claimant's complaint that the parties should be separated but had halted the transfer to the AWS after the Claimant's objection. Identifying another role took time, but the "friction" at the 15 June meeting "crystallised the urgent need to effect a transfer which resulted in my direction to [the Claimant] to accept a temporary transfer to the DCYP".

228. As again already indicated, Mr Opie says (AO7 to AO9) that it was clear by early 2020 that the Claimant was not willing to engage with Ms Withers or Mrs Short in a constructive way. He raised with Mr Bettridge his concerns about the team's ability to deliver its outputs, citing the Claimant's refusal to meet Ms Withers for his mid-year review and his refusal to engage in an informal meeting about the misconduct charges, all at a very difficult time with people working remotely during the Covid-19 pandemic. Mr Opie did not have confidence that the Claimant could cover Ms Withers' role, which includes being RAF lead on safeguarding and childcare; he would not have had any RCDA support either. Whilst the role the Claimant transferred to in DCYP involved him working in global safeguarding, Mr Opie does not see that as at all the same type of role as Ms Withers was carrying out. The Claimant was supporting his new line manager, Lisa Jennings, not taking the lead as required of Ms Withers. Mr Opie did not consider someone coming over to cover the CCDA role from the Army but says this would have risked considerable loss of knowledge and experience (in the person of Ms Withers) at a time when there was much for her to do. As we have indicated, he did not feel he could have the Claimant report to him, as he could not provide the required professional supervision.

229. The Claimant says that the link between the transfer and his protected disclosures was that Mr Bettridge cited having to conduct his work as Deciding Officer under pressure because of the date of a forthcoming Tribunal hearing (for Case Management). The Claimant said he would identify that email but did not do so, though it is accepted Mr Bettridge was working to finish his report before a Case Management Hearing. In re-examination the Claimant said Ms Withers recommended the move because of his conduct on 15 June. Prompted further about the reason for this action, he accepted that the move to AWS was proposed in March 2020, and that he had been asking before 15 June why he should be transferred and saying that it should be Ms Withers and/or Mrs Short.

230. As a footnote, we record that the Claimant drew to our attention (MA(2)45) his assertion that Alex Jones had concerns about Mr Bettridge's direction because Ms Tomkinson emailed him on 29 June 2020 to say, "Alex, [Mr Bettridge] has made the decision of 6 July, so we'll go with that for now …". We saw no communication in which Mr Jones raised any such concerns.

Allegation 89 – The Claimant was threatened with suspension if he did not engage with the move [to another department]

231. This is an allegation of protected disclosure detriment, dated from 18 June 2020 to the date on which the List was prepared, May 2022. It is the corollary of allegation 88 and we need say nothing further about it until our Analysis.

Allegation 90 – Disclosing to AfC and/or the RAFBF the fact of the Claimant's ongoing discrimination complaint against the Respondent

232. This is an allegation of protected disclosure detriment, dated from 12 June to 30 September 2020.

233. Mr Bettridge says (AB(2)5) that in his email of 15 June 2020, the Claimant specifically asked him to secure the recording of the meeting with the RAFBF. As we have noted, Mr Bettridge therefore emailed them requesting it. He thought he should explain to the RAFBF why he was interested in it as he did not think they would disclose it otherwise, and therefore told the RAFBF he was the Deciding Officer for a complaint of bullying and harassment but did not identify any of the parties involved. Mr Opie says at AO(2)5 that he did not know why the RAFBF used the term "discrimination" in their response to his request that they investigate the Claimant's concerns, though he believes it was because one of the five key issues the Claimant raised was "equality and inclusion" as noted above.

234. The Claimant's "best guess" is that Ms Withers told them, as she dealt with the RAFBF on a regular basis. He says the Respondent was effectively saying to the RAFBF that the Claimant's previous complaint came to nothing so they could just deal with it – we assume he means, by dismissing it.

Allegation 91 – The Respondent sought to assimilate the substance of the Claimant's disclosure of 15 June and the detriments he complained of into the commissioned HIO investigation into his internal discrimination complaint

235. This is an allegation of protected disclosure detriment, dated from 17 September 2020 to the date on which the List was prepared, May 2022.

236. On 17 September 2020, Mr Bettridge joined the Claimant's complaint about the events of 15 June 2020 with the HIO investigation. The Claimant believes this prejudiced his discrimination complaint and "buried" the substance of his protected disclosures. At MA(2)53, he seeks to suggest from a comment on a document at SB, page 163A that the GLD advised that the assimilation was an "outrageous outcome". The comment is apparently addressing a version of one of the Claimant's complaints to this effect, and simply says, "Outrageous outcome claim – Disciplinary issue". We will return to what, if anything, can be adduced from that comment in our Analysis.

237. Mr Bettridge refers (at AB(2)6) to his exchange of emails with the Claimant at pages 507 to 514, described above, and finds it "peculiar" that the Claimant should raise this complaint.

Philosophical belief

238. The belief the Claimant relies upon for his complaints of direct discrimination is that "protecting the integrity of the employment process from taint and corruption

and promoting equality and inclusion in the practices of the public sector and of other organisations they engage with to carry out public functions is paramount". The Respondent accepts that the belief captured by the words from "promoting" to "paramount" is a protected belief, but not the earlier part.

239. The Claimant says at MA(2)8, "I am a staunch believer in equality in the public sector and particularly so in youth work", citing how in 2018 he had raised YHA's failure to make reasonable adjustments for Service children and young people. In terms of how this has played out in his life and work more generally, he mentioned to us his taking industrial action to support workers' rights to equal pay and, outside of work, setting up a forum to encourage recruitment of football referees from a variety of backgrounds. Ms Hartshorne was also aware of the referee work and mentioned to us the Claimant's determination to make accommodations for a disabled young woman at the Airfest at Cosford.

Allegation 92 – The Claimant was directed to move from his substantive post to another department

240. This is an allegation of direct belief discrimination and victimisation, dated from 18 June 2020 to the date on which the List was prepared, May 2022. For the factual context, see allegation 88 above.

241. The Claimant says that his transfer was because of his protected acts, because the Respondent was concerned about its disregard for equality and diversity (in relation to the SYWs) being leaked and it did not like the fact that he had taken the matter to the RAFBF.

242. When asked, in relation to allegations 92 and 93, the basis on which he says the hypothetical comparator for direct discrimination purposes would have been treated differently in materially the same circumstances, the Claimant said they would have been accommodated within Community Support if they had not been an Asian male. More options would have been provided rather than a direction to move, and potential relocation would have been more carefully considered, with a risk assessment.

243. As to why he says any less favourable treatment was because of his belief, the Claimant told us that he kept flagging up equality and diversity and safety issues regarding the PABs – specifically the accommodation of children and young people with additional needs, which the YHA should have catered for – and the Respondent was uncomfortable about that, later freezing him out of meetings with the YHA.

Allegation 93 – The Claimant was threatened with suspension if he did not engage with the move

244. This is an allegation of direct belief discrimination and victimisation, dated from 18 June 2020 to the date on which the List was prepared, May 2022.

245. Again, the context is set out under allegation 88 above. The Claimant says (in unchallenged evidence at MA(2)27ff) that after he had challenged the transfer instruction from Mr Bettridge, Ms Tomkinson emailed Stuart Keen, HR Caseworker, on 18 June 2020, for advice and said that the Claimant's engagement with the RAFBF was a further misconduct issue; the Claimant says this was to try

to silence him. Mr Keen replied that the decision who to move was based wholly on business needs, allowing the investigation of the Claimant's complaints to proceed without complication. Mr Bettridge forwarded Mr Keen's rationale to the Claimant that same evening, stating, "I must ask you to engage with this requirement. If you do not do so, it is likely that suspension from post will be the next step". The Claimant asked if he could appeal. On 19 June 2020, Mr Bettridge emailed Ms Tomkinson and Mr Keen about this saying, "I think we are fast approaching a point where I shall no longer be able to continue as the Deciding Officer". The Claimant asserts that this shows Mr Bettridge was not really deciding his complaints but being a mouthpiece for others.

246. Mr Bettridge accepts at AB82 (see also page 1956) that he explained it was a management instruction and if not followed, it was likely suspension would be the next step. In his view the Respondent's procedure authorised him to require a move and refusal of a reasonable management instruction would have been a disciplinary matter. He refutes any suggestion that he had concluded at this – or any – point that the Claimant was guilty of misconduct, saying that was not his role, and strongly rejected the idea that the transfer was anyone's decision but his.

Further alleged protected acts

247. The Respondent accepted that PA14 and PA16 to PA19 were protected acts but as noted above, during closing submissions from Mrs Shakoor it became clear that the Claimant did not seek to rely on any of PA9 to PA16. We therefore say nothing further about those.

248. PA6 is the Claimant's email of 12 June 2020 to the RAFBF referred to above. PA7 is what he said at the 15 June 2020 meeting, again as set out above. PA8 is his email to Mr Bettridge of 15 June 2020 (page 514) in which he said he had just come off the meeting, asked for preservation of a copy of the recording "for consideration in the ongoing Bullying and Harassment investigations", adding, "I was interrupted, excluded and undermined during this meeting with the objective of seeking to 'cover the tracks' of what has taken place with the respondents and so the meaning of my concerns and those of Southern AOR was obviously not taken on board".

Allegation 94 – The Respondent's findings in its internal complaint [i.e., the matters decided by Mr Bettridge] were unsubstantiated, irrelevant, malicious and retaliatory. The findings the Claimant relies on are:

1. That his bullying and harassment complaint was vexatious and malicious so as for the Respondent to seek to avert a finding of victimisation

2. The recommendation that misconduct proceedings should be instituted against him for pursuing a vexatious and malicious discrimination complaint

3. The recommendation that he should be permanently removed from his substantive post

4. The finding that he engages in sexist behaviour towards women

5. The finding that he engages in bullying behaviour

6. The finding of negative and irrelevant work performance alleged against him motivated by the Respondent's desire to deflect the real substance of his discrimination complaints

7. The finding that it was him rather than the Respondent who had sought to create delays in the internal complaint process

249. This is an allegation of victimisation, dating from 4 March 2021 (the date of Mr Bettridge's decision) to the date on which the List was agreed, May 2022.
250. Mr Bettridge had previously been an HIO. He and the Claimant had no adverse history and indeed had never met before Mr Bettridge was appointed Deciding Officer. He had never met Mrs Short either; he recognised Ms Withers but had had no meaningful interactions with her.

251. The Claimant nevertheless insists Mr Bettridge was biased in his decision as otherwise he could not have reached the conclusions he did, with the information he had before him. He does not regard him as having been independent as he works alongside Mr Opie, who is the subject of the Claimant's Poppy Breaks Grievance. The Claimant was also keen to emphasise to us (see for example MA42) that Mr Bettridge had seen material related to the misconduct charge against the Claimant and the Poppy Breaks Grievance, so that his judgment was coloured, though he at no point suggested that Mr Bettridge should step down as Deciding Officer. In fact, Mr Bettridge had not seen the Poppy Breaks Grievance, though he was aware of the misconduct process and that Kirsty Baylis had clarified that the Claimant's email to her had not amounted to bullying and harassment (we did not see that email, but it seems to be accepted this is what Ms Baylis said). Mr Bettridge told us he did not form a view on the merits of the misconduct process, which he made clear in his decision. We accepted that evidence, consistent with the written decision as it is.

252. The Claimant also says he had the impression that Mr Opie influenced the grievance outcome (MA102), as the person who had brought misconduct proceedings against him, thus describing Mr Bettridge as Mr Opie's (and AVM Byford's) "mouthpiece" (MA(2)209). He also says at MA(2)58 that Mr Bettridge was influenced by Mr Opie telling him the RAFBF had found a complaint of discrimination unfounded and (MA(2)64) by being copied into discussions about the Claimant's challenges to AfC's furlough decisions. Both Mr Opie and Mr Bettridge strongly deny this; Mr Bettridge told us that his only discussions about his decision were with DBS and the GLD. We saw nothing to the contrary and so accepted that evidence.

253. Mr Bettridge's decision letter of 4 March 2021 is at pages 769 to 772, with appendices thereafter. His conclusions were in summary:

253.1. The matters the Claimant complained of were not instances of bullying, harassment or victimisation.

253.2. There were areas of development for Ms Withers, but this did not imply she had engaged in unreasonable behaviour.

253.3. On one occasion, it was possible that Mrs Short allowed her frustrations with the Claimant to show.

253.4. The behaviour closest to bullying was that of the Claimant, one instance of which was being addressed as misconduct.

253.5. The Claimant had a possible bias against women; whilst that could not be concluded on the evidence, Mr Bettridge recommended diversity and inclusion training.

253.6. The purpose of the Claimant's submission and his behaviour during the investigation of the complaint was to interfere with the misconduct case – thus his complaint was vexatious.

253.7. The allegations of discrimination were unevidenced and thus malicious.

253.8. As a result, a further misconduct case should be considered.

253.9. The Claimant should be removed from his current post as there was no hope of him resuming a professional relationship with Ms Withers and Mrs Short.

254. The letter recited how the Claimant was given the chance to particularise his case, Mr Bettridge allowing later allegations to be put forward to give him a full chance to address the issues. Mr Bettridge said he appointed an HIO because the Claimant refused to give him his evidence.

255. The Claimant accepts Mr Bettridge found in his Decision Analysis several respects in which Ms Withers (as well as the Claimant) could have done better, for example page 934 at paragraph 10 and page 940 at paragraph 31, but whilst he thinks Mr Bettridge gave some plausible explanations for events, he says he was biased and did not give the Claimant's evidence enough weight. The Claimant says the decisions summarised above were because of his protected acts, as he does not think Mr Bettridge would have made them had it been someone else. He says Mr Bettridge was biased and the decision was to do with the Claimant's race. He says the decision showed contempt for equality and diversity, covering up the Respondent's failings.

256. In respect of the finding that the complaint was vexatious and malicious, Mr Bettridge says (AB(2)7) that the Respondent's policy requires him (it does not require it, but rather permits it – see page 2054, paragraph 7.11) to conclude whether a complaint was made in good faith, defining vexatious as "an unmeritorious and/or recurring complaint which seeks only to annoy or distress others, or cause necessary administrative effort". The reasons Mr Bettridge decided the complaints were vexatious and malicious were in summary:

256.1. He recognised the need not to deter complainants and that the bringing of the complaint of itself did not mean it was vexatious, but complaints should not thwart misconduct cases and the interests of respondents to complaints also have to be taken into account.

256.2. The complaint was made within one week of Mr Opie initiating the informal misconduct process; Mr Bettridge felt the Claimant had a pattern of being defensive and the timing of his complaint was an example of that.

256.3. It had to be recognised that the misconduct charge could be part of a pattern of bullying – the key to determining whether that was the case was the strength of the complaint.

256.4. The main issue uncovered by the investigation as the cause of much of the difficulty was the Claimant's working practices, including his long emails questioning others' competence.

256.5. The Claimant had reason to be unhappy that his previous performance was no longer deemed satisfactory when Ms Withers became his manager. It was not his fault that he had not previously been given adequate feedback, which was a mitigating circumstance.

256.6. In relation to most of the Claimant's allegations there was no evidence supporting them; otherwise, they were very weak complaints and easily accounted for by Ms Withers and Mrs Short.

256.7. If there had been discrimination, Mrs Short and/or Ms Withers would have been dismissed. Unevidenced allegations were therefore intended to create serious harm.

256.8. In oral evidence, Mr Bettridge also referred to the Claimant's delay in producing evidence and his rejection of an informal resolution to the misconduct case as other factors in determining that the complaint was vexatious.

256.9. He was not aware that the Claimant had told Mr Brittain that he was happy to continue with the misconduct procedure notwithstanding his complaint. As noted above, Mr Bettridge concluded (page 983 at paragraph 9) that the Claimant had brought his complaint to frustrate the misconduct proceedings. It was clear, he thought, that the Claimant was having workplace issues. One possibility was that he was a victim, as he claimed, of co-ordinated bullying and harassment, especially by Ms Withers, to discredit him. Alternatively, from reading the Claimant's and others' evidence, he was not working efficiently – not keeping his diary up to date (so that he arranged meetings people could not attend), relying on written communications, being reluctant to accept feedback – and so became what could reasonably be perceived as aggressive. Mr Bettridge concluded that the Claimant did not like what Ms Withers required of him as his new manager. He told us what he meant in summary was that the Claimant had frustrated the informal approach made to him by Mr Opie.

257. Mr Bettridge denies (AB(2)8) that his recommendation that misconduct proceedings be considered (page 984) was an act of victimisation, saying he based it on a detailed and thorough investigation. At pages 985 to 986 he made some recommendations to improve the management of the PABs, though he was not aware in detail of the Claimant's concerns about the YHA not accommodating additional needs of children and young people.

258. As to the conclusion about the possibility of the Claimant having an underlying bias with regards to working with women, Mr Bettridge says at AB(2)10 that he reached this conclusion having compared how the Claimant addressed male colleagues in emails to them. As stated above, he made clear that there was not enough evidence to conclude that there was bias (because it was a small number of emails and most of the Claimant's colleagues were women) but said there would

be merit in the Claimant undergoing further diversity and inclusion training. He based this on the evidence of the Claimant's relationship with Ms Withers and Mrs Short, his refusal to apologise to Rebecca Pickwell, issues with his communication style raised by Wing Commander Parr and the YHA complaint. The Claimant says (MA103) that "the inference of the DO that I engage in sexist behaviour has never been put to me". That is correct; Mr Bettridge told us he was under pressure to complete his report (because there was a Tribunal Case Management hearing coming up) and he did not think to do so.

259. On the basis of the email communications just referenced, Mr Bettridge believed (AB(2)11) that the behaviour that came closest to the definition of bullying was the Claimant's. The Claimant refers (at MA104) to an email of 19 February 2020, in which the Secretariat confirmed, "The terms of reference for investigation into your alleged misconduct will be amended because enquiries have established that no complaint of Bullying and Harassment has been lodged by the YHA".

