EMPLOYMENT TRIBUNALS

Claimant: Mr Adrian Whitehead

Respondent: Warwickshire County Council

FINAL HEARING

Heard at: Birmingham (partly via CVP)

On: 20, 21 (reading), 22, 23 (ineffective), 27 & 28 September 2021;
1 (reading), 2, 5-9, 12-16, 19 December 2022;
(deliberations) 20 & 21 December 2022 & 4 January 2023

Before: Employment Judge Camp **Members:** Mr E Stanley
Ms J Keene

Appearances
For the claimant: in person
For the respondent: Ms H Barney, counsel (September 2021)
Mr T Khan, counsel (December 2022)

RESERVED JUDGMENT

The claimant's whole claim fails and is dismissed.

REASONS

Introduction

1. The claimant, Mr Adrian Whitehead, was employed by the respondent from 24 June 2019 as a Project Manager on a fixed-term contract due to end on 31 March 2020. He was dismissed with effect on 18 March 2020, ostensibly because of a breakdown in the employment relationship. He had been through early conciliation from 15 February to 5 March 2020.

2. The claimant has presented a number of claim forms, including different versions of the same claim forms. The first claim form is recorded by the Tribunal as having been presented on 22 March 2020. The version of the Particulars of Claim to support the first claim form that we have is dated 2 April 2020, although it may have been submitted later. The claimant has ended up with three ongoing claims with their own

case numbers, as set out in the header of this document. At the start of this hearing he was pursuing the following types of claim and, by our count, over 70 separate complaints:

2.1 detriment for being a fixed-term employee;

2.2 direct race discrimination;

2.3 racial harassment;

2.4 victimisation;

2.5 detriment for making a protected disclosure / ‘whistleblowing’;

2.6 automatically unfair dismissal for making a protected disclosure / ‘whistleblowing’;

2.7 so-called ‘ordinary’ unfair dismissal;

2.8 failing or threatening to fail to comply with the obligation to permit the exercise of the right to be accompanied;

2.9 wrongful dismissal (notice pay).

3. During his closing submissions, the claimant effectively withdrew the ‘ordinary’ unfair dismissal claim, recognising that he lacked two years’ continuous service and abandoning arguments he had been advancing that relied on the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999.

Procedural history

4. This is a relatively long-running case with a complicated and unfortunate procedural history that it would take several pages to explain. There have been numerous applications and preliminary hearings and Tribunal orders along the way, including orders made in September 2021 and December 2022 during the course of this final hearing, to which we refer. There have been appeals to the Employment Appeal Tribunal, some of which may still be awaiting a decision. The claimant also wrote to the Tribunal after closing submissions and we refer to the letters/emails from the Tribunal to the parties about this correspondence that were sent in January and March 2023 at Employment Judge Camp’s direction.

5. This final hearing was split into two parts, one in September 2021 (which included a single day of oral evidence from the claimant and no evidence from the respondent) and the other in December 2022. Between those two parts there were preliminary hearings, including a hearing to decide a recusal application from the claimant. A number of case management orders were made.

6. For an explanation of why the final hearing ended up being split into two parts and to get a flavour of what happened during the September 2021 part of the final hearing and subsequently, please see paragraphs 17 to 133 of the written reasons for our decision refusing the recusal application, signed by the Employment Judge on 6 November 2022.

7. There has been an enormous volume of correspondence between the parties and the Tribunal, overwhelmingly from or in response to the claimant, particularly between September 2021 and December 2022. To summarise it, or even to summarise the many decisions made by the Tribunal in the course of it, is impracticable for reasons of space in what is already a very long decision. However, for a better understanding of what has gone on, it may be helpful to consider the following in particular: the written records of the preliminary hearings of 23 and 26 July 2021 and of 13 September 2021 that were dealt with by Employment Judge Meichen; the reasons for our orders of 22 July 2022 relating to various applications that had been made by the claimant and the respondent; our decision of 24 November 2022 refusing the respondent's application to strike out the claim (written reasons signed by the Employment Judge on 30 December 2022; the claimant's equivalent application to strike out the response was withdrawn by him before the final hearing resumed in December 2022).

The issues

8. Employment Judge Meichen produced a list of issues in his written record of the preliminary hearing in July 2021. We shall call it the "list of issues". We refer to it and it should be deemed to be incorporated into these Reasons. As we understand it, it was based on a draft list produced or agreed by a direct access barrister then acting for the claimant. The parties were ordered to say if they thought the list of issues was inaccurate or incomplete. It was not challenged between July 2021 and the start of this hearing two months or so later. When this hearing started, both sides agreed it was accurate.