260. As to delay, Mr Bettridge accepts (AB16 and AB19) responsibility for that which occurred between 31 March 2020 and 28 April 2020 (he said up to June in oral evidence), caused because he had initially stated that he thought the Claimant's first revised Annex F contained sufficient detail. He then changed his mind on advice from DBS as it lacked dates of when the matters complained of were said to have taken place. He gave the Claimant two weeks after the end of Ramadan to provide that information. He nevertheless concluded that the "vast majority of the remaining delay was caused by the time the Claimant took to produce his evidence".

261. In Mr Bettridge's view, the original formal grievance on 16 January 2020 (which Mr Bettridge noted had been trailed in the Claimant's email of 23 October 2019) lacked sufficient detail and he was thus unwilling to present it to Ms Withers and Mrs Short. In the initial interview on 20 February 2020, the need for detail of specific allegations was made clear. Mr Bettridge asked why the Claimant believed he had been discriminated against on the ground of race or religion, to which the Claimant said he could not think of any other reason for the conduct in question. Either at that meeting or later, the Claimant told Mr Bettridge he had irrefutable evidence of discrimination. Mr Bettridge felt that this was positive, though his view was it should have been available at the outset. As we have noted, the grievance was updated twice, introducing several additional issues. Mr Bettridge asked the Claimant to provide his evidence as he thought that if it was irrefutable the complaint could be determined quickly. Interviews took place in June 2020. By July 2020, having interviewed Mrs Short and Ms Withers, Mr Bettridge thought there was no prima facie case to answer– their responses were detailed, coherent and on balance of probabilities believable. An HIO was then commissioned, a step which cannot be taken until initial interviews are completed. The Claimant did not produce his evidence until 14 December 2020.

262. On 13 January 2021, the Claimant asked for more evidence to be added and Mr Bettridge gave him until 20 January 2021. On 25 January, the Claimant emailed reasons why he wanted that additional evidence taken into account. Mr Bettridge read what was sent to him and did not think it relevant. We were not taken to that correspondence in any detail.

General

263. The Claimant believes Ms Withers and Mrs Short colluded out of career aspiration, to "get this old Asian man out" as he said more than once in his oral evidence. The Claimant can see no other plausible reason than his race and religion as to why he was treated as he was – this is the answer he gave to Mr Bettridge (page 458) when asked why he thought giving of false or late information, cancellation of meetings and the like was related to those protected characteristics. He said he could not give us any direct evidence of a connection to race or religion, though he said when he was asked to provide cover whilst on leave, he wondered whether the same was required of White colleagues.

264. In re-examination he told us he thought colleagues were uneasy about him taking blocked leave to go to Pakistan. He also referred to page 2676, mentioned above, an email from Anise Tomkinson to Alex Jones on 12 November 2019, in which she said that she believed the Claimant's Poppy Breaks Grievance had been written by a legal advisor "as his English has been reported as not being that good".

265. The Claimant referenced several issues involving other employees to seek to contrast how they were treated with how the Respondent behaved towards him:

265.1. It was rumoured Mrs Short had slapped a SYW. Ms Withers told us she spoke with Mrs Short about this, and it was denied. She did not speak with anyone else given it was only based on rumour. We accept her account, which was unchallenged.

265.2. Ms Hartshorne says at JH42 that she felt Mrs Short was dismissive of a concern she raised about potential mistreatment of a small child. Again, Ms Withers spoke with Mrs Short about it to ascertain the context.

265.3. Ms Withers also spoke to Mrs Short about her body language and says Mrs Short recognised that if she had rolled her eyes or similar, she should not repeat that in meetings.

266. Mr Pinel told us he saw no evidence of bullying and harassment by Ms Withers or Mrs Short, though two other CDOs had undermined the Claimant by being critical of his performance in discussion with Mr Pinel, specifically around the Claimant's delivery in meetings, compared with his Northern counterpart. They were fed up with hearing about the Northern region and felt the Claimant should have advocated for his region more vociferously.

267. Ms Zakers told us she had seen no covert behaviours by Mrs Short or Ms Withers to undermine the Claimant, though he always seemed to be outside of the relationship between the two of them, for example during breaks at Conferences, though why that was she could not say. Ms Withers told us she was always busy preparing for the next item during a break; Mrs Short regularly approached her to assist, and the Claimant did not. We accept that as consistent with the general tenor of the evidence about the differences in approach to work between the more reticent Claimant and the more outgoing Mrs Short. At one conference, a CDO told Ms Zakers that a number of CDOs had difficulty working with the Claimant, specifically that they felt he did not communicate with them, and they were not getting enough support. It appeared they were going to raise it with Mr Pinel. Ms Zakers referred the discussion to Mr Pinel as the Claimant was not present, and Mr Pinel "shut it down". Ms Hartshorne also referenced three CDOs who were vocal about not "rating the Claimant as RCDA", because they felt he was not

communicative and did not champion Southern interests. Ms Zakers also told us she felt the Claimant did not get given the "meatier" aspects of the more senior level work; he was happier and more outspoken when he was a CDO.

268. Ms Hartshorne referred in her evidence to an occasion when the Claimant stuttered and looked uncomfortable talking publicly in front of Ms Withers and Mrs Short and described Mrs Short sitting with arms folded whilst the Claimant was talking, shaking her head, and interrupting him to say, "I think what Mo is trying to say is …". That is what she describes in her statement as harassment which she says meant consistently engaging in unwanted behaviour. Both she and Ms Moore described Mrs Short as rolling her eyes at the Claimant and said she had done that to them too; Ms Moore describes it as part of Mrs Short's general body language. Both Ms Hartshorne and Ms Moore describe themselves as White and Christian. Mrs Short accepts she does this – she had discussed it with her husband when it was raised with her – and has sought to curtail it. She denies speaking over the Claimant however, saying that at the end of the Claimant's presentation, many colleagues looked blank, so she tried to support the Claimant by saying, "What Mo is trying to say is …". For the reasons already given, we prefer Mrs Short's evidence to that of Ms Hartshorne.

269. Ms Hartshorne told us that her relationship with Ms Withers had broken down; she cites lack of communication and decision-making. She describes Mrs Short's appointment to her RCDA post as "unlawful". She applied for the post herself twice. The first time, she scored maximum marks at shortlisting but was not successful at interview, for reasons she accepts. When she applied again, against the same criteria, she was not shortlisted by a panel chaired by Ms Withers. She thinks the appointment unlawful because Mrs Short did not hold a degree which was said to be an essential criterion. She says Mrs Short is Ms Withers' friend and Ms Withers would have felt more supported by her than by Ms Hartshorne.

270. The Claimant referred us at MA111 to a review carried out by the Chief of the Air Staff, Sir Mike Wigston, in which it was stated, "The absence of reporting reflects a deficit of trust in our complaints system … complainants citing a fear of retribution …". The Claimant also referred us to page 2686, a message from the Permanent Secretary, Stephen Lovegrove, to all staff on 19 June 2020, expressing grave disappointment at comments made by some staff at a Race Diversity and Inclusion all-staff dial-in, for example the conflating of "indigenous" with White Britons, the view that focus on diversity is at odds with fairness in general and the like. He wrote that "We must have a department where everyone, regardless of background, feels safe to give their best self, have their effort and skills properly recognised and their individuality and experience respected".

271. Ms Withers and Mr Opie voluntarily did not eat or drink at meetings where the Claimant was present during Ramadan and Ms Withers also checked with him during this period whether he was able to attend meetings when this would require travelling. Neither Mrs Short nor Ms Withers have had discrimination complaints made against them in the past. Mr Opie has, a complaint of maternity discrimination against him in 2014 which was dismissed. Mrs Short describes herself as devastated by the Claimant's email of 23 October 2019, saying that after that she had Ms Withers or Mr Opie check her emails to him, and became more formal and reserved in interacting with him.

Time limits

272. The Claimant said he would consider the link between his various allegations, for the purpose of seeking to demonstrate that they represented conduct extending over a period but did not suggest any such link during his evidence. He says the delay in bringing proceedings in relation to earlier matters was because he was awaiting the outcome of internal investigations.

Law

Burden of proof

273. Section 136 of the Act provides as follows:

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court [which includes employment tribunals] *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".

274. Direct evidence of discrimination is rare – the same is broadly true of victimisation – and tribunals must frequently consider whether it is possible to infer unlawful conduct from all the material facts. This has led to the adoption of a two-stage test, the workings of which were described in the annex to the Court of Appeal's judgment in **Wong v Igen Ltd [2005] ICR 931,** updating and modifying the guidance that had been given by the Employment Appeal Tribunal ("EAT") in **Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205.** The Claimant bears the initial burden of proof. The Court of Appeal held in **Ayodele v Citylink Limited and anor [2017] EWCA Civ. 1913** that "there is nothing unfair about requiring that a Claimant should bear the burden of proof at the first stage. If he or she can discharge that burden (which is one only of showing that there is a prima facie case that the reason for the Respondent's act was a discriminatory one) then the claim will succeed unless the Respondent can discharge the burden placed on it at the second stage".

275. At the first stage, the Tribunal does not have to reach a definitive determination that there are facts which would lead it to the conclusion that there was an unlawful act. Instead, it is looking at the primary facts to see what inferences of secondary fact could be drawn from them**.** As was held in **Madarassy v Nomura International plc [2007] IRLR 246**, "could conclude" refers to what a reasonable tribunal could properly conclude from all the evidence before it, including evidence as to whether the acts complained of occurred at all. In considering what inferences or conclusions can thus be drawn, the Tribunal must assume that there is no adequate explanation for those facts.

276. If the burden of proof shifts to the Respondent, it is then for it to prove that it did not commit, or as the case may be, is not to be treated as having committed, the allegedly discriminatory act. To discharge that burden, it is necessary for the Respondent to prove that the treatment was in no sense whatsoever on the grounds of race or religion/belief or a protected act. That would require that the

explanation is adequate to discharge the burden of proof on the balance of probabilities, for which a tribunal would normally expect cogent evidence.

277. All the above having been said, the courts have warned tribunals against getting bogged down in issues related to the burden of proof – **Hewage v Grampian Health Board [2012] ICR 1054**. In some cases, it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, in the absence of a satisfactory explanation, would have been capable of amounting to a prima facie case of discrimination.

278. The implications of **Hewage** were considered by the EAT in **Field v Steve Pye and Co (KL) Ltd and others [2022] EAT 68**. The EAT said that where there is significant evidence that could establish that there has been discrimination, it cannot be ignored. In such a case, where a tribunal moves straight to the "reason why" question it could only do so on the basis that it has assumed the claimant has passed the stage one threshold, so that the burden was now upon the respondent in the way described above. The EAT went on to say that if at the end of the hearing the tribunal concludes that there is nothing that can suggest that discrimination has occurred and the respondent has established a non-discriminatory reason for the impugned treatment, there would be no error of law in just answering the "reason why" question, but in fact the complaint would fail at the first stage. If having heard all of the evidence the tribunal concludes that there is some evidence that could indicate discrimination, but nonetheless is fully convinced that the impugned treatment was in no sense whatsoever because of the protected characteristic, it is permissible to reach a conclusion at the second stage only, but there is much to be said for properly grappling with the evidence and deciding whether it is sufficient to shift the burden of proof. Particular care should be taken if the reason for moving to the second stage is to avoid the effort of analysing evidence that could be relevant to whether the burden of proof should have shifted at the first stage.

Harassment

279. Section 40 of the Act renders harassment of an employee unlawful. Section 26 defines harassment as follows:

"*(1) A person (A) harasses another (B) if - //(a) A engages in unwanted conduct related to a relevant protected characteristic [here, race or religion], and //(b) the conduct has the purpose or effect of //(i) violating B's dignity, or //(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B …*

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account - //(a) the perception of B; //(b) the other circumstances of the case; //(c) whether it is reasonable for the conduct to have that effect".

280. The Tribunal is thus required to reach conclusions on whether the conduct complained of was unwanted, whether it was related to race or religion, and if so whether it had the requisite purpose or effect.

281. Unwanted conduct is similar to detriment and is not usually difficult to prove. It is to be assessed from the Claimant's perspective, though the conduct does not have to have been directed at him. Unwanted conduct may also be constituted by a series of events and does not necessarily have to be a single event.

282. The requirement for the conduct to be "related to" race or religion entails a broader enquiry than whether conduct is because of race or religion as in direct discrimination. What is needed is a link between the treatment and the protected characteristic, though comparisons with how others were or would have been treated may still be instructive. In assessing whether it was related to the protected characteristic, the form of the conduct in question is more important than why the Respondent engaged in it or even how either party perceived it. The conduct itself and the overall context fall to be considered.

283. The question of whether the Respondent had either of the prohibited purposes – to violate the Claimant's dignity or create the requisite environment – requires consideration of each alleged perpetrator's mental processes, and thus the drawing of inferences from the evidence before us. As to whether the conduct had the requisite effect, there are clearly subjective considerations – the Claimant's perception of the impact on him (he must actually have felt or perceived the alleged impact) – but also objective considerations including whether it was reasonable for it to have the effect on this particular claimant, the purpose of the conduct, and all the surrounding context. That much is clear from section 26 and was confirmed by the EAT in **Richmond Pharmacology Ltd v Dhaliwal [2009] ICR 724.** The words of section 26(1)(b) must be carefully considered; conduct which is trivial or transitory is unlikely to be sufficient. Mr. Justice Underhill, as he then was, said in that case:

"A respondent should not be held liable merely because his conduct has had the effect of producing a proscribed consequence: it should be reasonable that that consequence has occurred. That…creates an objective standard … whether it was reasonable for a claimant to have felt her dignity to be violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question. One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt …

"…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…".

284. In a harassment complaint as much as one of direct discrimination or victimisation, it is for the Claimant to establish the necessary facts which go to satisfying the first stage of the burden of proof, including proving facts from which

we could conclude (in the absence of an adequate explanation) that the conduct in question, if established on the facts and unwanted, was related to race or religion. If he does, then the Respondent can have harassed him even if it was not its purpose to do so, though if something was done innocently that may be relevant to the question of reasonableness under section 26(4)(c). Violating and intimidating are strong words, which will usually require evidence of serious and marked effects. An environment can be created by a one-off comment, but the effects must be lasting. Who does the unwanted conduct, and whether others were aware of it, can be relevant, as can whether an employee complained, though it must be recognised that is not always easy to do so. Where there are several instances of alleged harassment, the Tribunal can take a cumulative approach in determining whether the statutory test is met.

Victimisation

285. Section 39(4) of the Act says that:

"*An employer (A) must not victimise an employee of A's (B): … (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service; //(c) by dismissing B; (d) by subjecting B to any other detriment*".

286. Section 27 defines victimisation as follows:

"*(1) A person (A) victimises another person (B) if A subjects B to a detriment because - //(a) B does a protected act, or //(b) A believes that B has done, or may do, a protected act.*

(2) Each of the following is a protected act - //(a) bringing proceedings under this Act; //(b) giving evidence or information in connection with proceedings under this Act; //(c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act".

287. As to whether a complainant did (or it was believed he would do) "any other thing for the purposes of or in connection with [the Act]" (section 27(2)(c)) this is to be given a broad interpretation – **Aziz v Trinity Street Taxis Ltd [1998] IRLR 204** – and does not require the Claimant to have focused his mind specifically on any provision of the Act**.** Section 27(2)(d) is to be similarly interpreted, and no express reference need be made to the Act, though the asserted facts must, if verified, be capable of amounting to a breach of the Act and what the Claimant does must indicate a relevant complaint. Mr Beever referred us to **Fullah v Medical Research Council [2013] UKEAT/0586/12**. Citing **Durrani v London Borough of Ealing [2013] UKEAT/0454/13**, the EAT held that it is not necessary to use the words "race discrimination" for there to be a protected act, as long as the context made it clear; all is likely to depend on the circumstances. Employers must know what it was constituted a protected act; there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the Act applies.

288. Furthermore, where a claimant does not rely on having done a protected act (section 27(1)(a)) but on a respondent's belief that he has done, or may do, a

protected act (section 27(1)(b)), this is not a question of establishing the Respondent's knowledge of a fact (as in **Scott v London Borough of Hillingdon [2001] EWCA Civ. 2005**) but of establishing the Respondent's decision-makers' belief.

289. No comparator is required for the purposes of a victimisation complaint, but the protected act must be the reason or part of the reason why the Claimant was treated as he was – **Greater Manchester Police v Bailey [2017] EWCA Civ. 425.** Again, this requires consideration of the mental processes of the decision-makers and again the protected act or belief that the Claimant may do a protected act need not be the primary reason for the act or omission in question, though it must be more than a trivial influence on that decision. The Court of Appeal in **Page v Lord Chancellor [2021] ICR 912** referred to the principle that there is no victimisation if the reason for the treatment is not the protected act but some feature of it that could properly be treated as separable from it. It said that whilst it is important that the protection provided by the victimisation provisions in the Act are not undermined, the circumstances do not have to be exceptional for that principle to apply. Tribunals can recognise those features which are properly separable from the making of the complaint or other protected act.

Religion/belief

290. Section 10 of the Act says so far as relevant:

"*(2) Belief means any religious or philosophical belief …*".

291. The most often-cited case on the meaning of "belief" under section 10 is **Grainger plc and others v Nicholson [2010] ICR 360** which held:

291.1. The belief must be genuinely held.

291.2. It must be a belief and not an opinion or viewpoint based on the present state of information.

291.3. It must be a belief as to a weighty and substantial aspect of human life and behaviour.

291.4. It must attain a certain level of cogency, seriousness, cohesion and importance.

291.5. It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.

292. The bar must not be set too high. A philosophical belief need no longer be similar to a religious belief, it does not need to be a fully-fledged system of thought and does not need to govern the entirety of the believer's life (again, **Grainger**). The manifestation of the belief is not the focus of the Tribunal's enquiry, though the fact that a belief is enshrined in law does not mean it is protected – **Gray v Mulberry Company (Design) Ltd [2020] ICR 715**.