9. The only change explicitly made to the list of issues during the hearing, apart from (as mentioned above) the abandonment of the ordinary unfair dismissal claim, was the respondent, at our request, providing details of its justification defence to the fixed-term employees detriment claim. See the order and written reasons respectively signed by the Employment Judge on 29 September 2021 and 17 November 2021. Our decision to permit the respondent to do that has been challenged by the claimant on appeal, to date unsuccessfully so far as we are aware. It has anyway become irrelevant because the fixed-term employees detriment claim has failed for reasons other than justification.

10. During the course of the hearing, some discrepancies and anomalies and ambiguities in the list of issues became apparent. Where relevant, we shall mention these when giving our decision on the issue in question.

The law

11. Once the claimant abandoned his ordinary unfair dismissal claim, there ceased to be any disputed point of law involved in this case and it became entirely about the facts. Our summary of the relevant law will therefore be brief.

12. The law that we have had to apply is reflected in the wording used in the list of issues. Our starting point, and in relation to some complaints almost our end point, is the relevant legislation, in particular:

    12.1 regulations 3 and 7 of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002;

    12.2 sections 13, 23, 26, 27, 39, and 136 of the Equality Act 2010 ("EQA");

    12.3 sections 43B, 47B, 48 and 103A of the Employment Rights Act 1996 ("ERA");

    12.4 section 10 of the Employment Relations Act 1999.

13. We also note, and adopt, what respondent's counsel wrote about the law in his closing submissions.

14. In terms of case law not referred to in counsel's written submissions:

    14.1 in relation to the concept of detriment and to what could broadly be termed 'causation' in the EQA, in relation to both direct discrimination and victimisation, we have directed ourselves in accordance with paragraphs 48 to 51 and 61 to 74 of Warburton v Northamptonshire Police [2022] EAT 42;

    14.2 as to the harassment claim, we have noted paragraphs 7 to 16 of Richmond Pharmacology v Dhaliwal [2009] ICR 724, read in conjunction with paragraphs 86 to 90 of the judgment of Underhill LJ in Pemberton v Inwood [2018] EWCA Civ 564;

    14.3 so far as concerns the burden of proof in the EQA, we have applied the law as set out in paragraphs 36 to 54 of the decision of the Court of Appeal in Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913;

    14.4 what "on the ground that" in ERA section 47B(1) means and how ERA section 48(2) and the burden of proof apply in a 'whistleblowing' detriment case are explained in, respectively, Fecitt v NHS Manchester [2012] IRLR 64 and Serco Ltd v Dahou [2017] IRLR 81 & Ibekwe v Sussex Partnership NHS Foundation Trust [2014] UKEAT 0072_14_2011.

The facts

15. The evidence before us consisted of: written and oral witness evidence from the claimant and, for the respondent, from 15 individuals. The first time we mention the name of someone who gave evidence for the respondent at this hearing, it will be highlighted in bold type.

16. Later in these Reasons, we shall explain why it is that we have rejected the claimant's uncorroborated evidence. So far as concerns the respondent's witnesses, although many of them – understandably given that we are primarily concerned with events of late 2019 and early 2020 – had forgotten a lot of the detail of what occurred and although we had other concerns about a number of them, we accept that they all believed they were telling us the truth. Any issues we had with them and with their

evidence were insignificant compared to those we had with the claimant and his evidence.

17. By December 2022 there were six lever arch files or 'bundles' of documents that had been prepared by the respondent, totalling over 3000 pages. We shall call these the "main bundles". Because the claimant would not accept the main bundles, he had prepared two bundles of his own prior to the September 2021 portion of the hearing, totalling over 1100 pages. There was a great deal of duplication between the two sets of bundles and as best we could tell, there was nothing of importance in the claimant's bundles that was not also in the respondent's bundles. As we made clear to the parties at the outset, given the volume of documentation we could not hope to read everything and have of necessity relied heavily on both sides to take us to what is relevant by referring to it in their witness statements, in cross-examination, and in submissions.

18. In this section of the Reasons we shall do no more than outline the facts. Our findings in relation to relevant matters in dispute that we felt we needed to resolve are mostly set out in the parts of these Reasons where we decide the issues. We have structured our decision like this in an attempt to shorten it.

19. The claimant was employed by the respondent as IT Project Manager (sometimes referred to as ICT Project Manager) from 24 June 2019 on a fixed-term contract that was always due to end on 31 March 2020. He was employed in the ICT (Information Communication and Technology) service, the Head of which was **Mr A Hussain**. Mr Hussain's line manager was **Mr C Cusack**, Assistant Director for Enabling Services. Mr Cusack's line manager was a Mr Powell, who was Strategic Director for Resources. The claimant's direct line manager was a Ms Darby. Her line manager was a Ms Woodhead. The ICT Projects Team Leader was **Mrs J Tarver**. She had been involved in the claimant's recruitment.

20. The claimant had worked in local government before, for a number of years. On the face of his job application, though, he had continuous local government service going back only to January 2018.

21. In late 2019, the respondent was going through a major reorganisation. It particularly affected the ICT & Digital team within the Enabling Service, in which the claimant was employed. It followed an analysis of the ICT & Digital department's skills, capabilities and structure completed in 2018 by an organisation called Gartner. They produced something referred to as the "Gartner Report". On the back of the Gartner Report, Mr Cusack made recommendations to the respondent's Corporate Board for changes to what was known as the ICT & Digital "Functional Operating Model" ("FOM"). That in turn led to the reorganisation.

22. Like every local authority we have ever come across, the respondent is and was heavily unionised. As best we can tell, there were extensive discussions and consultation with the recognised trade unions and they were 'on board' with the reorganisation. This is possibly because there were no plans for compulsory redundancies as a result of the reorganisation, or none that we are aware of.

23. What was being proposed and why was set out in detail in a Staff Engagement Pack dated November 2019, which runs from page 598 of the main bundles. As we understand it, the main proposed change, or one of the main changes at least, was

that at the point when the restructure took effect, most ICT staff, including Project Managers then employed, would move from ICT to something called the Commissioning Support Unit ("CSU"). The person within the CSU in charge of the CSU part of the reorganisation, including consultation relating to it, was **Miss T De Kretser**, Service Manager for Change Management.

24. The date when ICT staff in particular roles would move to CSU – i.e. the date when it was planned that the reorganisation would take effect – changed over time. Originally, the date for Project Managers like the claimant was 2 December 2019. It then moved to 1 February 2020. For most or all of the period on which this claim is focussed – December 2019 to early March 2020 – the date was 1 April 2020, i.e. the day after the claimant's fixed-term contract would terminate. It ended up being October 2020.

25. The respondent ran two consultations about the reorganisation with employees (as distinct from unions): one for ICT and one for CSU. The person heading up the ICT consultation was **Mr I Jewkes**, at the time Interim HR Business Partner. Mr Hussain was also heavily involved.

26. The ICT consultation ran from 28 November 2019 to 20 January 2020. The claimant had a meeting with Mr Hussain and Mr Jewkes on 9 December 2019 and another one, where he was accompanied by Mrs Tarver, on 16 January 2020. Between the two meetings, the claimant sent numerous emails asking questions and raising issues relating to the reorganisation.

27. The CSU consultation launched with a group consultation meeting on 13 December 2019 which was attended by the claimant. Following the meeting, the claimant sent emails to Miss De Kretser about what was proposed. An individual consultation meeting between the two of them was scheduled for 20 January 2020, but in the end it did not take place. CSU consultation closed on 10 February 2020.

28. One of the emails the claimant sent as part of the ICT consultation was on 17 December 2019. He asked for a response by 20 December 2019. As a result, there was a meeting between him and **Mrs M Amorsen**, Senior HR Advisor, on 19 December 2019.

29. From 17 January 2020 onwards, the claimant raised by email a number of grievances about and connected with the reorganisation and his personal situation. He had at least seven separate grievances between then and 23 February 2020. He wrote dozens of emails connected with his grievances and the things he was aggrieved about, sending one and usually significantly more emails, many of them lengthy, almost every day during late January, February and into March 2020.

30. On 27 January 2020, there was a meeting between the claimant, Mr Cusack and **Mrs S Davies**, Senior HR Practitioner, which we understand is being characterised as a 'protected conversation'. The only details we have of it are those in paragraphs 22 to 34 of Mr Cusack's witness statement, which the claimant did not substantially challenge in cross-examination. It was hardly mentioned during this final hearing, which is unsurprising given that there is no Tribunal complaint directly about it.

31. On or before 30 January 2020, the claimant made the first of his Subject Access Requests ("SAR"s) against the respondent. It was dealt with by **Miss V Tshuma**, HR Advisor. She provided requested data on 24 February and 12 March 2020.