293. **Harron v Chief Constable of Dorset Police [2016] IRLR 481** concerned a belief in the need for probity in public sector expenditure. Referring to the decision of the House of Lords in **R (Williamson) v Secretary of State for Education**

[2005] 2 AC 246 HL, the EAT noted that "weighty and substantial" (**Grainger** principle III) means it must relate to matters which are more than trivial; cohesion (**Grainger** principle IV) means intelligible and capable of being understood. The EAT also said that the belief must be a belief on a fundamental problem rather than something that had so narrow a focus as to be parochial.

Direct discrimination

294. Section 39 of the Act provides, so far as relevant:

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

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service … //(d) by subjecting B to any other detriment".

295. Section 13 of the Act provides, again so far as relevant, "*(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*". The protected characteristic relied upon in this case is belief. Section 23 provides, as far as relevant, "*(1) On a comparison of cases for the purposes of section 13 … there must be no material difference between the circumstances relating to each case*".

296. The Tribunal must therefore consider whether one of the sub-paragraphs of section 39(2) is satisfied, whether there has been less favourable treatment than an actual or hypothetical comparator, and whether this was because of the Claimant's belief.

297. In determining whether the Claimant has been subjected to a detriment, "one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to her detriment? An unjustified sense of grievance cannot amount to 'detriment'" (**Shamoon v Chief Constable of the RUC [2003] UKHL 11**).

298. The fundamental question in a direct discrimination complaint is the reason why the Claimant was treated as he was. As Lord Nicholls said in **Nagarajan v London Regional Transport [1999] IRLR 572** "this is the crucial question". The belief, if protected, being part of the circumstances or context leading up to the alleged act of discrimination is insufficient.

299. In most cases – such as **Nagarajan** – the act complained of is not in itself discriminatory but is rendered discriminatory by the mental processes (conscious or otherwise) which led the alleged discriminator to act as they did. Establishing the decision-maker's mental processes is not always easy. What tribunals must do is draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances. In determining why the alleged discriminator acted as they did, the Tribunal does not have to be satisfied that the protected characteristic was the only or main reason for the treatment. It is enough for the protected characteristic to be a significant reason in the sense of being more than trivial (again, **Nagarajan** and **Igen**).

300. Unreasonable behaviour of itself is not evidence of discrimination – **Bahl v The Law Society [2004] IRLR 799** – though the Court of Appeal said in **Anya v University of Oxford and anor [2001] ICR 847** that it may be evidence supporting an inference of discrimination if there is nothing else to explain it.

Equality Act time limits

301. For reasons that will become clear in our Analysis, it is not necessary for us to say anything about the law on time limits under the Act.

Protected disclosures

302. Section 43A of the ERA defines a "protected disclosure" as a qualifying disclosure made by a worker in accordance with one of sections 43C to 43H. Section 43B then defines what counts as a "qualifying disclosure". For the purposes of this case, this is any disclosure of information which,

"*in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject; (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed*".

303. As noted, a "qualifying disclosure" is a protected disclosure if made in accordance with one of sections 43C to 43H. The Respondent does not say that any qualifying disclosure was not protected. It is of course for the Claimant to satisfy the Tribunal that he made protected disclosures. As the legislation and related case law make clear, there are several matters for the Tribunal to consider in this regard.

304. A "qualifying disclosure" requires first of all a disclosure of information by the worker. There must be sufficient factual content and specificity capable of tending to show one of the required matters – **Kilraine v London Borough of Wandsworth [2016] IRLR 422**. An allegation or an expression of opinion or state of mind is not sufficient, though it was noted in **Kilraine** that the dichotomy between "information" and "allegation" is not one that is made by the statute itself. The EAT said, "It would be a pity if Tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggest that very often information and allegation are intertwined ... The question is simply whether it is a disclosure of information. If it is also an allegation, that is nothing to the point".

305. Once a tribunal is satisfied that information has been disclosed, the next question is whether the two remaining requirements of section 43B set out above are satisfied. The first such requirement is whether the Claimant reasonably believed that the disclosure of the information was in the public interest. The second requirement is whether the Claimant reasonably believed that the information he disclosed tended to show that a person had failed, was failing or was likely to fail to comply with a legal obligation, or reasonably believed that the information he disclosed tended to show that this had been or would be concealed.

306. On the first of these requirements, as made clear in **Chesterton Global Ltd (t/a Chestertons) v Nurmohamed [2018] IRLR 837**, the test is whether the Claimant reasonably believed that his disclosure(s) were in the public interest, not

whether they were in fact (in the Tribunal's view for example) in the public interest. The worker must actually believe that the disclosure is in the public interest and the worker's belief that the disclosure was made in the public interest must have been objectively reasonable. Why the worker makes the disclosure is not of the essence, and the public interest does not have to be the predominant motive in making it. Tribunals might consider the number of people whose interests a disclosure served, the nature of the interests affected, the extent to which they were affected by the wrongdoing disclosed, the nature of the wrongdoing disclosed and the identity of the alleged wrongdoer.

307. The second of these requirements is assessed very similarly. It is well-established that in order for the Claimant to demonstrate that he reasonably believed the information he disclosed tended to show (for example) that a legal obligation had been breached, it is not necessary that this actually be true, although of course the factual accuracy of what is disclosed may be relevant and useful in assessing whether he reasonably believed that what he said tended to show that. The cases of **Darnton v University of Surrey [2003] IRLR 133** in the EAT and **Babula v Waltham Forest College [2007] ICR 1026** in the Court of Appeal make clear that a disclosure may be a "qualifying disclosure" even if a worker is mistaken in what they disclose, provided they are reasonably mistaken, in other words that they have the required reasonable belief. This is a question of fact for the Tribunal, looking at the Claimant's state of mind at the time he made the disclosures.

308. The Claimant's level of expertise and understanding can be taken into account in determining the reasonableness of his beliefs – **Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4**. Finally, we note that the Claimant must have the required reasonable beliefs in relation to each alleged disclosure, though two or more communications can together be a protected disclosure – **Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540**. The question is whether the later disclosure expressly or by necessary implication refers to or incorporates the information in the earlier one – **Robinson v Al Qasimi [2020] IRLR 345**.

Protected disclosure detriment

309. The meaning of "detriment" can be determined in the same way as under the Act – see above.

310. The test the Tribunal must apply in determining the complaints is whether any protected disclosure had a material influence on any conduct which the Claimant is able to establish amounted to a detriment. The question is not whether the protected disclosure was the reason or principal reason for that conduct. The correct approach seems to be:

310.1. The burden of proof lies on the Claimant to show that a protected disclosure was a ground for (a more than trivial influence upon) the detrimental treatment to which he was subjected. In other words, the Claimant must establish a prima facie case that he was subjected to a detriment and that a protected disclosure had a material influence on the Respondent's conduct which amounted to that detriment.

310.2. If he does, then by virtue of section 48(2) ERA, the Respondent must be prepared to show the ground on which the detrimental treatment was done. If it

does not do so, inferences may be drawn against it – see **London Borough of Harrow v Knight 2003 IRLR 140, EAT**.

310.3. As with discrimination cases, inferences drawn by tribunals in protected disclosure cases must be justified by the facts it has found.

310.4. In **Kong v Gulf International Bank (UK) Limited [2022] ICR 1513**, the Court of Appeal said that once the reasons for particular treatment have been identified by the tribunal, it must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn.

Analysis

311. We begin our analysis with three general comments:

311.1. First, our task was to decide the allegations put to us, as they were agreed and recorded in the List – see **Chapman v Simon [1994] IRLR 124**. We did not do so in an inflexible, wooden way, adopting instead a generous reading of each complaint as far as possible, but in fairness to the Respondent which prepared its case based on the allegations as drafted, it is those allegations that we decided and not any others that the Claimant either alluded to in oral evidence or might have intended to pursue.

311.2. Secondly, it was not for us to plug gaps in the Claimant's evidence – and as already indicated, there were many. We identified when we first met the parties on Day 2 that the Claimant's statements left many allegations unaddressed. We also made clear on several occasions that we would only read documents we were taken to. Over nine days of evidence, we read multiple documents, including several long items which we considered outside of formal Hearing time, at Mrs Shakoor's request. It nevertheless remained that some aspects of the Claimant's case were wholly unsupported by evidence, whether in the form of documents or oral testimony.

311.3. We should also make clear we did not address every point put to us by the parties in evidence and submissions, only those that seemed to us most important.

312. We now turn to deal with each allegation in the order in which we dealt with them in our findings of fact above.

Allegation 23 – Ms Withers withheld management facilitation to the Claimant to enable him to lodge a counter complaint to the YHA

313. It is appropriate first of all to make some general observations on the background to this and related complaints.

314. The Claimant's emails of 5 August 2019 to Kirsty Baylis were obviously, and we think unsurprisingly, of concern to the YHA, specifically his statement that he would be recommending that the Respondent seek an alternative provider (something we will come back to), his reference to the YHA adopting "an entrenched position which frankly presents as an attitude problem" and his statement that "with more will and less attitude it can be done". We also bear in mind that Ms Baylis's emails to the Claimant, albeit not telling him what he wanted

to hear on the substantive issues they were discussing, were unstintingly courteous. We find it equally unsurprising therefore that Ms Withers and Mr Opie were unhappy with what the Claimant had written, thought an apology was appropriate and referred the emails to DBS for advice. Of course, the Claimant did not use bad language, and of course it is possible to imagine written communications that are far worse in both tone and content. Nevertheless, whilst it is plain that the Claimant did not accept then and does not accept now that there was anything improper about the emails, beyond saying that they may have in part been more strongly worded than was usual for him, it was not unreasonable to view the parts of the emails we have identified in this paragraph as curt, impolitely demanding, inappropriately personal, and in effect seeking to use a threat of going somewhere else with the Respondent's business as a lever to get the YHA to do what the Claimant was asking.

315. In summary, the emails could fairly be regarded as unprofessional, particularly with their having been sent without guidance and advice from Ms Withers. The fact that the Claimant had earlier that same day emailed Ms Withers to ask that she escalate the difficulties he was having (page 2550), makes it all the more remarkable that he emailed Ms Baylis as he did, even accounting for the time pressure he felt.

316. It is agreed, as recorded in our findings of fact, that Rebecca Pickwell and Nicky Parr also raised concerns about the Claimant's communications with them. The Claimant objects that all of these emails, including his exchanges with Ms Baylis, were isolated from their threads. We will come back to this point in dealing with the relevant allegations, but we do not see how that changes the inappropriateness of what he wrote in the specific emails the YHA objected to.

317. "Tone" and "aggression" were descriptions used in the concerns raised by all three of Ms Baylis, Ms Pickwell and Ms Parr, but we read nothing into that – they are common words. There is no evidence of co-ordination; indeed, the Claimant himself says that Ms Parr used the word "aggressive" in relation to CDO Valley.

318. Finally by way of background, in relation to this and all of the allegations concerning what the Respondent saw as misconduct in the Claimant's dealings with the YHA, it must be remembered that Ms Withers and Mr Opie sought an informal, management, approach, in the face of DBS advice to the contrary.

319. As to Allegation 23 itself:

319.1. There is some crossover with related allegations as we will return to, but it is not wholly clear what the Claimant means by "withholding management facilitation". The Claimant says he should have been offered options, but what he means by that is not clear, beyond wanting Ms Withers to raise his concerns with the YHA and wanting a right of reply to Ms Baylis's email of 15 August 2019.

319.2. Doing our best to address the allegation, it was in fact Mr Opie who in effect directed the Claimant away from lodging a complaint (what the Claimant described as a right of reply) with the YHA, as shown by his email at page 2717, on 7 August 2019. It was understandable, in view of the complaint that had been received, that Mr Opie and Ms Withers did not want the Claimant to reply to the YHA with complaints of his own. That was sensible, routine management of a delicate situation.

319.3. As the Respondent says, there were in any event no grounds on which the Claimant could have complained about Ms Baylis's manner of communication, even if he had concerns or complaints about service delivery. The complaints he might have wished to make and those raised by Ms Baylis were therefore of a different order, not least given that the emails the Claimant sent which Ms Baylis complained about did not raise the question of reasonable adjustments for children and young people, which appears to have been the main concern that he wanted to raise. In other words, we do not see how what the Claimant wanted to raise can properly be described as a counter-complaint and/or seen as in some way justifying what the Claimant had said.

319.4. Furthermore, as Mr Bettridge said at DA105, the Claimant did not ask Ms Withers to help him formulate a counter-complaint.

320. For all of those reasons we concluded that the Claimant had not established the unwanted conduct on which he relied.

321. We nevertheless considered for completeness the question of whether if there had been unwanted conduct, it was related to race or religion. The Claimant speculated that maybe Ms Withers did not support him in this way because she thought that as an older Asian man, he would cause issues. We saw no basis for that assertion – as we have said, it was entirely understandable that Mr Opie would want to wait for a few days before concerns were raised with the YHA – and we note that the Claimant has not alleged that any conduct he complains of was related to age. Particularly given the obvious difference between the Claimant's complaints about the YHA's service and Ms Baylis's complaints about his communications, we do not see the force of the Claimant's submission that Ms Baylis is White.

322. He asserted in submissions that White employees' complaints would have been given more credibility, but again there was no evidence for that and in any event, it is not quite the point. Whilst comparisons can be relevant to harassment complaints, the question is whether the treatment related to race or religion. We will come to general and contextual issues in due course, but on its own terms, the Claimant did not establish facts from which we could conclude that the conduct he identified was related to race or religion as alleged. It was thus unnecessary for us to go on to consider whether the conduct had the requisite purpose or effect.

Allegation 24 – Ms Withers withheld from the Claimant the letter of complaint against him from the YHA thus prejudicing him and denying him a right of reply

323. The Claimant says that because of delay in providing him with the YHA complaint, he was denied a right of reply. We accept whether conduct was unwanted for harassment purposes is to be looked at from his perspective. He knew that the YHA had concerns from as early as the 6 August 2019 meeting with Mr Opie and Ms Withers, and of course he had the email exchanges which gave rise to the concerns, but he did not see Ms Baylis's email of 15 August 2019 – which was treated as the complaint – for two months. It is difficult to see what disadvantage the Claimant suffered because of the delay given that it seems there was no further interaction between the Respondent and the YHA in that period, and it seems clear to us the Claimant would not have been granted a right of reply anyway, for the reasons already given under allegation 23, but it may nevertheless

have been unwanted. That said, the Claimant's case is that Ms Withers withheld the complaint, and it seems clear that this was in fact Mr Opie's decision. Ms Withers was plainly not going to override how her line manager was handling the matter, at least not without his permission. The Claimant did not establish on the evidence the conduct on which he relied.

324. For completeness, we went on to consider whether withholding the email was related to race or religion. It was not ideal to delay so long in showing the Claimant the email, but Mr Opie's reasons were clear and cogent – he was considering the conduct and obtaining advice, was then absent on leave, and wanted to speak with the Claimant face to face. None of that was related to race or religion and the Claimant's case that if he was important enough it would have come much sooner rather than when the details had been explored, is vague and unsupported by any evidence. In submissions it was said that this would not have happened to a White colleague. Again, we were given no evidence to support that assertion and, in any event, as indicated above, that is not the principal question to be addressed in a complaint of harassment. The complaint would have failed on this basis also.

325. Again there was no need for us to consider whether the conduct had the requisite purpose or effect, but it plainly did not have the requisite purpose given Mr Opie's reasons for delaying, and nor could it reasonably be said that it had the requisite effect, given that Mr Opie was guided by a desire to pursue a low key, informal and supportive approach, as the Claimant should reasonably have understood when the two of them discussed the matter. We will come to general and contextual issues in due course, but on its own terms, the Claimant did not prove facts from which we could conclude, in the absence of an adequate explanation, that he had been harassed.

Allegation 34 – Ms Withers and Mrs Short asserted that the Claimant is "aggressive" and/or "troublemaking" to disguise the underlying motive

326. In submissions Mrs Shakoor said that this allegation was linked to the Offsite policy and training review, the complaints by the YHA and allegation 59. Be that as it may, the Claimant produced no evidence, whether to the Respondent or to us, of such comments being made by either Ms Withers or Mrs Short. He referred us to the HR table at pages 2015 to 2022 (what he calls the "menu of misdemeanours"), specifically the comment about whether the Claimant was being passive aggressive, but that does not show that Ms Withers or Mrs Short used those words; the comment seems to have been made by the person who produced the table. The Claimant submits that what happened in respect of complaints about his communications was first a repetition of words such as "aggressive", secondly isolation of what he had written from the relevant email thread context, and thirdly an inappropriate referral to DBS. We did not see any evidence to suggest coordination of the various complaints and whilst we know only too well that where words or tone are inappropriate, context can matter a lot, certainly in relation to Ms Baylis we do not see how their being considered outside of a thread of emails – if indeed that is what happened – changes the validity of the recipients' perception of how the Claimant communicated with them.

327. In short, the unwanted conduct on which the Claimant relied was not established on the evidence as having taken place. Furthermore, the Claimant guesses that the relation to race or religion was a form of typecasting, Ms Withers and Mrs Short thinking he treats women as submissive to men. There was no

evidence of that, whether related to this specific allegation or more broadly, and in any event, it was in fact not them who drew attention to concerns about possible bias against women in the Claimant's communications, but Mr Bettridge. We will come to general and contextual issues below, but on its own terms, the Claimant did not establish facts from which we could conclude that the conduct he identified, even had it occurred, was related to race or religion as alleged. We did not need to go on to consider whether it had the requisite purpose or effect.

Allegation 36 – Ms Withers wilfully omitted to correct the erroneous perceptions of the YHA that were within her own knowledge with regards to the alleged acts and/or omissions of the Claimant in the planning, organisation and delivery of the Adventure Poppy Breaks

Allegation 37 – Ms Withers was complicit with the inaccuracies in the complaint made against the Claimant by the YHA

328. These allegations can plainly be taken together.

329. It is important to note the wording of allegation 36, namely that there is said to have been a failure to correct erroneous perceptions of the YHA with regards to the alleged acts and/or omissions of the Claimant. It seems clear from that wording and was abundantly clear from the Claimant's evidence that the erroneous perceptions he refers to were not Ms Baylis's views about his communications, but the YHA's perceptions of the substantive issues he had raised about their failings as he saw them.

330. Ms Withers' email of 6 August 2019 to Ms Baylis and her manager (annexed to Ms Withers' statement), in which she said the Claimant had been told how inappropriate his emails were and that appropriate action would be taken, was perhaps unwise and reflected some inexperience on her part, as it disclosed to the YHA as an external party what action the Respondent might take internally, though clearly what was in her mind was the need to patch up the issues created by the Claimant's emails. Further, as we have said, Mr Opie's – and it was his – unwillingness to take up the substantive issues with the YHA (page 2717) was understandable. The complaint nevertheless failed on its facts, as there was no evidence put to us that the YHA thought the Claimant should not have raised his substantive concerns; they had their reasons for not acceding to what he had requested, but it was the tone of his communications, not the substantive issues, that Ms Baylis and her manager complained about. We add for completeness that if the Claimant relies for this allegation on erroneous perceptions of the emails he sent to Ms Baylis, when objectively assessed we do not see how her perceptions were erroneous. We may not have used the same language as she did in describing them in her 15 August 2019 email, but they can be fairly seen as inappropriate in the ways we have described.

331. Did the Respondent engage in the unwanted conduct alleged by the Claimant? As there was no evidence of the YHA challenging the substance of the Claimant's concerns, so that it is wholly unclear what Ms Withers should have corrected, and as in any event she spoke with the YHA about the Claimant's concerns, at least in outline, at the pre-planned meeting on 13 August 2019 – as trailed by Mr Opie in his email to the Claimant of 7 August 2019 – we find that it did not.

332. Further, even if the alleged unwanted conduct had taken place, we heard nothing from the Claimant in his evidence to connect it to race or religion, though we note again that we will come back to contextual matters below. It was not necessary for us to consider whether the conduct had the requisite purpose or effect, but we would note that whilst the Claimant says he lost the ability to work on the PABs, this was not because the Respondent did not address service issues with the YHA but because of his own email communications, and the Respondent's conclusions about them. The Claimant thus did not establish this part of this complaint either. Again, we will come back to contextual matters below, but on their own facts, these allegations also fail.

Allegation 38 – Ms Withers ignored inconvenient facts and relevant considerations in presenting the facts and issues to Mr Opie which were germane to the complaint made against the Claimant by the YHA

333. This allegation concerned what Ms Withers did or did not present to Mr Opie, though the Claimant did not make clear what inconvenient facts she ignored, other than that he was on a tight timetable in arranging the final places for the 2019 PABs and needed to update parents. We do not see how those facts were inconvenient for Ms Withers, or for the Respondent generally. They had nothing to hide in respect of these issues and in fact Mr Opie positively raised the opportunity for discussion of these matters with the YHA at the meeting Ms Withers was due to have with them on 13 August 2019 when the Claimant raised his concerns with Mr Opie on 7 August 2019. It appears therefore that Mr Opie was in fact appropriately appraised of the Claimant's concerns and of course he had seen the email exchanges Ms Baylis complained about, in which the Claimant's substantive concerns were aired.

334. Furthermore, we noted the Claimant's email at page 342, in which on 21 October 2019 he said he did not want to discuss the issues with Mr Opie outside of due process, thus denying himself the opportunity of making Mr Opie aware in person of any further context. Even despite that, he could have emailed Mr Opie to provide that context if there was more information which he wanted Mr Opie to be aware of. He did not do so.

335. The Claimant thus did not establish on the evidence the unwanted conduct on which this allegation relied. In any event, we did not see how it would have been related to race or religion. The Claimant said that Ms Withers did not expect him to put his head above the parapet. We did not see how that can be said to be related to either protected characteristic, whether by way of some form of stereotype or otherwise. This was in any event speculation on the Claimant's part that Ms Withers had this in her mind. There was no evidence she did.

336. There was again no need for us to consider whether, had the conduct occurred, it had the requisite purpose or effect. Again, we will come back to contextual matters below, but on its own terms, the Claimant did not establish facts from which we could conclude, in the absence of an adequate explanation, that he had been harassed.

Allegation 39 – Ms Withers asserted that an email communication which the Claimant sent to the YHA lacked integrity

337. This allegation can be dealt with very briefly, because the Claimant did not establish, on the basis of the evidence to which we were taken, the facts on which it relies, in that Ms Withers made no such assertion, notwithstanding what she says at JW52. Mr Opie sent an email to the Claimant on 15 October 2019 (page 344) referring to the Civil Service Code for Integrity, though he made clear, in terms, in that email that this was about acting professionally and in a way that retains the confidence of others, so that even that email did not make the assertion on which the Claimant relies. It is clear from page 291 (her email to Alex Jones of 8 August 2019) that Ms Withers had told the YHA the Claimant had exceeded his authority, but that is the subject of allegation 40.

338. The unwanted conduct was thus not established, nor did the Claimant explain how, even if it had been, it was related to race or religion. There was no need for us to consider whether the conduct had the requisite purpose or effect. Again, we will come back to contextual matters, but in and of itself, the Claimant did not establish facts from which we could conclude that he had been harassed.

Allegation 40 – Ms Withers asserted that the Claimant exceeded his level of authority in informing the YHA of his intention as Project Lead to recommend that the Tri-Service Community Support use an alternative provider to deliver its Adventure/Activity Breaks

339. As noted above, it is clear Ms Withers did make this assertion in her discussion with the YHA. We were satisfied that her doing so could be considered unwanted conduct, given that it was a comment critical of the Claimant made to a third party. Conduct does not have to be unreasonable in order to be unwanted.

340. We did not see however how the conduct was related to race or religion. The Claimant accepted that what Ms Withers – and, it must be said, Mr Opie – thought in this regard was a genuine management belief. Mr Opie explained it well in our view – he thought the Claimant had represented his own views as the Respondent's, without checking with his manager. We agree that this could properly be said to be a matter of concern; it is one thing for the Respondent to be researching possible new providers, quite another for an employee to announce it unilaterally to the incumbent. Thus, even though Mr Henniker later found that the Claimant had not exceeded his authority, we did not find Ms Withers' concerns in this respect to have been unreasonable, let alone so unreasonable as to be a proper basis for inferring some relation to race or religion. In any event, the Claimant's explanation of why this conduct was related to race or religion was that Ms Withers was showing contempt for other equality and diversity issues which she thought would not be challenged. That is a victimisation complaint, not an explanation which connects what was said to the relevant protected characteristics. In any event, what the comment clearly related to was Ms Withers' genuine perception of what the Claimant had done, and no more.

341. Again, there was no need for us to consider whether the conduct had the necessary purpose or effect, though we would add that it was probably unwise of Ms Withers to make this statement to the YHA; it would have been better simply to say she would look into the matter. That said, there was no evidence of the Claimant's reputation with the YHA being sullied, other than as a result of their concerns about his correspondence on 5 August 2019 with Ms Baylis, so that if the working environment did change for the Claimant in this respect, it was as a result of his conduct, not that of Ms Withers.

342. Again, we will come back to contextual matters, but analysing the evidence in relation to this allegation, the Claimant did not establish facts from which we could reasonably conclude that he had been harassed. Even if he had, we were entirely satisfied that the Respondent had shown that Ms Withers' comment was in no sense whatsoever related to his race or religion.

Allegation 42 – Ms Withers made prejudicial and defamatory remarks about the Claimant in verbal and written communications with the YHA

343. The Claimant could not identify the communication(s) on which this allegation was based. On a broad reading of the word, one might say that Ms Withers' communication with the YHA reflected in her email at page 291 was "prejudicial" to the Claimant, though it seems doubtful whether it could properly be described as "defamatory".

344. The key point is that in his evidence the Claimant could only reference in support of this allegation the statement that he exceeded his authority. That collapses this allegation into allegation 40 and for the reasons set out above, we did not see how this statement was related to race or religion. In submissions, Mrs Shakoor said that this "would not have happened to a White person". We were not taken to any evidence that could lead us to that conclusion, and whilst as we have already said, comparisons of that nature are not unhelpful in harassment cases, what must be established is that the conduct – the comment in this case – was related to race or religion, which it was not.

345. We repeat our conclusions in relation to allegation 40.

Allegation 43 – Ms Withers excluded the Claimant as Project Lead from planning and evaluation discussions and meetings with the YHA about the Adventure Poppy Breaks

346. It is correct that what the Claimant alleges took place, and we were satisfied that it was unwanted conduct as far as he was concerned. We repeat that conduct does not have to be unreasonable in order to be unwanted.

347. It did not however relate to race or religion. In her submissions, Mrs Shakoor said that Ms Withers gradually excluded the Claimant after he had prepared his PAB overview in 2018 and then given a presentation about them in November 2018 where he raised concerns about the YHA not making reasonable adjustments to accommodate additional needs of children and young people. There are two things to say about that. First, the Claimant did not put his case in that way in cross-examining the Respondent's witnesses. Secondly, it is an explanation of his case that is more akin to victimisation; we did not see the link between what Mrs Shakoor submitted and race or religion.

348. It is plain in our view that the Claimant being excluded from such discussions and meetings was related to his emails to Ms Baylis, not to race or religion. He himself accepted that the YHA may have been uneasy about dealing with him thereafter. Far from being so unreasonable as to lead to an inference of some relation to race or religion, his being excluded from meetings and discussions was in our view an entirely understandable and sensible measure, given what had taken place and whilst it was looked into. The Claimant effectively accepted that and could make no link to race or religion during his oral evidence.

349. Again, we will come back to contextual matters, but analysing the evidence in relation to this allegation, the Claimant did not establish facts from which we could reasonably conclude that he had been harassed. Even if he had, we were entirely satisfied that the Respondent had shown that the Claimant's exclusion from these discussions and meetings was in no sense whatsoever related to his race or religion.

Allegation 44 – Ms Withers and Mrs Short excluded the Claimant as Project Lead from the consultation and planning process with the Tri-Service, potential funders and service providers and service users in relation to future Adventure/Activity Breaks

350. This allegation is very similar to allegation 43, though it seems to relate to the Claimant being excluded from meetings related to activity breaks more broadly, rather than just PABs. That said, we noted that Mr Bettridge found that the allegation was vague (DA160). It was no clearer before us and as we have said, it was not our role to search for facts or evidence that a party might wish to rely on.

351. What we could ascertain was that if there was any such exclusion, Mrs Short was not responsible for it. The Claimant did not suggest otherwise, and so we did not see how the complaint against her could be made out.

352. In relation to Ms Withers, the Claimant referred to being excluded from discussions regarding the design and delivery of a new Tri-Service policy and to issues relating to the centralisation of the allocation of places on PABs. In relation to the former, it appears clear the Claimant would not ordinarily be an invitee to a Tri-Service meeting (or to YHA/RAF safeguarding meetings) where Ms Withers was able to attend as CCDA. We had no details as to why his Navy counterpart may have attended one or more such meetings, if they did, and so could not draw any adverse conclusions from that. We also noted the email at page 1876 referred to above, which was evidence suggesting that the Claimant was not inappropriately excluded from discussions about these matters. As to the latter (allocation of places on PABs), our understanding of Ms Withers' evidence was that the allocation of places was discussed when the Claimant was on leave and needed to be dealt with urgently. For those reasons, we could not see any conduct which the Claimant could legitimately say was unwanted; he was not excluded, it was simply a case of his not being entitled or expected to attend a meeting, or being away when one was needed.

353. Furthermore, we could not see how any such conduct related to race or religion. The Claimant did not suggest any such connection until in closing submissions Mrs Shakoor said that it would not have happened to a White person. Again, we saw no evidence to suggest that – in fact the only possibly relevant evidence was Ms Hartshorne's "exclusion" from a PAB allocation meeting in 2019 when she could not join it remotely and was then on leave. She is White and describes her religion as Christian.

354. Broader contextual matters are addressed below, but the evidence in relation to this allegation did not prove facts from which we could conclude, even in the absence of an adequate explanation, that the Claimant had been harassed.

Allegation 1 – Ms Withers gave the Claimant voluminous "tokenistic" work in reviewing an Off-Site Policy and Training Package to complete over the Christmas/New Year break 2018/19

355. There was no attention given in any of the evidence to the allegation that this work was "voluminous", though we have no doubt it was a substantial piece of work. The Claimant's sole focus was that it was "tokenistic". As to that, we noted the following:

355.1. The Claimant did not complain about the allocation of the work at the time, nor does he complain at all about being allocated the almost identical task at Christmas 2017.

355.2. If it was tokenistic, it seems strange that, once it was completed, Ms Withers asked him to embark on a consultation about it (see page 1361). The Claimant did not suggest that the consultation was tokenistic – his allegation 14 is that Ms Withers and Mrs Short meddled in it.

355.3. We were satisfied on the evidence that Ms Withers did not know about the Tri-Service review when she commissioned the work.

355.4. Even if she had known about it, the Tri-Service policy and the Single Service policy and training package plainly sit alongside each other; one does not negate the other.

355.5. This is borne out by the fact that the Tri-Service policy is still not in place; the Claimant sought to use that fact to criticise the Respondent, when in fact it supports the Respondent's position that the work was not tokenistic.

355.6. As we will return to, whilst the Claimant asserts that Ms Withers gave him the work knowing (but not telling him) that she wanted a workshop format, in fact she stumbled across that as a viable option two months later, after the Claimant's work had been sent to her.

355.7. Mrs Short utilised the work the Claimant had done when providing Offsite training in February and October 2019, again indicating the need for it and its inherent value.

356. For all of these reasons, the Claimant's case that this was unwanted conduct was not made out; the work was very evidently not tokenistic. As to whether it was related to race or religion:

356.1. The Claimant offered no specifics about this in his evidence.

356.2. He made some reference, and Mrs Shakoor made several references in cross-examining the Respondent's witnesses and in submissions, to his working at Christmas because he was a Muslim. There was no evidence put before us that colleagues were uneasy about this, we heard no evidence of who else worked at Christmas and we do not see working at Christmas as a proxy for any particular religion or belief. It was in any event the Claimant's choice to do so and was in fact contemplated in a policy the Respondent had developed for that purpose.

356.3. Christmas may have been the context in which the Claimant found himself doing this work, but it certainly was not the reason Ms Withers commissioned it – she wanted it done and for good reason.

356.4. Ms Withers asked both Mrs Short and the Claimant (page 196) about their Christmas plans and said that if they were working, then they would need to consider auditable outcomes, in accordance with the Respondent's policy.

357. For all of the above reasons, there was no prima facie case that the provision of the work was related to race or religion. Again therefore, it was not necessary for us to consider whether the conduct had the requisite purpose or effect, though as to purpose, it is clear that Ms Withers wanted the work done, whilst as to effect, the work the Claimant did was utilised and needed; the fact that a consultation led to different views about how the training should be organised did not negate that fact.

358. Again, we will come back to contextual matters below, but the evidence in relation to this allegation did not prove facts from which we could conclude, even in the absence of an adequate explanation, that the Claimant had been harassed.

Allegation 14 – Mrs Short and Ms Withers meddled with the Claimant's consultation process in his review of the Offsite Policy and Training Package

359. We were not satisfied that the Claimant established the facts on which this allegation depended for the following reasons, all of which taken together demonstrated that there was no "meddling" as alleged:

359.1. Both he and Mrs Short were able to nominate CDOs for the consultation group – Ms Withers' email at page 1361 certainly left that open to him.

359.2. We were not taken to any evidence of the Claimant raising concerns at the time that more Northern than Southern region CDOs ended up a part of the group, except he did say in his Wyton presentation (page 1413) that there was a regional imbalance which needed to be addressed. We preferred Mrs Short's recollection to that of Ms Hartshorne in respect of her questions about Ms Hartshorne's attendance at the Wyton meeting, for the reasons given in our findings of fact.

359.3. The focus of the consultation seems to have been on how the Offsite training would be delivered. The Claimant accepts that Ms Withers could legitimately express a preference for a workshop approach. He suggests that all of the options should have been put to him at the outset, but it seemed to us that the whole purpose of a consultation is that new ideas might emerge during it.

359.4. As we have noted, Ms Withers stumbled across the workshop option somewhat by accident.

359.5. It was not the actions of Ms Withers or Mrs Short which led to the cancellation of the March 2019 meeting to launch the consultation; it was the fact that it was arranged late.

359.6. A written consultation was not ideal, but that was not something Mrs Short or Ms Withers resolutely insisted on and, in fact, it might well have been the Claimant's preference.

359.7. Whilst comments were made during the consultation which were critical of the material the Claimant had prepared – and one in particular for which Ms Pickwell felt the need to apologise – that again seems to us to be the purpose of consultation, as long of course as it is done respectfully, and whilst the Claimant repeatedly asserted that Mrs Short in particular had whipped up such comments, we were not taken to any evidence of that.

359.8. The Wyton conference arrangements for an evening discussion were not ideal, but that arose from the Claimant adding the matter to the agenda quite late.

359.9. The Claimant then decided to circulate his presentation – any caution Ms Withers expressed about that did not prevent him doing so. We should add that the Respondent characterising this as obtaining feedback about feedback is somewhat unfair, given again that this is what a consultation essentially entails, although we accept that it has to end somewhere.