32. On 30 January 2020, the claimant was told that his grievance would be investigated by **Mr A Savage**, HR Consultant. Mr Savage was not an employee of the respondent but had been working for the respondent via an agency as an interim HR Business Partner since 30 September 2019. He had been formally asked if he would carry out the investigation on 17 January 2020. He had been recommended to Mr Cusack to do this by **Ms C Fraser**, then the respondent's Strategy and Commissioning Manager for HR and OD (Organisational Development).

33. Mr Savage sought to arrange a meeting with the claimant. The date originally proposed was 4 February 2020. The final proposed date was 17 February 2020. There was lots of correspondence between the two of them. The claimant raised several concerns and complaints about Mr Savage. No meeting took place and Mr Savage stood down.

34. On 6 February 2020 Mr Cusack, writing on Mr Hussain's behalf, invited the claimant to a meeting with Mr Hussain and Mrs Davies on 12 February 2020 to discuss the fact that the claimant's fixed-term contract was coming to an end. On 11 February 2020, the claimant emailed Mr Hussain complaining about various things, including that he had not been given enough notice of the meeting to exercise his "statutory rights to be accompanied" and that he could not "understand why I appear to be being invited to meetings with yourself as there is an obvious conflict of interest for yourself". Mr Hussain emailed back the same day confirming that in light of the claimant's email the meeting would not be taking place.

35. On 14 February 2020 Mr Cusack emailed the claimant setting out what would have been discussed with Mr Hussain had the meeting on 12 February 2020 taken place, in particular confirming that the claimant's employment would end by reason of redundancy on 31 March 2020 and explaining the possibility of redeployment. Mr Cusack also offered the claimant a meeting with him on 5 March 2020 to discuss the ending of the claimant's fixed-term contract. The claimant's reply of 15 February 2020 included this: "by the time you receive this email you should be aware that I have raised a grievance about your bullying me and other matters. I therefore do not think it [is] appropriate to meet you".

36. The claimant began early conciliation on 15 February 2020.

37. The claimant raised with Mr Powell: a grievance about alleged victimisation and bullying by Mr Cusack on 15 and 16 February 2020; a complaint about Mr Savage on 16 February 2020.

38. On 20 February 2020, after Mr Savage had stood down from investigating the claimant's grievances, Ms Fraser emailed the claimant at Mr Powell's behest suggesting that they be investigated by an external HR consultant. This did not happen because the claimant raised objections to what was proposed.

39. Also on 20 February 2020, the respondent's legal services department wrote to the claimant in response to an email of 23 January 2020, which seems to have been treated as a letter before action. The author of their letter was given as **Mr D Leach**, solicitor, but it had been reviewed and approved by **Ms S Cowen**, then Team Lead Senior Solicitor. The claimant's email of 23 January 2020 concerned the length of his continuous local government service. That would have been highly relevant had the claimant been dismissed by reason of redundancy on 31 March 2020, as originally

anticipated. It remained significant until the claimant, after all the evidence had been heard, abandoned his argument to the effect that, because he had more than two years' continuous local government service, he had sufficient continuity of service in accordance with the ERA to be entitled to bring an 'ordinary' unfair dismissal claim.

40. On 24 February 2020, after discussions with Mr Cusack, HR and in-house legal, Mr Hussain attempted to telephone the claimant, who was not in work, to discuss the early termination of his employment, but was unable to speak to him. The following day, in the evening, Mr Hussain received two WhatsApp messages from the number he had telephoned stating that the claimant was the sender's uncle and complaining about Mr Hussain's calls.

41. On 25 February 2020, the claimant took leave ostensibly for the purpose of seeking alternative employment. He subsequently alleged that he had been on leave the previous day too. He did no work in the office from 14 February 2020 onwards.

42. Also on 25 February 2020, Mr Hussain emailed the claimant inviting him to a meeting on 28 February 2020 to discuss the early termination of his employment. The email told the claimant that in the interim he was not required to work and should not contact people at the respondent. The claimant replied by a letter sent by email on the 26th. Although the letter did not say so in terms, the gist of it was that he was declining the invitation to the meeting on the 28th. In the letter, he made complaints about various things, including being given insufficient notice of the meeting to be able to secure a suitable person to accompany him. He suggested various possible companions, including the respondent's Chief Executive, an elected Councillor, and a solicitor called Mr Williams. He copied the letter to them. Mr Williams was copied into a number of the claimant's emails to the respondent in 2020.

43. In the claimant's letter of 26 February 2020, the claimant also complained about Mr Hussain phoning him on a "private number" and indicated that the respondent could not telephone him on his mobile number or send him an email to a non-work email address, that he did not have a landline, and that he would not be reading emails sent to his work email address.

44. On 27 February 2020, the claimant emailed Mr Hussain a scanned-in copy or photograph of a redacted GP fit note dated 27 February 2020. It advised that the claimant was not fit for work from 21 February 2020 to 9 March 2020. The condition for which the claimant was signed off was one of the things that had been redacted. It has been established in the course of these proceedings that it was "Stress". In his covering email, the claimant stated that he would, "not be doing any work or participating in any work – including meetings until at least the 9th March 2020".

45. On 28 February 2020, Mr Hussain wrote to the claimant replying to the claimant's letter of 26 February 2020. He set out the reasons why the respondent thought the working relationship between it and the claimant had broken down and hence why "early termination of your fixed term contract" – i.e. dismissal before 31 March 2020 – was being proposed. The letter invited the claimant to confirm an alternative date for the meeting to discuss early termination within 5 working days of receipt, or, "if you are too unwell to meet with me within that timeframe, please confirm a date and time in the week commencing 9 March 2020 where you and your companion are available".

46. Between 3 and 5 March 2020, there was further correspondence between the claimant and Mr Hussain about having a meeting. The upshot of it was that the claimant would not engage with Mr Hussain to fix a date.

47. On 5 March 2020, the early conciliation process came to an end.

48. On 6 March 2020, the claimant made a complaint about Mr Hussain that he characterised as a formal grievance. He also sent a lengthy email to Ms Fraser about the plan to have his grievances investigated by an independent HR consultant, from which Ms Fraser and Mr Cusack concluded that that plan was futile.

49. On 9 March 2020, Mr Cusack dismissed the claimant by letter. It was sent to the claimant's work email address and by special delivery post. However, it had not been signed for on 10 March 2020. It was therefore decided to deliver a further termination letter, dated 11 March 2020, by hand to the claimant at his home in Wellingborough. The person who delivered it, on 11 March 2020, was **Mr N Moore**, at the time Device Support Technician within ICT. There is a dispute about whether it was delivered to the claimant's address or to one of his neighbours.

50. On 13 March 2020, the claimant emailed the respondent's Chief Executive. He did not mention having been dismissed and referred to not having received post that he assumed came from the respondent because "according to the post office … they seem to all start with the same prefix code in relation to previous Special Delivery correspondence received from the Council". The same day Ms Cowen emailed a copy of the termination letter of 11 March 2020 to Mr Williams, solicitor. The claimant has complained about this as a privacy / data protection breach.

51. During the week commencing Monday, 16 March 2020, Mr Cusack received:

    51.1 a letter from the claimant dated 15 March 2020 stating that he had belatedly received the termination letter of 9 March 2020 and appealing against dismissal, as well as asking about the return of unspecified personal property the respondent had allegedly retained;

    51.2 a letter from the claimant dated 16 March 2020 complaining about a data breach and alleging that the termination letter of 11 March 2020 had not been delivered to him but instead to various people on the claimant's street;

    51.3 by returned post, the termination letter of 11 March 2020, accompanied by a note from an unnamed person. If the factual content of the note were true, it probably came from one of the claimant's neighbours.

52. From 19 March 2020 onwards, the respondent's dealings with the claimant were handled by its legal services department.

53. A short internal investigation into the alleged data breach complained about in the claimant's letter of 16 March 2020 was undertaken by legal services, which concluded that there had been no data breach and that the note actually came from the claimant himself.

54. The claimant presented his first claim form on 22 March 2020. The first Covid 'lockdown' was announced the following day.

55. Initially, the litigation was handled for the respondent by Ms Cowen. In May 2020, **Mr P Jeffcoate** took over.

56. The claimant made an interim relief application. This was due to be heard on 9 April 2020 but because of Covid that became a case management hearing. The interim relief hearing ended up taking place on 3 June 2020, with both sides represented by counsel. The claimant withdrew the application at that hearing.

57. Mr Jeffcoate wrote to the claimant with the decision on the claimant's appeal against the termination of his employment on 1 July 2020. The claimant replied to that letter on 3 July 2020.

58. On 27 August 2020, the claimant made two further SARs of the respondent.

59. One was addressed to legal services. It was handled by Mr Leach, who wrote to the claimant on 3 September 2020 refusing disclosure on the basis that the data sought were exempt because of Legal Professional Privilege and Third Party Personal Data.