359.10. The result was some disaffection on the part of some CDOs, particularly Ms Pickwell, who had made clear that far from being responsible for certain tasks related to the project, she did not want to be involved because of how the Claimant had communicated with her about her previous feedback. We saw no evidence to suggest that Mrs Short elicited or encouraged that particular response; in fact, to the contrary, she and Ms Withers had sought to encourage the Claimant to address the matter with Ms Pickwell, and as Mrs Short put it, she is a good trainer, and it was felt to be a pity that she was no longer involved.

360. That conclusion necessarily required the dismissal of this complaint. For completeness however, as to whether there was any evidence that this conduct, if it had been made out, was related to race or religion:

360.1. The Claimant led no evidence to suggest why this conduct was so related.

360.2. There was nothing in what we have just analysed that we found to be unreasonable, let alone so unreasonable that it could legitimately raise an inference of a relation to race or religion. The Respondent's actions were reasonable for the reasons we have given.

360.3. The evidence we saw of Mrs Short seeking input from and action by groups of CDOs was in a different context to the Claimant requiring actions of a small number of CDOs following the Wyton conference, because she did it where she, the Claimant and Ms Withers had agreed that she would.

361. Again therefore there was no need for us to consider purpose or effect. We will come back to contextual matters, but on the evidence relating to this allegation, the Claimant did not prove facts from which we could conclude in the absence of an adequate explanation that he was harassed.

Allegation 45 – Ms Withers and Mrs Short excluded the Claimant as Project Lead from the Tri-Service Review of the Off-Site Policy and Training Package

362. It would have been good practice for Ms Withers to inform the Claimant that she was pursuing a Tri-Service option, but we were not satisfied that the Claimant established on the evidence the unwanted conduct on which this allegation

depended. He gave almost no evidence about it at all. Moreover, being "excluded" implies that he should have been involved in the project in the first place, when it is plain that notwithstanding that he was Project Lead for the RAF's Offsite policy and training package, the Tri-Service review was properly a matter that required Ms Withers' involvement as CCDA. We had no evidence as to why his Army counterpart was involved – though we noted that they are a much bigger Service than the RAF and that this person was not involved in leading for the Army at every stage given that Ms Wakefield, then Head of AWS, attended the Tri-Service meeting in December 2019. The Claimant could not establish on the evidence his belief that his Navy counterpart was also involved.

363. Even if unwanted conduct had been established however, the Claimant led no evidence as to why it was related to race or religion. It seems abundantly clear that the reason Ms Withers led on the review for the RAF was that she concluded, legitimately, that it was a matter that a Head of Service should lead on. That is in no sense unreasonable, let alone so unreasonable as to lead to an inference of a connection to race or religion which shifted the burden of proof to the Respondent.

364. Again there was no need for us to consider purpose or effect. On the evidence relating to this allegation, the Claimant did not prove facts from which we could conclude in the absence of an adequate explanation that he was harassed.

365. We now turn to consider contextual matters, to identify whether there are any facts therein that a reasonable tribunal could have concluded passed the burden to the Respondent in respect of any of the allegations of harassment we have considered, either individually or taken as a whole.

Harassment – general observations

366. As will by now be clear, several of the Claimant's harassment complaints were not made out on their own facts. Where the facts were established, none had any relation to race or religion that we were able to discern. A key plank of the Claimant's case was that the Respondent acted so unreasonably that there can be no explanation other than race or religion. We have made clear in each instance that we do not agree. We recognise however that it is important to consider contextual matters, including evidence said to illustrate broader practice or culture, to analyse whether any inferences should be drawn that the conduct in question related to race or religion. We make the following observations:

366.1. The Claimant's endeavours to make such connections rested largely on assertions that there was such a link or unwarranted conclusions such as that his working on the Offsite review at Christmas was related to his being a Muslim, something which fed into the consultation and other matters related to it.

366.2. He invited us to conclude that it is unlikely all of the issues he experienced at work arose after twenty years of satisfactory service, if they were not in some way related to race or religion. We noted however the fact that Ms Withers had different expectations of the Claimant once she became CCDA, compared to Mr Pinel, which is an adequate explanation for the changing landscape in the team, though not a complete explanation given that the Claimant's 2018/19 review undertaken in July 2019 showed recognition of improvements on his part. That recognition is of itself supportive of the Respondent's case that neither Ms Withers' nor Mrs Short's actions were tainted by race or religion. Moreover, by October

2019, it was clear that there were significant difficulties between the Claimant, Mrs Short and Ms Withers, including very different perspectives on his performance. What took place between July and October 2019 was of course the Claimant's exchanges with the YHA and the view which Ms Withers and Mr Opie legitimately took of them. That seems to us to have been a turning point in the team dynamics and combined with Ms Withers' new management expectations, an explanation for a changing relational landscape unrelated to race or religion.

366.3. The Claimant suggested some colleagues were uneasy about him going to Pakistan on block leave and Mrs Shakoor suggested he was not supported in observing Ramadan. There is no evidence of colleague unease and the Claimant's block leave was permitted. Moreover, we were struck by Ms Withers' evidence of her and Mr Opie's sensitivity during Ramadan in not eating or drinking during meetings when the Claimant was present and checking on whether the Claimant was able to travel.

366.4. As noted in our findings of fact, the Claimant drew our attention to Mrs Short's alleged conduct to seek to draw a contrast between how she was treated and what he regards as an overreaction to his behaviour in his dealings with the YHA:

366.4.1. There was a rumour that Mrs Short had slapped a SYW. As we have said, Ms Withers looked into it and it would be a serious matter, potentially raising adverse inferences against the Respondent, if inappropriate conduct had been established and not acted upon, but we were not prepared to draw any conclusion based on something which the Claimant fairly agreed was wholly unsubstantiated.

366.4.2. Ms Hartshorne told us that Mrs Short dismissed concerns regarding a small child, which again Ms Withers looked into. That too was on the face of it a serious matter and again could potentially have raised adverse inferences against the Respondent if inappropriate conduct had been established and not acted upon. It was however denied by Mrs Short and for the reasons we have already expressed, we prefer her evidence of what took place – as relayed by Ms Withers in this instance – to that of Ms Hartshorne.

366.4.3. Ms Withers also discussed with Mrs Short her body language, specifically rolling her eyes. We accept this is inadvisable, but it was common to Mrs Short's dealings with many colleagues, and indeed her husband, not just the Claimant and so did not permit an adverse inference to be drawn.

366.5. It seems clear the Claimant did not mix with Mrs Short and Ms Withers during breaks at conferences and other meetings. We found Ms Withers' explanation convincing, namely that this reflected Mrs Short's more proactive nature.

366.6. It is agreed Mrs Short said at one meeting, "I think what Mo is trying to say is". As already indicated, we again preferred her evidence to that of Ms Hartshorne as to when and how this was said, given our caution about Ms Hartshorne's evidence on matters involving Mrs Short. We were satisfied that the comment was therefore supportive of the Claimant.

366.7. The Claimant quite properly drew our attention to the general statements from Sir Mike Wigston and Stephen Lovegrove, in which they rightly raised

concerns about comments made regarding racial inclusion. It is regrettably unsurprising that there was misunderstanding amongst some of the Respondent's employees as to what inclusion entails, which is what Stephen Lovegrove's message in particular focused upon. We cannot extrapolate from that however to an inference that race discrimination is somehow rife within the Respondent organisation, so that we can also infer that Mrs Short or Ms Withers harassed the Claimant in relation to race. On the contrary, Ms Withers' conduct during Ramadan shows an acute awareness of the importance of inclusion.

366.8. We have noted Anise Tomkinson's comment (page 2676) about the Claimant's command of English. First, we make clear we do not agree with it; the Claimant's command of English is excellent. Secondly, we were alive to the fact that a comment on a person's standard of English can be a proxy for race, whether by stereotyping or otherwise. It is important to recognise however that Ms Tomkinson was not an alleged discriminator, nor a decision-maker, in respect of any of the harassment allegations before us at this Hearing. The Claimant speculated that she must have heard the comment from Ms Withers. We agree that someone must have made a comment to Ms Tomkinson along these lines, but it was not put to Ms Withers that she had said it and so there was no basis on which we could infer that she did. Moreover, whilst Ms Withers did raise communication issues with the Claimant, these were focused on his tone, the length of his emails and his reliance on written rather than face to face discussion – see page 346 – and not his standard of English. Further, Ms Tomkinson may well have been saying that the Claimant's English was not "<u>that</u> good", that is as good as to be able to write such an email which had in her view the hallmarks of a lawyer's involvement. We do not know, because Ms Tomkinson was not a witness, but we were clear no adverse inference could properly be drawn from the comment.

366.9. We also considered the discussion between Ms Tomlin and others, specifically the foul language when referring to the Claimant and the references to "these people". Whilst well after the events with which we were concerned, we agree with Mr Opie, and more particularly Mr Bettridge, that the comments are disgraceful and should be addressed. Again however, Ms Tomlin and the other attendees at the meeting were not alleged discriminators nor witnesses in this case and so we did not think that the comments enabled us to draw any conclusions about the behaviour and mental processes of Ms Withers and Mrs Short. Specifically, we did not deem it appropriate to draw any conclusions about the reference to "these people". It is not clear what that was referring to, though it seems most likely in its context to have been a reference to people who complain. Whether that is an issue to be revisited in the hearing of Claims 3 and 4 we do not know, but for our purposes it was far from clear that it was a reference to race or religion.

367. Even taking all of the allegations together, the burden of proof did not shift to the Respondent and there was nothing in the background which the Claimant drew to our attention, which did so either. The complaints of harassment were therefore dismissed.

Protected acts

368. It was agreed that each of PA2 to PA5 were either a protected act or gave rise to the Respondent believing the Claimant may do a protected act. At this point

in our analysis, that left us needing to determine whether PA1 was also a protected act. These were the Claimant's emails to Ms Withers and Mrs Short of 23 October 2019 to which we have repeatedly referred. Mrs Shakoor submitted that the Claimant's email of 8 July 2019 was important context for PA1, but that email did not indicate or forewarn of any issue being raised in relation to the Act. PA1 therefore fell be analysed at on its own terms.

369. What the Claimant wrote was in reply to the email from Ms Withers on 22 October 2019 (page 346) in which she referred to the upset caused by some of the Claimant's emails, the fact he had not contacted Ms Pickwell as agreed, and her unhappiness that he had quoted her out of context in emailing colleagues. What the Claimant said in PA1 was that he believed he was being subjected to adverse, differential treatment and that her email was biased, with an ulterior agenda. He specifically said he would be raising a grievance under the Bullying and Harassment Policy and that he reluctantly drew the conclusion that how he was being treated by Ms Withers and Mrs Short was due to his "obvious protected characteristics". He did not say what those characteristics were, but it was very precise Equality Act language and both Mrs Short and Ms Withers understood him to be referring to his race and religion.

370. It is our judgment that the email was a protected act. It had the required reference to the Act for the reasons just stated, and the Claimant specifically referred to being undermined by Ms Withers and Mrs Short in relation to the Offsite review and PABs delivery and singled out. Taken all together, that was specific enough to amount to allegations of discrimination, noting that the complaints did not have to have been meritorious, given that the Respondent did not raise the question of bad faith under section 27(3) of the Act. Moreover, we thought it nothing to the point that Ms Withers and Mrs Short did not share with others that they believed the Claimant was saying he was being singled out on racial or religious grounds. They as individuals plainly knew enough to be in a position where they could victimise the Claimant. Even if that were not the correct analysis, taking the email as a whole, including the reference to the forthcoming bullying and harassment complaint, the recipients plainly had the belief that the Claimant would do a protected act at some point thereafter.

Allegation 51 – Ms Withers set up the Claimant to try to make him fail by placing an unreasonable condition upon his annual leave entitlement that he nominate CDO cover to assist her and Mrs Short in producing the consolidated report on the Station CNAs and Mrs Short was coercive in Ms Withers placing the condition (the Claimant relies on PA1)

371. First, we did not see how this allegation could properly have been levelled against Mrs Short. It is not clear what is meant by her having been "coercive in placing the condition" but what is clear is that she had nothing to do with requiring the Claimant to nominate CDO cover whilst on leave.

372. Secondly, in relation to Ms Withers, we were not shown any evidence that she made it a condition of the Claimant taking leave that he should nominate such cover (our understanding is that the leave was booked without any condition attached), and it was not at all clear to us how this requirement was in any event an attempt to make him fail; we were certainly not told he did not take the leave. In his pack-up at page 1127, the Claimant said that, as set out in our findings of fact, Ms Hartshorne had experienced difficulty in the previous year when providing cover as she could not join a meeting regarding allocation of PAB places which

then took place in her own absence. Ms Hartshorne was clearly not happy about those events, but the Claimant had many other CDOs he could have asked to cover for him if she was unwilling, and he does not seem to have done so. We were not satisfied therefore that he established that he was subjected to a detriment in this regard. To hold that the simple requirement to nominate cover amounted to a detriment, when we thought it entirely unsurprising for an absence of six weeks, would be to set even that modest bar far too low.

373. In any event, the sole reason Ms Withers required the cover was plain – it was her standard practice, as the requirement that cover be provided (by Ms Hartshorne) in 2019 shows. We had no reason to doubt the Respondent's evidence that both RCDAs were required to make this arrangement when going on leave. The requirement was not in any sense because of PA1; it was routine.

374. Whether analysed as the Claimant not proving facts which would shift the burden of proof to the Respondent, or as the Respondent providing an explanation for its conduct which was wholly unrelated to the protected act, this complaint was not upheld.

Allegation 52 – Ms Withers denied recognition of the Claimant's achievements by the withholding of development objectives and exposure to corporate opportunities in support of him securing a place on "Positive Action Pathway", thus negatively impacting his access to opportunities for promotion and/or further training (the Claimant relies on PA1 to PA5)

375. We concluded that the Claimant had not established the detriment on which this allegation relied:

375.1. First, it was not clear what development objectives and opportunities the Claimant says were withheld. We were not taken to any evidence that any were.

375.2. Secondly, Ms Withers drew the PAP to his attention, albeit last minute because she was not aware of the deadline; as page 1166 shows, they discussed it on 29 May 2019 and she emailed him about it the next day.
375.3. Thirdly, the Claimant secured a place on the PAP.

375.4. Fourthly, the Claimant and Ms Withers talked about him leading a CDO conference, when they met on 23 September 2019, and it seems clear Ms Withers was supportive of him doing so. It is not clear what else he says she should have done; he made no requests of her at all in relation to the PAP, and of course from 23 October 2019, just a month later, he did not want to meet with her for a review, which would have been a good opportunity to discuss it.

376. The complaint failed on that basis, but we also concluded that the Claimant had not shown a prima facie case that whatever Ms Withers failed to do in this regard was in any way influenced by his protected acts:

376.1. She gave precisely the same support to Mrs Short, namely supporting her joining the PAP and nothing further.

376.2. PA1 may have been part of the context for the absence of any further discussion, but it was not the protected act, but rather the Claimant's wish not to

meet for his review, that frustrated any further dialogue. That is certainly why no development objectives could be agreed.

376.3. As we have noted, Ms Withers did tell us that she did not want to chase the Claimant about his taking up a leadership opportunity because it might lead to a further complaint after PA1, but that is not the same as saying that there were "corporate opportunities" she withheld because he had complained, which is what is alleged. As we have noted, we were not taken to evidence of any such opportunities having been missed.

377. The Claimant did not prove facts which would have shifted the burden to the Respondent, and therefore this complaint also failed.

Allegation 54 – Mrs Short sabotaged the Claimant's project by coercing the field force (CDOs) in the Northern region to abort a planned Off-Site training event at RAF Linton to be delivered by CDO Valley (Southern region), which the Claimant had endorsed as Project Lead (he relies on PA1)

378. This allegation can be dealt with very briefly. Mrs Short's only involvement in this matter was the email at page 1459 in which she suggested CDO Linton liaise with a CDO closer to his Station, for costs and time reasons, as an alternative training option. There was no evidence that she had any engagement on the matter thereafter. The email in question was dated 30 September 2019. It therefore came before any protected act and thus cannot have been because of them. The Claimant did not prove facts from which we could conclude, even in the absence of an adequate explanation, that he had been victimised.

Allegation 56 – Ms Withers and Mrs Short sabotaged the Claimant's project by postponing or cancelling a planned Off-Site training delivery at RAF Cosford with no plausible rationale (the Claimant relies on PA1 to PA5)

379. This is similar to allegation 54. It was said to lie against both Ms Withers and Mrs Short, but the allegation against the latter was withdrawn during the Claimant's evidence. We therefore focused our analysis of this allegation on Ms Withers.

380. The Claimant did not adequately explain to us why this was a detriment. He had to cancel the training, but he was not going to be delivering it (we understood Ms Hartshorne was to do so) and in any event there was no evidence of him being criticised by those who had planned to attend. Indeed, he made clear in his email to colleagues at page 1512 that it was not his decision. As to the postponement sabotaging the Offsite project, it plainly did not. Mr Opie's direction was not to abandon the training package; on the contrary, he wanted it delivered, just in a one-day format.

381. As to whether the cancellation was in some way influenced by a protected act, it equally plainly was not. In short, as just mentioned, the Respondent wanted the course delivered in one day, as Mr Opie's email made clear. That was the reason for directing the cancellation. The Claimant portrayed the reference to Programme SOCRATES as a cover that he invited the Tribunal to see through to identify victimisation, but as we have noted Mr Opie gave specific examples of two other courses which had also been halved in length. We accepted his evidence that whilst the programme was a military one, its principles were to be applied

force-wide; this was outlined in his email to the Claimant of 7 February 2020 at page 1511. No two-day Offsite training courses have been run since.