60. The other was for correspondence about the claimant and HR documents. It included a specific request for the claimant's final payslip and a P45. Mr Jeffcoate had previously written to the claimant on 4 August 2020 about the payslip and P45, in response to the second claim Particulars of Claim dated 21 July 2020. It seems to be agreed between the parties that the P45 and payslip were provided on or around 28 September 2020 and not before. There is a dispute about what else was provided and when.

61. On 5 September 2020, the claimant wrote to various people at the respondent complaining about the handling of these two SARs. As a result, an internal review was carried out by **Ms J Cumming**, Senior Solicitor and the respondent's in-house expert on freedom of information and the GDPR. What appears to be her response to the claimant's letter of 5 September 2020, including the outcome of the internal review, is in a letter dated 7 October 2020 which is in the main bundles. The claimant denied receiving it and his chronologically final complaint relates to this.

Credibility

62. This has been an exceptional and exceptionally difficult case to deal with. That has largely been because of the claimant as an individual. Later, we shall explain in relation to each issue why we have not accepted the claimant's case. The reasons are different for different issues. Fundamentally, though, the claimant has from our point of view destroyed his own credibility. We shall now set out, in a non-exhaustive list, how he has done this.

63. The claimant based complaints on allegations that he has simply invented, e.g. his 'letter-bombing' allegations (complaints/issues 5.3.42 and 7.1.42; see from paragraph 318 below).

64. The claimant created documents / evidence, or caused them to be created, with a view to manufacturing and/or bolstering Tribunal claims. See, for example, the sections of these Reasons beginning at the following paragraphs: 161 (offensive notes sent with returned letters around November 2020); 186 (notes of a meeting in December 2019); 291 (WhatsApp messages to Mr Hussain); 318 (a note sent to Mr

Cusack in March 2020 with a returned letter); 350 (a letter dated 16 March 2020 supporting an allegation of theft).

65. There were other complaints the claimant made that he cannot himself have believed in. For example:

    65.1 victimisation detriment complaint 5.3.16 – see paragraph 242 below;

    65.2 complaints about things being "ignored" (e.g. complaint 4.1.2; see paragraph 133 below) when he was well aware that they weren't.

66. The claimant made substantial and important allegations for the first time when being cross-examined in what we think was an attempt to address weaknesses in his case. For example:

    66.1 coming up with a new alleged protected act seemingly when he realised that his first six allegations of victimisation came after the first potentially viable protected act in the list of issues (see paragraphs 109 to 111 below);

    66.2 the evidence he gave in relation to the first alleged protected act (issue 5.1.2 a.). See from paragraph 177 below.

67. The claimant has used exaggerated and hyperbolic language. For example –

    67.1 alleging Mr Cusack was "stalking" him when all that was happening was that Mr Cusack had made himself a single point of contract for the claimant, in circumstances where claimant had been creating difficulties by sending multiple emails about similar things in a short space of time to a number of different people. See from paragraph 265 below;

    67.2 in eight complaints, making accusations of "blackmail" – see in particular paragraphs 237 and 251 to 252 below;

    67.3 accusing the respondent of direct race discrimination by having "falsified" details in a Statement of Terms and Conditions (complaint / issue 3.2.4) when he didn't even mean that the details were incorrect, merely incomplete, and certainly not fabricated because of his race. See paragraphs 126 and 127 below;

    67.4 making racial harassment complaints about the respondent allegedly doing nothing worse, on his own case, than ignoring some letters;

    67.5 using extreme language in correspondence, e.g. suggesting the respondent was using "mafia tactics" and acting "like the gestapo" and, in circumstances where he had himself regularly corresponded by email, that the respondent sending him emails rather than letters by post was an "attack on me and my family".

68. The claimant has made extremely serious and sometimes outrageous allegations without any justification. When it was put to him that he was doing this, he refused to accept or acknowledge it or to back down, let alone apologise. For example:

    68.1 near the start of this final hearing, the respondent made a successful application to redact the claimant's witness statement. The basis of the application was the fact that the claimant was very clearly implying in paragraph 29 of the statement that one of the respondent's witnesses was implicated in allegations of historic institutional child abuse. The claimant would not accept that that was what he was implying, but was unable to explain what the purpose of that part of his statement was if he wasn't, nor what its relevance was;

    68.2 the claimant made two complaints (5.3.36 and 7.1.10) about the respondent supposedly lying by accusing him of having suggested in correspondence that Mr Savage was responsible for someone the claimant knew attempting suicide. It was not a lie; it was plainly what the claimant was suggesting, despite his protestations to the contrary. The claimant has continued with these complaints.