382. The Claimant also spent considerable time in cross-examination of the Respondent's witnesses suggesting that by reducing the course, the Respondent was leaving Offsite activities in a state of non-compliance with health and safety requirements, with the intent of demonstrating that the cancellation was so unreasonable that adverse inferences should be drawn. We saw no evidence of non-compliance with health and safety requirements, and we note that none of the other CDOs who gave evidence said that there was. The parties were agreed that there was no evidence of any health and safety failures at RAF community events either.

383. The Claimant did not prove facts from which we could conclude, even in the absence of an adequate explanation, that what Ms Withers and Mr Opie directed in this regard was influenced by any protected act.

Allegation 59 – Ms Withers undermined the Claimant by referring a complaint received from HIVE concerning CDO Valley to the Station OC BSW at RAF Valley within the Claimant's AOR, without notifying him as professional supervisor to the CDO or seeking his input (the Claimant relies on PA1 to PA4)

384. The Claimant did not establish the facts on which this allegation depended. The evidence shared with us shows very clearly that the Head of HIVE approached both Ms Withers and Ms Parr directly, and so Ms Withers did not refer the complaint as the Claimant alleges; all that happened was that she and Ms Parr discussed it on Ms Withers' return from leave.

385. Moreover, whilst it might have been ideal for Ms Withers to inform the Claimant about it, we accept her evidence that she did not do so because she thought the matter had been resolved, by her explaining to Ms Parr that she did not think CDO Valley had acted inappropriately. She did not omit to refer the matter to the Claimant in any way because of a protected act. The Claimant could not say during cross-examination why he made that connection. In re-examination, he speculated – and it was speculation – that Ms Parr knew he was about to submit Claim 1, but of course that says nothing about the mental processes of Ms Withers.

386. The Claimant did not prove facts from which we could conclude that the burden had shifted to the Respondent.

Allegation 61 – Mrs Short undermined the Claimant by making a visit and arrangements to visit RAF Cosford where the Claimant is based without informing him, but instead informing Ms Withers who also undermined him by not informing him (he relies on PA1)

387. Whilst it would have been ideal for Mrs Short to copy the Claimant into her email to Ms Hartshorne explaining the visit, and ideal for Ms Withers to tell the Claimant it was happening, this was evidently a routine matter as far as they were concerned. Mrs Short simply followed her routine practice of notifying the CDO of a visit, with the unusual additional step of copying in Ms Withers because – and we noted her frank evidence on this point – of her somewhat difficult relationship

with Ms Hartshorne. As for Ms Withers, it was a common-sense explanation that she simply did not notice the Claimant was not copied into an email, which because it was a social visit Mrs Short was not obliged to send in the first place.

388. At worst the omission of the Claimant from the email was impolite, but again we concluded that it would set too low even the modest bar discussed in the case law to say that this amounted to a detriment. Moreover, when asked why he says his colleagues' omissions in this regard were related to a protected act, the Claimant told us maybe he was singled out because he is Asian, and perhaps Mrs Short thought this meant he was not interested in a Christmas social visit. Quite apart from being speculation, that of course is causation related to a protected characteristic, not a protected act.

389. This complaint too failed because the Claimant did not establish facts from which we could properly conclude, even in the absence of an adequate explanation, that he was victimised.

Allegation 62 – Mrs Short undermined the Claimant by sending an email to the field force inferring delay on the part of the Claimant and thus creating unwarranted time pressure for him in which to produce the minutes of the Wyton CDO Conference; Ms Withers then further undermined the Claimant by withholding distribution to the field force of the minutes which he produced (he relies on PA1 to PA5)

390. This is in fact two allegations. The first concerns Mrs Short's email of 25 November 2019, beginning with the words, "Ahead of receiving the meeting notes" and then attaching some documents relating to completion of CNAs. In our judgment, to describe that as a detriment to the Claimant would be to bring the concept of detriment into disrepute. The comment was routine and did not imply delay on the Claimant's part. We were not told that either Mrs Short or the CDOs were aware of any deadline for circulating the notes and we were not even told that CDOs knew who was responsible for preparing them. We were not taken to any evidence that any CDO raised delay in circulating the minutes until Ms Hartshorne did so in July, but there was no evidence that she thought the delay reflected badly on the Claimant at all. We could not see either how the email created time pressure for the Claimant. He had agreed a deadline with Ms Withers, as he and Ms Withers knew, and could continue to work to it.

391. As to causation, the Claimant had no explanation as to why Mrs Short's email was in some way influenced by his protected acts, except to say she was getting back at him. We were satisfied she was not. The reason she sent the email is evident on its face, namely that some CDOs had requested documents in relation to CNA preparation; that was all she had in mind. The allegedly offending words can just as easily be read as positively recognising the follow up work the Claimant was to do, in other words that Mrs Short was wanting to make clear that she did not wish to trespass on the Claimant's contribution. That is however speculation on our part. As we say, her opening words are a routine, innocuous expression. Her sole focus was what her colleagues had requested from her, and we were satisfied the protected act was not an influencing factor, consciously or unconsciously. We did not think the Claimant had established facts from which we could conclude in the absence of an adequate explanation that he had been victimised, but even if he had, the Respondent's explanation for Mrs Short's words

made clear that they were in no sense whatsoever influenced by any of the protected acts.

392. As to the delay in Ms Withers distributing the minutes, again we were not satisfied the Claimant had established that this was a detriment. There was a delay, but we saw no evidence that this undermined the Claimant, for the reasons we have given, namely that no-one knew he was to prepare them nor that he had caused any delay, as is shown by the fact that Ms Hartshorne chased Ms Withers in July, and not the Claimant, with whom she evidently had a good relationship. In other words, if the delay reflected badly on anyone, it was Ms Withers.

393. That part of the complaint failed on that basis. It would also have failed on the question of causation, because the Claimant's own explanation was that Ms Withers delayed sending the minutes as she thought his English was not very good (based on his belief that it was she who said this to Anise Tomkinson). That of course is not the required influence for a victimisation complaint to be made out. Moreover, Mrs Shakoor told us that all the Claimant's minutes have been circulated late since November 2018, pre-dating any protected act. The Claimant did not prove facts sufficient to shift the burden of proof to the Respondent.

394. Even if he had, we were satisfied that the Respondent provided an explanation for the delay which was not the influence of any protected act. Part of the delay was that the minutes required amendment, as did Mrs Short's a year earlier. That was routine. Ms Withers did say that she delayed further because she did not want another complaint (arising from her having amended the minutes) or words to that effect. Her meaning was clear from her related oral evidence when she said that she thought her doing so would create an added element of unhappiness for the Claimant. In other words, as is plain from the situation generally at this time, she did not want to worsen the already difficult working environment. Further still, not wanting another complaint is not the same as doing something because of the complaint that has already been made. We would have been satisfied, had we needed to be, that the Respondent's explanations for the delay in sending the minutes was properly severable from any protected act, even though the Claimant's complaints provided the context for Ms Withers' decision.

Allegation 72 – Mrs Short and Ms Withers excluded the Claimant by coercing AfC in its selection process for the furlough of its RAFBF funded Station Youth Workers, so as to secure preference in the developing and launching of a digital youth platform for those Stations outside of the Claimant's AOR and in closest proximity to their respective physical bases (the Claimant relies on PA1 to PA5)

395. We were not satisfied that the Claimant established the facts on which this allegation depended. Whilst he undoubtedly believes it was the case, he produced no evidence to suggest that either Mrs Short or Ms Withers "coerced" AfC in its process of selecting which SYWs to retain whilst others went on furlough, in Mrs Short's case not least because she was on leave when the decisions – required urgently given the pandemic – were taken. Whilst consultation may have been a better way to reach its conclusions, the selections were plainly AfC's decision, which was rationally explained by Mark Davis – in short, they were SYWs who AfC believed had shown the requisite skills, three of them having already collaborated on digital provision of some description.

396. Contrary to the Claimant's view, we did not find that in any sense to be implausible such as to give rise to the inference he invited us to draw that this was Ms Withers' and/or Mrs Short's doing. We do not see how it can be said that AfC could not have taken the decision without their influencing it, as it is reasonable to presume that AfC was familiar with the capabilities of its own employees.

397. Furthermore, the Claimant could not say on what basis he alleged Ms Withers and Mrs Short would have acted in this way because of a protected act, except to say that they wanted to get at him. He did not prove facts from which we could conclude, even in the absence of an adequate explanation, that the Respondent victimised him in this respect.

Allegation 78 – Ms Withers and Mrs Short subjected the Claimant to abuse/misuse of power by collaborating and exerting improper influence in seeking to effect the transfer of the Claimant to Army Welfare Services (the Claimant relies on PA1 to PA5).

398. First of all, we did not see how this allegation could be levelled at Mrs Short. As we will come to, it is evident and natural that Mr Opie discussed the Claimant's temporary transfer with Ms Withers, but there was no evidence identified to us that Mrs Short was also involved in that decision.

399. Turning to what was alleged against Ms Withers, whilst it may be said that she "collaborated" with Mr Opie in that the Claimant's transfer was a topic of discussion between them, two things should be noted. First, what the Claimant meant by collaboration is clearly collaboration between Ms Withers and Mrs Short, so that they could then together exert influence on Mr Opie. That allegation rested entirely on speculation on the Claimant's part. Secondly, we saw and heard no evidence that Ms Withers acted improperly in her discussions with Mr Opie on this topic. She was clearly concerned about the functionality of her team, but we were amply satisfied that Mr Opie was well capable of taking his own, independent decisions, exemplified by his seeking to pursue informal conduct proceedings with the Claimant in 2019 in the face of DBS advice to the contrary. Again therefore, the Claimant did not establish the detriment on which this allegation relied. We noted further for completeness, that the transfer to AWS was a neutral act under the Respondent's policy, it was not compelled, and the Claimant refused it. We did not think that sequence of events could properly be described as a detriment to him in any event.

400. Also for completeness we considered whether, if this had been a detriment, it was influenced in any way by a protected act. We noted:

400.1. There was no evidence that the Claimant's transfer came under discussion from the time of the first protected act in October 2019; it was first discussed around March 2020. Of course, by March there had been further protected acts (or matters suggesting further such acts would follow), but the timing for initiating such discussions was in our view at least suggestive of an employer that was not seeking to take such a step as a response to a protected act being done or intimated.

400.2. Ms Withers emailed DBS (Alex Jones) in March 2020 (page 461) and gave concrete examples of what she saw as the Claimant refusing to carry out reasonable requests in a professional manner, which she said meant that she did

not believe she could effectively manage him. That was evidently the driving force for the transfer becoming an agenda item.

400.3. As for the suggestion of AWS (and DCYP) as places where the Claimant could work, they were the obvious choices given that they already engaged community and welfare professionals. It is telling that Ms Withers' concern was that, if the Claimant was to transfer – and she was clear it was not her decision – it should be to somewhere where he could engage in suitable and productive work, indicating a careful and considerate thought process. We also noted he would not have had to relocate.

400.4. Ms Withers believed Ms Wakefield had been exonerated, and Mr Opie did not know of the Claimant's concerns about her.

400.5. In Mr Bettridge's email to the Claimant, communicating the transfer (page 2013), he expressed his concern that the Claimant did not have the required level of trust in Ms Withers, and said he wanted to give him space and reduce the stress he was experiencing. It was clear in our judgment that Mr Bettridge and Mr Opie were directed by a combination of business and staff welfare concerns. It was entirely coincidental that this was the date by which the Claimant had to submit his Claim Form, and anyway, it seems highly unlikely Mr Bettridge would have known whether he had already done so.

401. We will come separately at allegation 88 to the question of the Claimant being transferred as opposed to Ms Withers. In respect of allegation 78 however, he did not prove facts from which we could conclude in the absence of an adequate explanation, that he had been victimised.

402. In summary with respect to allegations 51, 52, 54, 56, 59, 72 and 78, there was nothing in the decisions or actions which the Claimant sought to challenge in those complaints which we found to amount to unreasonable conduct by Ms Withers or Mrs Short, and certainly nothing so unreasonable as to suggest an inference should be drawn that one or more protected acts was or might have been at play in influencing those decisions and actions. Whether analysed as the Claimant not meeting the burden on him, or as the Respondent discharging its burden by providing explanations for what took place, those complaints of victimisation failed.

Protected disclosures

403. We only had time before giving oral judgment to reach provisional conclusions in relation to whether the Claimant made one or more protected disclosures, as we made clear to the parties. What follows sets out our considered judgment in relation to each. The Claimant captured in the List the text he relied on in each case, though of course we had regard to the broader email or letter in which each was embedded, except in respect of PD2 which was made orally.

404. As we have set out above, section 43B of the ERA requires the disclosure of information, as opposed to just an allegation or expression of opinion. Although tribunals are enjoined not to be too pernickety about that, a qualifying disclosure does require sufficient specificity and factual content. In turn, it must also tend to show, in the Claimant's reasonable belief, that a legal obligation had been breached or that this was being covered up. The Claimant must also have

reasonably believed the disclosure was in the public interest. The Respondent conceded that if we were to find any disclosure concerning furlough selection tended to show in the Claimant's reasonable belief that a legal obligation was being breached, he also reasonably believed it to be in the public interest, but it did not concede that point in relation to any disclosures concerning how the Claimant was treated on 15 June 2020. The Respondent raised no issue regarding to whom any were disclosures made.

PD1 – The Claimant's email to AfC on 12 June 2020

405. The email is at page 595. The Claimant said, "Our [Stations] were seemingly excluded from any consultation as regards the furlough of SYWs and I share those concerns … I wish to express and record my disquiet around the process adopted for selection of those [Stations] which retained their SYWs, the exclusion to the inherent opportunity, and the rationale behind it". We were satisfied that this disclosed information, to the effect that Stations in the Southern AOR had been excluded from consultation about the selection and from the selection process itself.

406. We were not satisfied however that the Claimant reasonably believed that this information tended to show there had been a breach of a legal obligation. The focus of the email was the exclusion of the Southern AOR from consultation. Subjectively, whilst the Claimant says now that he believes there was an equality law issue, he was more than capable of saying that in this email and did not do so. We were not satisfied therefore that he subjectively expressed that belief in what he wrote. Furthermore, objectively, the Claimant still cannot say now with any clarity, after months of reflection, on what basis he believed there had been a breach of the Act, for example that the process put women or disabled persons at a particular disadvantage. As the case law makes clear, we should assess the reasonableness of his belief based on his being the intelligent, informed person he is, and someone who had already made explicit complaints to his employer about breaches of the Act and a Claim about the same to the Tribunal. We concluded that he did not reasonably believe this disclosure tended to show a breach of a legal obligation under the Act.

407. Similarly, we were not satisfied that the Claimant reasonably believed that the PSED was being breached, for the reasons just expressed and the additional reason that he had been told that it was not the Respondent's decision which SYWs should be retained and has produced no reasonable basis for his contention otherwise, nor was the Respondent party to the contract between the RAFBF and AfC as the Claimant in his position knew or should reasonably have known. Similarly, we still do not understand the basis on which the Claimant says he believed what he said tended to show the RAFBF and/or AfC were in breach of charitable law obligations related to proper expenditure of publicly donated funds. It seemed to us quite the opposite, namely that AfC was using those funds, in a time-pressured situation, to give a good service to children and young people during the national lockdown.

408. For those reasons, we found that PD1 was not a qualifying disclosure. There was no need for us to consider the public interest element in this instance.

PD2 – What the Claimant said at the meeting on 15 June 2020

409. This alleged protected disclosure consists of the Claimant raising concerns about "impropriety in the selection of SYWs for furlough and the impact on inclusion, equality of opportunity and equality of access to resources". Mr Pinel gave a similar account in his evidence to us, namely that the Claimant made the point strongly that staff in his AOR had raised questions about the handling of the SYW selection process.

410. This seemed to us to be on the borderline between allegation (or opinion) and information. We gave the Claimant the benefit of the doubt on that point however, on the basis that it can be reasonably assumed those present at the meeting had read the Claimant's agenda item (PD1) and would have been aware of the information he was disclosing accordingly.

411. This was not a protected disclosure in our judgment however, because the Claimant was raising "equal opportunities" in the general, rather than legal obligation, sense. His focus was very plainly on the fact that the whole field force should have been involved in the selections and that SYWs in his AOR had been denied an opportunity afforded to those in the North. There is no doubt the Claimant believed that and in part it was true (we say in part because it seems clear many SYWs in the Northern AOR were similarly excluded), but we do not think that he held subjectively a view that there had been a breach of a legal obligation; what he expressed was a concern about a difference in treatment between the two AORs. In any event, even if he held the subjective belief that a legal obligation had been breached, it was not reasonably held for the reasons we have given in relation to PD1.

412. We therefore found that PD2 was not a qualifying disclosure. Again, there was no need for us to consider the public interest element.

PD3 – The Claimant's email to Mr Bettridge on 15 June 2020

413. This email is at page 514. As set out in the List, the kernel of the alleged protected disclosure was the statement, "I was interrupted, excluded and undermined during this meeting, with the objective of seeking to 'cover the tracks' of what has taken place with the respondents [that is Ms Withers and Mrs Short] and so the meaning of my concerns and those of Southern AOR was obviously not taken on board. There was no intervention from [Ms Withers] (one of the respondents [to his bullying and harassment complaint]) to seek to correct this conduct".

414. We were satisfied that the part of the email related to how the Claimant said he was treated, namely being interrupted, excluded and undermined, and in addition that Ms Withers did not intervene, was clearly the disclosure of information. There was however no subjective expression by the Claimant that in this way there had been a breach of a legal obligation, still less any reasonable basis for so believing. We know from subsequent correspondence that he was not alleging in this respect a breach of the Act. Moreover, the clear focus of this part of the email was how he said he had been treated, which evidently means that there was a complete absence of any reasonable belief that this disclosure was in the public interest.