69. The claimant has persisted in denying sending or receiving particular items of correspondence in the teeth of overwhelming evidence to the contrary. See, for example, paragraph 160 below and paragraph 170 onwards below.

70. The lengths the claimant is prepared to go in relation to and in connection with his claim are further illustrated by the unreasonable conduct we identified when rejecting the respondent's strike-out application. This included attempting to circumvent a third-party disclosure order we made. He did this by writing to the third party, a GP surgery, threatening them with legal action and the GMC if they complied with the order. He suggested in his letter to them that he was making that threat having spoken to the GMC and "the primary health care that cover the practice". At the same time he sent them a cheque for £1,000 so that if they did as he asked and breached the order and were fined as a result, they could pay the fine. See paragraphs 28 to 37 of the written reasons, signed by the Employment Judge on 30 December 2022, for our decision of 24 November 2022.

71. We bear in mind that there will often be inconsistencies in the accounts of events given at different times by honest people and that their evidence may well still be broadly accurate; and that someone's evidence can be inaccurate and unreliable in one respect without this necessarily making the rest of their evidence suspect. Nevertheless, having carefully considered the claimant's evidence, in the above circumstances we give it little or no weight. This does not mean that everything he has told us is untrue, merely that we cannot take his word for it. Where we make findings of fact that align with his evidence, it is on the basis of the documents and what the respondent's witnesses told us.

Reasonable adjustments & communications difficulties

72. The claimant says he has dyslexia. According to him, the fact that he has dyslexia is something he has known for many years, albeit he had never been formally assessed and diagnosed at the time of this hearing. In relation to hearings, we have, with one exception, made every adjustment he asked us to, for example providing things on

yellow paper, permitting him to take an audio recording of the proceedings, and giving him additional time to deal with documents. We also note our response – paragraphs 2 to 5 of our orders dated 29 August 2022 and sent out the following day – to queries from the claimant about reasonable adjustments more generally. (In this correspondence, the claimant repeated allegations that he relied on in support of his recusal application about Employment Judge Camp's conduct connected with the claimant's dyslexia. When dealing with that application in September 2022, we found those allegations to be false).

73. The one exception referred to in the previous paragraph is that we permitted Mr Savage to give evidence by CVP, something the claimant had objected to on the basis of his dyslexia. We gave reasons for our decision orally at the time and the claimant seemed to accept the decision and did not ask for written reasons and intimate an appeal.

74. Apart from that, we have made every reasonably practicable adjustment the claimant asked us to make. We have made other adjustments on our own initiative, for example formatting documents (including this one) in a 'dyslexia-friendly' way.

75. However, we do have concerns about what the claimant has said about his dyslexia. In particular:

    75.1 he has alleged that his dyslexia has led to great difficulties in relation to correspondence and other documents to and from the respondent and the Tribunal;

    75.2 during the December 2022 portion of the hearing he sought to blame anomalies and inconsistencies in his evidence on dyslexia.

76. There have been a number of what we might refer to as 'email issues'. Before the first claim form, near the end of the claimant's employment, the email issue was that he was refusing to look at emails from the respondent. As we shall explain later in these Reasons, we think he was doing this in a bid to make things difficult for the respondent and so that he could pretend he had not received correspondence he had in fact received.

77. Communications issues that have arisen as the claimant's case has developed include suggestions:

    77.1 that correspondence should not be sent to him by the respondent by email;

    77.2 that no one should send him emails and that he would not himself send things by email to the respondent or the Tribunal;

    77.3 that emails and letters that were apparently from him were in fact prepared and (in the case of the emails) sent by others on his behalf, because he was

allegedly incapable of preparing them himself due to his dyslexia; in particular that he struggles to read and create long documents;

77.4 that he no longer has an email address that he can reliably use to correspond with the respondent and the Tribunal even if he wanted to; that he has to call in a favour whenever he wants to send an email;

77.5 that he no longer has a computer and has to borrow one if he wants to write a letter;

77.6 that he has had enormous difficulties with the post, aggravated by fractious relationships with some of his neighbours, and does not want things to be hand-delivered to him;

77.7 that he feels the need to hand-deliver things to the Tribunal and to the respondent as well as posting and sometimes emailing them;

77.8 that emails received from time to time, including during this final hearing, from anonymous individuals said to be acting on the claimant's behalf and with his authority, are from people who have been helping him because of his dyslexia. He has referred to and relied on them and has evidently expected us to act upon them. On 11 October 2021, we ordered the claimant to provide the full names and email addresses of all individuals authorised by him to communicate with the Tribunal on his behalf. This is one of a number of case management orders he has never obeyed, without satisfactory explanation.