415. We were not satisfied that there was a disclosure of information in relation to the balance of what is quoted above, namely the reference to covering the tracks

"of what has taken place with the respondents". Mr Bettridge was not party to the 12 June email nor present at the meeting on 15 June, and therefore he would not have had the information necessary to understand what the Claimant was saying specifically had "taken place with the respondents" or what his "concerns" were which were not taken on board, unless – which is not clear – the Claimant was referring to the whole suite of his bullying and harassment complaints.

416. In any event, given that the Claimant did not have any reasonable basis for believing the AfC representative acted as they did at the meeting to cover something done by Ms Withers and Mrs Short, and no reasonable ground on which to assert that they had influenced the choice of which SYWs would be retained, in our judgment he did not hold a reasonable belief that a legal obligation had been breached in this regard or that this was being concealed, simply because he had no, let alone any reasonable, basis for what he disclosed.

417. We therefore found that PD3 was not a qualifying disclosure. There was no need for us to consider the public interest element in relation to the second part of it.

PD4 – The Claimant's email to Mr Opie on 16 June 2020

418. This email is at page 593. The Claimant wrote, "I wish to raise my experience with you. In raising those issues around equal access to resources/support and equality of opportunity, I did not feel at all 'heard, safe or supported' …My experience was that of exclusion, interruption and undermining from Action for Children and the behaviour of its Head of Commercial towards me particularly, indicates scrutiny".

419. The Claimant's email of the same date sent to Mr Bettridge (page 510) is telling. He told Mr Bettridge he had just emailed Mr Opie "not in relation to [Ms Withers and Mrs Short] but as regards the behaviour I experienced from [AfC]". That is a true reflection of his email to Mr Opie. As with PD3, what he raised included no subjective expression that in this way there had been a breach of a legal obligation, still less any reasonable basis for so believing, given his undoubted ability to make that clear and his plain statement subsequently that he was not complaining of any form of discrimination. Moreover, what he raised was wholly personal to him, both subjectively as seen by him and objectively as must be measured by us, and so was not reasonably believed to have been in the public interest.

PD5 – The Claimant's letter to AfC on 29 July 2020

420. This letter is at pages 596 to 602. The Respondent submitted that this and PD6 were not relevant to these Claims because they post-date all relevant allegations, but that does not appear to be so for PD5 in relation to allegation 91.

421. The letter clearly disclosed information, both related to how the Claimant was treated on 15 June and the substantive furlough decisions for SYWs.

422. As to whether in the Claimant's reasonable belief it tended to show that a legal obligation had been breached, in so far as it recounted how he was treated by the AfC representative, we repeat our analysis above. As to the substantive

furlough issue, we note the following, not all of which are mentioned in the List as being relied upon by the Claimant:

422.1. He had sought to raise points around "equal access to resources and equality of opportunity".

422.2. The retention decisions were "not taken in line with best practice", the Claimant then referring to a CIPD guide which he said advises that selections for furlough be made "using objective criteria, such as a scores matrix". The Claimant added that AfC inviting expressions of interest "would have been good practice (and a wholly reasonable expectation)".

422.3. The process went against "the very cornerstones of youth work", the Claimant asking how those cornerstones could be expected to be properly considered in future youth work planning, "let alone in implementing equal opportunities policy".

422.4. The selections appear to have been made based on locations near to where Ms Withers and Mrs Short were based. The Southern AOR was made to appear superfluous.

422.5. He went on to say, "The MOD is a public body; this point underpins all of the other issues raised".

422.6. There was disquiet that the proper needs of the Stations had not been taken into account.

422.7. As indicated in our findings of fact, the Claimant then summarised his concerns, beginning with "equality and inclusion".

423. It is a detailed letter and, as noted, we considered more than just the parts quoted in the List. We were not satisfied however that the Claimant reasonably believed that what he disclosed tended to show that a legal obligation had been breached, and thus concluded that PD5 was not a protected disclosure, for the reasons given in relation to the earlier alleged disclosures, namely in summary:

423.1. The Claimant is a well-informed individual, well capable of raising explicit concerns about breaches of the Act, as he had demonstrated beforehand. He did not do so.

423.2. He remains unable in our judgment to say how the selection process gave rise to a reasonable belief that AfC was in breach of the Act or the Respondent in breach of the PSED, for the reasons stated above.

423.3. The Claimant's concerns were about equality generally – "good practice" such as set out by the CIPD – the overwhelming burden of the letter being the divide between how the Claimant believed the Southern and Northern AORs had been treated and perceived.

PD6 – The Claimant's letter to the RAFBF on 8 October 2020

424. This letter is at pages 1985 to 1988. It plainly did post-date all possible relevant allegations (numbers 88, 89, 90 and 91) and therefore we did not consider it further.

Concealment

425. Where concealment of the breach of a legal obligation was raised in one of the alleged protected disclosures, we have dealt with it above. In submissions, the Claimant referred to what Mrs Shakoor described as spurious reasons for the RAFBF withholding the recording of the meeting on 15 June 2020. For completeness, in relation to that we note:

425.1. AfC and/or the RAFBF had been public about the selection process once it was completed.

425.2. Ms Withers had circulated the news within her team pretty much immediately thereafter.

425.3. Mr Pinel did not say to us that the Claimant was shut down at the meeting; the burden of his evidence was rather that it was agreed the point should be picked up offline, that is positively considered rather than anything being concealed.

425.4. Mr Opie asked the RAFBF to investigate the meeting and forwarded to the RAFBF a letter from the Claimant to AfC, which Mr Opie helped him draft.

425.5. Mr Bettridge sought the recording of the meeting as soon as the Claimant requested it (pages 507 to 514).

425.6. Both AfC (at page 1958) and the RAFBF (at page 575) responded in writing to what the Claimant had raised.

426. It is clear to us therefore, in the light of all of that evidence, and the absence of anything beyond incredulity on the Claimant's part about the results of the selection decisions, that at no point did he reasonably believe that any breach of a legal obligation was being concealed. He had no basis for any such belief.

427. We have concluded therefore that the Claimant did not make any protected disclosures in items PD1 to PD5, though in any event we went on to determine allegations 88 to 91 on their merits. We noted the following preliminaries to those determinations:

427.1. The Claimant confirmed that these allegations lay only against Mr Bettridge, which we thought plainly right, as he was responsible for each of the decisions in question.

427.2. For completeness we noted that Mr Bettridge was not aware of PD1 or PD2, he was of course aware of PD3, but not of PD4. It is unclear whether he was aware of PD5.

427.3. Where a detriment is established, the Claimant must show that a protected disclosure had a material (more than trivial) influence on the treatment being afforded to him. If he did so, then the Respondent would have the burden of showing the ground for its acts or omissions – see section 48(2) ERA.

Allegation 88 – The Claimant was directed to move from his substantive post to another department

428. We were satisfied that this amounted to a detriment. Even though it was a direction to move to work which was suitable for the Claimant, he could of course reasonably say that moving out of his existing role was to his disadvantage.

429. As to the ground for it, it did closely follow the Claimant's email to Mr Bettridge on 16 June 2020 (PD3), and Mr Bettridge expressly stated at the time and in his evidence to us that the 15 June 2020 meeting led him to make his direction. Those facts were enough to establish a prima facie case that the protected disclosure had a material influence on the decision and so we would have needed to decide whether the Respondent had shown the ground or grounds on which it directed the transfer and that this was not any protected disclosure.

430. We would have concluded that the Respondent had shown grounds that were not the protected disclosure, for the following reasons:

430.1. A transfer of the Claimant out of his role was clearly in view well before PD1 in June 2020, not least because the Claimant's move to AWS was discussed and refused in March.

430.2. Mr Bettridge was reluctant to transfer anyone – his correspondence and oral evidence make that clear.

430.3. The Respondent's Bullying and Harassment Policy does contemplate a separation of the parties to a complaint, so that it is unsurprising a transfer was in view. We were not entirely clear which part of the Policy Mr Bettridge relied on, but it only gives examples of when a separation may be appropriate, not an exhaustive list.

430.4. Ms Tomkinson described DBS advice that the Claimant should be transferred in order to avoid further obstruction and frustration and explicitly referenced the two Tribunal Claims and the Claimant's bullying and harassment complaint (we gather the reference to a second Tribunal Claim refers to the Claimant's failed attempt to add protected disclosure detriment complaints to his original Claim), but Mr Bettridge said he bristled at that suggestion. It was evident to us that he did so from his oral evidence on the point and also from the fact that his next email to Ms Tomkinson questioned why the Claimant should be moved. That confirms not only that he made the decision (it is wholly routine that he should get advice or even drafting from DBS), but also very much suggests he did not think any protected disclosures (or indeed the bullying and harassment complaint or Tribunal complaints) were a reason to move the Claimant. We thus accepted his oral evidence that he concluded they were not.

430.5. Mr Bettridge told us it was welfare issues – the Claimant's welfare as well as Mrs Short's – that led to the decision to direct the transfer. This is established by his private email to DBS at pages 564A and 564B in which he raised those issues as the basis for having to take this decision.

430.6. Mr Opie in fact helped the Claimant write PD5 and forwarded it to AfC with a request for an enquiry, the letter setting out the Claimant's concerns about how

he was treated and – against Mr Opie's advice – his concerns about how SYWs had been selected. That very much suggested to us that as far as he played any part in the transfer decision, Mr Opie had only in mind a concern to have a functioning team and was not responding to the Claimant making any such disclosures. Moreover, it can objectively be seen, very clearly, that there were significant issues in the team that needed resolving – see for example allegation 78.

430.7. There was wholly insufficient evidence to suggest Alex Jones had doubts about the transfer, but even if he did, it was Mr Bettridge's decision, we were satisfied as to his reasons and any doubts on Mr Jones' part reveal nothing about what did and did not influence Mr Bettridge's actions.

430.8. The transfer was to an important and productive role, suitable to the Claimant. The decision was therefore taken carefully and considerately.

430.9. Furthermore, the Respondent plainly felt it had nothing to hide and had no reason to treat the Claimant adversely because of any protected disclosure, given that it raised his concerns both with AfC and the RAFBF and indeed facilitated and assisted him in doing so.

431. We considered the Claimant's argument that the decision to transfer him was so unreasonable that it must have been influenced by a protected disclosure, because the Respondent could have taken other options. We noted:

431.1. Checks and balances such as the Claimant suggests in his statement – it is not clear he suggested them at the time – would not have facilitated the healthy interactions such as were needed with Ms Withers, enabling her to properly manage him.

431.2. The Respondent could properly take the view that it was entitled to have the Claimant carrying out productive work and that this was a more neutral step than placing the Claimant outside of the workplace, for example on "garden leave". Equally, we were not taken to any policy which identified this as an appropriate step.

431.3. Mr Opie was clearly trusted by the Claimant but did not have the relevant professional expertise to manage him.

431.4. We could see that moving Ms Withers would have been fraught with difficulty. We noted that the Claimant did not raise this option at the time. He says now that he could have done the job of CCDA, but Mr Opie could perfectly reasonably conclude that he had not demonstrated that – he had not applied for the role and Ms Withers was working on significant projects, as Mr Opie described, so that losing her knowledge and experience would have been detrimental to the team. The role the Claimant took up in DYCP can be readily distinguished from that which she was performing.

431.5. The Claimant says that someone from the Army could have been transferred across, to give him chance to be assessed by someone independent for a few months and in accordance with the spirit of an initiative known as AFRP (Armed Forces Recruiting Programme). This was not raised by the Claimant at

the time either. Mr Opie did not consider it, but his omitting to do so was not in any sense so unreasonable that it calls into question the real reason for the decision.

432. In short, any protected disclosure, if there had been one, would have been the immediate context of, but not the ground on which, Mr Bettridge's direction was given.

Allegation 89 – The Claimant was threatened with suspension if he did not engage with the move [to another department]

433. We accept that this was a detriment, as the Claimant could reasonably take the view that he was in a worse position than other employees with the risk of suspension if he did not comply with Mr Bettridge's direction to move roles.

434. This allegation is the corollary of allegation 88, and so we repeat our reasoning in relation to that. It should be noted that it appears Mr Bettridge did not simply decide himself that this was appropriate but took advice – as the Bullying and Harassment Policy required of him – and gave consideration to the Respondent's Disciplinary Procedure. Further, we would add that whilst, as the Claimant points out, he was not in the Claimant's line management chain, he did represent the Respondent and was vested with its authority, so that it could be properly said to be a reasonable management instruction. In order to ensure that the transfer took effect, the Respondent had to have recourse to an alternative course of action if it were refused. It was a tough statement, but not one made on the ground of any protected disclosure, had there been one, for the reasons given above.

Allegation 90 – Disclosing to AfC and/or the RAFBF the fact of the Claimant's ongoing discrimination complaint against the Respondent

435. In the List, this complaint was not said to lie with Mr Bettridge, but with Ms Withers, Mrs Short and Mr Opie. Thus, the facts on which the Claimant relied were not made out because the action in question was taken by Mr Bettridge. We nevertheless considered the substance of the allegation on its merits.

436. We found it difficult to see the detriment the Claimant says he was subjected to. There was no evidence that we were taken to which suggested that what Mr Bettridge told the RAFBF affected the investigations undertaken by either them or AfC, nor the content of their consequent communications with the Claimant, which seems to have remained professional and friendly. The Claimant speculated that it meant the RAFBF and AfC would – in our words – see him as a serial complainer and so attach less weight to what he raised with them. The RAFBF report clearly shows however that they listened repeatedly to the recordings of the 15 June meeting, and identified ways in which it could have been better conducted, whilst AfC's communications simply reiterated what they had said was the basis for how they had selected SYWs before the Claimant made any alleged protected disclosure. If the Claimant's case was that he suffered reputational damage with either of these third parties, there was no evidence of it.

437. It might have been better if Mr Bettridge had not mentioned his investigation to the RAFBF – though we note he did not name in relation to whom it was being conducted, and there were three Respondent employees at the 15 June meeting – but what led to him doing so was plain: he was in fact trying to help the Claimant,

by mentioning it as a means of encouraging the RAFBF to release the recording. Accordingly, even had there been a protected disclosure and any detriment, we would have concluded that the Claimant had not shown a prima facie case that the former was a ground for the latter.

Allegation 91 – The Respondent sought to assimilate the substance of the Claimant's disclosure of 15 June and the detriments he complained of into the commissioned HIO investigation into his internal discrimination complaint

438. The relevant email exchange between the Claimant and Mr Bettridge runs in reverse from pages 514 to 507. In that exchange, the Claimant said that he wanted a copy of the recording of the 15 June meeting, "for consideration in the ongoing Bullying and Harassment investigations", citing his Annex F complaint. Mr Bettridge replied that he was taking advice about making the request for the recording and asked for a contact email address for that purpose (which incidentally shows that he was engaged with the Claimant's concerns, rather than looking to disadvantage him because of them). On the next day, 16 June 2020, the Claimant again said that he wanted the recording preserved "for my ongoing Bullying and Harassment Complaint". That is when Mr Bettridge replied that he had just noticed it bore no relation to that complaint, for which he was Deciding Officer. The Claimant then replied to say that it was relevant because it related to what is now allegation 72 in these proceedings – namely that Ms Withers and Mrs Short coerced AfC in the SYW selections. He made clear that AfC's conduct was something he had separately asked Mr Opie to review.

439. The alleged detriment was not clear to us at all. Mr Bettridge did not decide the Claimant's complaint about AfC's conduct, though of course he dealt with what is now allegation 72, as he had to. Even if there was a detriment, the confusion about what Mr Bettridge was and was not to consider in relation to 15 June 2020 was entirely understandable given the email trail we have just set out. That was the basis on which Mr Bettridge covered the ground that he did in reaching his decision on the Bullying and Harassment Complaint, plainly so in our view. We add that we did not draw the conclusion the Claimant invited us to reach at MA(2)53, from the document at SB163A. The phrase "outrageous outcome claim – disciplinary issue" was very obviously not the GLD saying that assimilating the complaints was outrageous on Mr Bettridge's part.

440.This complaint too would have failed on its substance, in that the Claimant did not show a prima facie case that Mr Bettridge's actions were influenced by any protected disclosure.

Belief

441. As already indicated, the Respondent accepts the Claimant's pleaded belief was for the most part one which fell within section 10 of the Act. The disputed belief was "protecting the integrity of the employment process from taint and corruption".

442. This was the other matter we had not reached a definitive view upon when giving oral judgment, and strictly speaking we did not need to determine it anyway as we have already determined the reason why (in the context of the detriment complaints the ground on which) Mr Bettridge directed the transfer to DCYP and

gave the concomitant warning of the risk of suspension if the Claimant did not comply, and it will already be clear that we did not find the reason was the Claimant's belief. The parties nevertheless requested that we determine the point in providing these Reasons and we have done so.

443. Even taking account of the decision in **Harron**, we were not satisfied that the belief in question meets the test in **Grainger**. We did not think that it satisfies the fourth Grainger principle, in that it is not clear what the Claimant means and so it could be said to lack cogency and/or cohesion. We were also not satisfied that it meets the second Grainger principle that it must be a belief not just an opinion or viewpoint. It seemed to us to reflect the Claimant's opinions about the SYW furlough selections, without any foundation for the assertion that those selections were "tainted" or "corrupt", as we have set out above. In addition, because the alleged belief concerns the SYW issue only, it did not as a result satisfy the first Grainger principle (a genuinely held belief) in that we heard no evidence of the Claimant holding or in any way manifesting such a belief beyond that very specific context. In the words used in **Harron**, the belief was archetypally parochial rather than fundamental.

444. The complaints of belief discrimination thus fell to be considered on the basis of the belief which it was agreed did fall within the auspices of section 10, namely that "promoting equality and inclusion in the practices of the public sector and of other organisations they engage with to carry out public functions is paramount".

Allegation 92 – The Claimant was directed to move from his substantive post to another department

Allegation 93 – The Claimant was threatened with suspension if he did not engage with the move

445. We assessed these two complaints of belief discrimination, which were also complaints of victimisation, together. It will again be evident that we did not uphold them, because, whilst again we accepted the Claimant could reasonably perceive both steps as detrimental, as already stated we have reached conclusions as to what Mr Bettridge's grounds/reasons for taking these steps were, which did not involve any consideration of the Claimant's protected belief or protected acts.

446. We agreed with the Respondent that the right way to approach these allegations was to go straight to the "reason why" question. The reasons were as we analysed them under allegation 88. The expression of the Claimant's belief, whether of itself or as a protected act, if such it was, in his communications with the Respondent and third parties from 12 June 2020 onwards, may have been the context for Mr Bettridge's actions, but it was not the reason for or any influence upon it. In support of that conclusion, we reiterate in particular that the Respondent was wholly open to the Claimant raising his concerns (in this context, expressing his beliefs) hence its assistance to him in communicating with both AfC and the RAFBF, which amply suggests it was not in the mind of Mr Bettridge, or Mr Opie, to do these things because of the Claimant's beliefs or his expression of them.

447. Furthermore, the Claimant said in evidence that he would have been accommodated in Community Support, and thus not directed to transfer and threatened with suspension, if he was not an Asian male. That is not the direct discrimination complaint he pursues in respect of these allegations, nor of course

does it connect Mr Bettridge's actions to any protected act. The Claimant went on to say that what Mr Bettridge did was influenced by his flagging up that the YHA were failing to accommodate additional needs of children or young people and the Respondent did not want its own failings to challenge that exposed. We rejected his articulation of the Respondent's views of those matters, but the point is again that they were not the subject of the protected acts he relied upon.

448. It was not necessary for us to address the comparator question, but we briefly noted that the Claimant said in submissions that the comparator would be others who had concerns about the SYW issue – we know there were such people – but who did not voice them to the Operations Board or the RAFBF. Under section 23 of the Act however, the comparator would also need to be someone with the same issues with their line manager and team, in order to isolate any belief or protected act and test if it played a part in Mr Bettridge's decisions. We heard no evidence of any such comparator. There was ample evidence to conclude that the Respondent would have treated someone in that position (the hypothetical comparator) in the same way.

449. Whether assessed as the Claimant failing to meet the burden on him at the first stage because he had not established less favourable treatment or anything more than on the one hand his having held and/or expressed a view or done a protected act, and on the other the detrimental treatment, or as the Respondent having shown that the belief, its expression and any protected act had nothing whatsoever to do with Mr Bettridge's decision, the complaints failed.

Protected acts 6 to 8

450. As it only remained to deal with allegation 94 given the revised scope of the Hearing (see above), PA6 and PA7 were not strictly relevant to the issues before us, given that Mr Bettridge was not party to them, but we have determined them anyway.

451. PA6 (the same as PD1) was not a protected act. The recipients could not know that the Claimant was raising an issue in relation to the Act. He referred to the "process of selection", "exclusion" from consultation and "the inherent opportunity". At that stage, given it was the first time he raised these particular concerns, with no context to explain what he was referring to, these words were in no way sufficient to enable the recipient to know that the Act was in view, even taking a generous approach to the statutory language.

452. PA7 (the same as PD2) was not a protected act either. The phrase "equality of opportunity" was very general – see the decision in **Fullah**. It could very well have meant equality in a moral sense, that is in a general fairness sense, and was not at all a sufficiently clear reference to the Act. The Claimant himself said in evidence that his point in this communication was that his AOR was being disadvantaged, and of course that did not – certainly not without more – flag that he was identifying issues under or making any reference to the Act.

453. As for PA8 (the same as PD3), the Claimant did refer in his email to his extant bullying and harassment complaint which Mr Bettridge was considering, but all that was said about Ms Withers was that she did not intervene on 15 June 2020. That may have borne relevance to the Bullying and Harassment complaint in the Claimant's own mind, but Mr Bettridge could not be expected to understand that it was, or the basis on which it was, a further allegation of discrimination or

harassment under the Act, as is shown by his email the next day saying that he realised, unless he was missing something, that PA8 was not relevant to his role as Deciding Officer. He was indeed missing something, namely sufficient clarity – which the Claimant was perfectly capable of providing – that he was alleging a breach of the Act. Of course, in relation to his comments about how he was treated, the Claimant himself later confirmed that this was not something that engaged the Act at all.

Allegation 94 – The Respondent's findings in its internal complaint [i.e., the matters decided by Mr Bettridge] were unsubstantiated, irrelevant, malicious and retaliatory

454. The findings the Claimant relies on were sevenfold. We take each in turn but begin with some general conclusions.

455. The first is that not all the Claimant's allegations properly reflected Mr Bettridge's decision. We will deal with that at the relevant point. Secondly, taking the broad interpretation referred to in the case law, we would be prepared to hold that each finding – to the extent properly reflected in one of the allegations – was detrimental to the Claimant. He could reasonably conclude he was not in as good a position as others in any such respect. As to Mr Bettridge's appointment as Deciding Officer and his continuing in that role, we saw nothing that would lead us to conclude it was unreasonable, let alone so unreasonable that adverse inferences should be drawn against the Respondent because of it. We noted:

455.1. Crucially, the Claimant never said at the time that Mr Bettridge should step down.

455.2. There was a rational and routine explanation for his replacing Chris Elliott – she was leaving the Service.

455.3. We were satisfied with Mr Bettridge's explanation as to why he was sufficiently senior to hear the complaint – he was alert enough to the importance of this issue to take advice and was given an explanation as to why he was considered two grades above Ms Withers.

455.4. The Claimant had the "impression" that Mr Opie influenced the decision. That may be his impression, but it was unevidenced except by the fact that their offices are co-located (and that Mr Bettridge was sighted on other issues regarding the Claimant, which we will come to). It was notable how both were particularly affronted by the suggestion Mr Opie interfered in Mr Bettridge's decision-making. As he demonstrated when he pushed back on the advice he was given in relation to the transfer, we were amply satisfied that Mr Bettridge was independent-minded and, when called upon to do so, perfectly capable of making his own decisions.

455.5. Mr Bettridge knew of the misconduct allegations against the Claimant, but we did not see how that was avoidable given that many of the Claimant's allegations that he was to investigate fell squarely within the bounds of the issues that led to the misconduct charges. Further, Mr Bettridge was careful in his decision not to express any view on them.

455.6. He can in fact be said to have sought to assist the Claimant with his complaint, by giving him two opportunities to further detail his initial Annex F, rather

than simply dismissing it at the first stage because it was not sufficiently particularised, and by waiting until December 2020 to receive the Claimant's supporting evidence.

455.7. His Decision Analysis is very detailed. That does not of itself show fairness of course, or more pertinently the absence of victimisation, but it is demonstrative of considerable effort and lengthy consideration of what the Claimant had raised.

456. There are general matters about the decision that we will return to, but we now turn to each part of the allegation, noting that we were not deciding an unfair dismissal complaint, though accepting as a central feature of the Claimant's case that if we were to find that the Respondent's behaviour in any of these respects was wholly unreasonable, that might be sufficient to draw an adverse inference and pass the burden to the Respondent.

1. That the Claimant's Bullying and Harassment complaint was vexatious and malicious so as for the Respondent to seek to avert a finding of victimisation

457. Part of the definition of "vexatious and malicious" in the Respondent's policy is that it is recurring, and we agree with Mrs Shakoor that the Claimant had not brought recurring complaints. They were voluminous, but this was his first grievance in a long period of employment. That said, Mr Bettridge's decision shows the following:

457.1. He was evidently conscious of the importance of not deterring others from bringing complaints.

457.2. He was alive to the possibility of the misconduct allegations being an example of how the Claimant was being bullied.

457.3. He may well have been wrong to say that the Claimant complained to thwart the progress of the misconduct proceedings and we were not convinced by his evidence that what he meant by that was that the Claimant had thwarted Mr Opie's informal approach. Nevertheless, first, he was not aware of the Claimant's email to Andrew Brittain saying that he wanted the formal misconduct proceedings to progress (which, incidentally, suggests that Mr Bettridge was only party to such knowledge of the misconduct process as was entailed in the Claimant's grievance). Secondly, he had a rational ground for making the connection, given that the Claimant's first complaint alleging discrimination – albeit he had raised concerns about the working environment before – followed on very quickly from concerns being raised with him about his conduct. Thirdly, this was only one part of Mr Bettridge's overall conclusion that the Claimant had acted vexatiously and maliciously.

457.4. It will be evident from our conclusions in respect of the harassment allegations we have been required to consider, that Mr Bettridge could properly find them unfounded, so that there was at least a rational foundation on which he could draw his conclusions about the grievance overall.

457.5. The amended version of the letter Mr Bettridge sent to all parties ahead of the appointment of an HIO does suggest he formed an early view that the complaint might be vexatious and malicious, as Mr Bettridge accepted, but he was not the HIO – who may have unearthed material Mr Bettridge was not aware of at

that early stage – and as noted above, Mr Bettridge waited patiently for the Claimant's evidence, having hoped that if it was irrefutable as the Claimant said, an HIO investigation could be avoided.

457.6. He was careful to point out mitigating factors, specifically that the Claimant had not in his view been adequately managed in the past.

2. The recommendation that misconduct proceedings should be instituted against the Claimant for pursuing a vexatious and malicious discrimination complaint

458. This was not a recommendation, but something Mr Bettridge said should be considered so that strictly speaking this allegation failed because the relevant facts were not established. It is important to note however that he did not simply decide of his own volition to give this some thought; his doing so came directly from the Respondent's policy – see page 2054. It followed from his findings just summarised, and it was appropriate for him to take into account the potential and actual impact on Ms Withers and Mrs Short as the respondents to what he had determined were multiple unfounded allegations.

3. The recommendation that the Claimant should be permanently removed from his substantive post

459. It is correct that Mr Bettridge said this should happen. Mrs Shakoor suggested in closing submissions that it was later held that Mr Bettridge exceeded his authority in that regard. We cannot take that into account of course as we were not taken to any evidence on the point and so Mr Bettridge had not been asked about it during his evidence. Even if he did exceed his authority however, as we have assessed in detail in relation to allegation 88, he had reasons for directing the Claimant's temporary transfer that were unrelated to any protected act. Having reached the careful and considered conclusions he did as to the Claimant's multiple unfounded complaints against Ms Withers and Mrs Short, this was of course bound to confirm that the team could no longer function as then constituted. As he put it, "the nature of his accusations, their lack of merit and the harm this has caused mean that, in my judgment, there is no hope of his resuming a professional relationship with the respondents". Tribunals have to take care when addressing such matters, but we were satisfied, not least given the backdrop of what it was that led to the temporary transfer, that these conclusions as to the impact on relationships caused by the unfounded complaints, and thus the functioning of the team and the wellbeing of its members – which as shown by the history we have recounted, appear to have been Mr Bettridge's concerns – are properly separable from the grievance itself. In short, the protected act was the context but not the reason for the recommendation.

4. The finding that the Claimant engages in sexist behaviour towards women

460. This is not what Mr Bettridge found. He said that it was possible the Claimant had a bias against women but could not reach that conclusion on the evidence. In this respect therefore the Claimant did not establish the alleged detriment. Assessing the actual finding, it shows a considered approach. Mr Bettridge had compared the Claimant's emails to men and those to women to justify his comment, and it was a nuanced conclusion because he recognised that he was looking at a small number of emails and that most of the Claimant's colleagues

were women. It would have been better to raise this point with the Claimant before committing it to writing, but it was evidently based on his considered findings. It is true, as Mrs Shakoor said in submissions, that the Claimant complained about Mr Opie, as well as about Ms Withers and Mrs Short, but what this fails to recognise is that Mr Opie at no point complained about how the Claimant had communicated to him; a number of women had.

5. The finding that the Claimant engages in bullying behaviour

461. This is again not what Mr Bettridge found. His finding was that the behaviour closest to bullying was that of the Claimant. Accordingly, the Claimant did not establish the detriment on which this complaint depends. In any event, we have set out our views on the Claimant's emails to Ms Baylis and how we agree that they were inappropriate in certain respects. We would not ourselves have said that they were close to bullying, but objectively assessed it is correct to say that they were plainly more objectionable than anything we saw in the conduct of Ms Withers and Mrs Short which was subjected to detailed scrutiny over nine days of evidence before us. One might say that in making this observation, Mr Bettridge veered some way towards commenting on the misconduct proceedings, so that perhaps the comment was inadvisable, but for the reasons we have given it was not without foundation.

6. The finding of negative and irrelevant work performance alleged against the Claimant motivated by the Respondent's desire to deflect the real substance of the Claimant's discrimination complaints

462. The Claimant did not clarify what is meant by this allegation, but we assume it refers to Mr Bettridge's references to the Claimant's work practices such as not updating his diary and relying on emails to communicate. They were negative assessments, but we do not see how they were irrelevant, not least because they in part formed the basis of the mitigating factors Mr Bettridge put forward and because they were an inherent part of the issues that he had to consider in deciding the Claimant's complaints. In other words, he found that it was the Claimant's practices which were an explanation for much of what he complained about rather than his race or religion. That cannot be said to be without foundation, even on the facts as we have found them to be on the harassment allegations before us.

7. The finding that it was the Claimant rather than the Respondent who had sought to create delays in the internal complaint process

463. Mr Bettridge recognised his own responsibility for some of the delay, in early 2020, again showing a reflective and balanced approach, though it is clear the HIO appointment also caused some delay and Mr Bettridge could have emphasised that as well. The point could therefore have been more nuanced perhaps, but it seems indisputable that the Claimant had contributed substantially to the delays by not adequately setting out his complaints for four months and then not providing his supporting evidence until December.

464. Having addressed the seven allegations, we also note the following:

464.1. As already identified, to a very large degree the decision is notable for its balanced approach, including the recommendations in respect of Ms Withers and Mrs Short.

464.2. Mr Bettridge did not disregard the evidence of the Claimant's witnesses, but without any negative reflection on any of them, we thought they added little to the overall evidence before us, though they did highlight for example concerns about Mrs Short's body language. It is unsurprising therefore that Mr Bettridge took a similar view.

464.3. Specifically in relation to Ms Hartshorne, as we have several times mentioned, we think it was fair to say that her evidence was affected somewhat by her evident issues with Ms Withers and Mrs Short regarding their respective promotions.

464.4. Mr Bettridge did disregard the evidence the Claimant submitted in January 2021, though only after reviewing it first. We were not taken to that evidence, but it is understandable that a Deciding Officer would want to place a limit on what evidence can be produced and when, a year after the initial formal complaint – and we add that even two years later in this Hearing, there is nothing we have been shown that we think should obviously have sent Mr Bettridge in a different direction.

464.5. We have noted the later Henniker/Tomlin process, but it was only relevant to one of Mr Bettridge's findings, namely that the Claimant's behaviour came closest to bullying.

464.6. Crucially, the Claimant said in oral evidence that Mr Bettridge's decision was infected by considerations of his race, which of course would not be victimisation but race discrimination.

465. The Claimant's case was essentially that Mr Bettridge's decision was flawed because he found against him. The fact that the complaints were not upheld by Mr Bettridge was plainly an insufficient basis for inferences of discrimination to be drawn. Our conclusions on allegation 94 are in summary that nothing in the decision was so unreasonable or flew in the face of the evidence (this was the central feature of the Claimant's case) such as to suggest an inference should be drawn that it was influenced by any protected act. Mr Bettridge based his decisions and recommendations solely on his analysis of the Claimant's substantive complaints, untroubled in our view (for all the reasons we have given, assessing the course of Mr Bettridge's work overall) by the fact that the Claimant had done, or might do, any protected act, including in making the complaint Mr Bettridge was investigating. We noted in support of that conclusion two particular matters we have already mentioned, namely Mr Bettridge's recommendations as to the conduct of Ms Withers and Mrs Short (he also appears not to have hesitated to send them the standard warning earlier in the process) and his cautionary note about not deterring complainants, both of which are demonstrative of someone seeking to reach a determination on the facts revealed to him by the investigation, not someone influenced by complaints of discrimination and harassment having been brought in the first place.

466. In respect of all aspects of allegation 94 therefore, the Claimant did not prove facts from which we could conclude that the Respondent victimised him. Even if he had done so, we were satisfied the Respondent provided explanations for its

actions which were in no sense whatsoever influenced by any protected act or any belief about the same.

Final comments

467. As none of the Claimant's complaints succeeded, it was not necessary for us to consider time limits.

468. In addition to the contextual matters we had regard to in deciding the harassment allegations, we also took a step back at the end of all our deliberations to ask ourselves whether there were any other matters which might lead us to draw inferences in favour of the Claimant's case and against the Respondent. We did not think there were:

468.1. We were not invited to draw any such conclusions from the late supply of a small number of documents; they should have been disclosed before, and it is not entirely clear to us why there were not, but as will be evident from what is set out above, their content did not support the Claimant's case or adversely affect the Respondent's to any material degree, if at all, or show us much that was not already known to the parties.

468.2. We read nothing into the Respondent's decisions about who to call as witnesses at this Hearing. It called precisely the people who were responsible for the alleged acts of discrimination in its various forms. There was no suggestion by the Claimant that anyone other than those present was somehow behind a decision he sought to challenge in his various complaints, except that he says Ms Withers and Mr Opie (through Anise Tomkinson) influenced Mr Bettridge's decisions. We have given reasons for rejecting that case and in any event Ms Withers and Mr Opie were present to be questioned; Ms Tomkinson was not, but on the Claimant's own case she was only a "conduit", not a decision-maker.

469. In conclusion, all of the Claimant's complaints failed and were dismissed.

Note: This was in part a remote hearing. There was no objection to the case being heard remotely. The form of remote hearing was V - video.

Employment Judge Faulkner
22 March 2023

Note

All judgments and written reasons for the judgments (if provided) are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the parties in a case.