78. At all times the claimant has continued to correspond by email, and to send long and detailed letters to the Tribunal that have obviously been prepared on a computer, whenever – it appears – he wants to. The volume of his correspondence, both during his employment and in these proceedings, has been unusually large.

79. The claimant had specified email as his preferred mode of communication in some of his claim forms, giving various email addresses. Throughout his employment, he was able to receive, act on and reply to emails sent to him without apparent difficulty, including responding with long emails, or long letters sent as attachments to emails, very quickly. He did not mention his dyslexia during his employment in any correspondence we have been taken to, nor (on the evidence we have seen) did he suggest he had any difficulties in dealing with documents because of dyslexia during his employment.

80. Dyslexia was not mentioned at all during the first part of this final hearing, in September 2021, except: in one email the claimant sent (see paragraphs 39 and 40 of the written reasons for our decision of September 2022 not to recuse ourselves); in passing in the claimant's witness statement, in support of a claim for aggravated damages. He asked for no adjustments at all prior to or during that part of the hearing.

81. In his oral evidence in December 2022, the claimant sought to explain by reference to his dyslexia: why he was making a number of allegation for the first time; why he had not raised certain things in writing with the respondent at the time; why some things were not sent by email; why things were sent from multiple email addresses; and why he refused to correspond by email (except when he chose to). He had not put that

explanation forward when giving evidence about similar issues in September 2021. In any event, it is clear that the claimant was more than capable of making allegations and raising things in writing, by email and in his witness statement, because he did so.

82. The only independent evidence we have seen relating to the claimant's dyslexia is what appears to be a report from an occupational health doctor relating to the claimant's employment with someone other than the respondent. It is dated 4 March 2022 but was not provided to the Tribunal or the respondent until the end of August 2022. The version provided has been quite significantly redacted. Judging from their qualifications, the author of the report (whose name has been redacted) is a GP with a specialism in occupational health medicine rather than being, for example, a specialist psychologist. He or she has, obviously, not conducted a dyslexia diagnostic assessment and their report appears on the face of it to be based solely on what they were told by the claimant.

83. We do not know how much help the claimant has had from others during his employment and in relation to his Tribunal claim with correspondence and other documents. In conclusion, however, we are not satisfied that if the claimant has dyslexia, it causes him the difficulties that he is now alleging it does and which he now uses to explain peculiarities in his evidence. If it did, it is inconceivable that it would not have been mentioned in the correspondence leading up to him making the claim and in the claim itself.

Decision on the issues

84. We shall now go through the list of issues, dealing with every complaint being made. We shall roughly follow the order in which the complaints are mentioned in the list of issues, and shall refer to the issues using the paragraph numbering from the list of issues.

2. Less favourable treatment of fixed-term employees (2002 Regulations)

2.1 Was the claimant treated less favourably by the respondent than a comparable fixed-term employee by being subjected to the following detriments:

2.1.1 the Claimant was prevented from being 'lifted and shifted';

85. With this claim, as with a number of others, in order to understand what complaint the claimant is making that is before the Tribunal, it has been necessary to look at the claim forms.

86. In the claim forms (first claim particulars, paragraph (7)(f)(v)), this complaint is: "When it came [to] the CSU the 1st Respondent imposed arbitrary restrictions on the Claimant as a fixed-term worker by insisting that only permanent IT Managers could be 'lifted and shifted', and the Claimant could not be considered as he was on a fixed-term contract".

87. This allegation fails on the facts.

88. The CSU restructure was not a restructure involving redundancies and the consultation exercise being undertaken in relation to it was not a redundancy consultation. What was meant by being 'lifted and shifted' in the context of this restructure was continuing in employment with the respondent, in the same post but effectively in a different department.

89. Everyone who was employed in the relevant part of the respondent at the point when the restructure took effect, be they permanent employees, fixed-term employees or anyone else, was being 'lifted and shifted'. The reason the claimant was not going to be lifted and shifted was that his fixed-term contract was due to come to an end before the restructure was due to take effect.

90. We can see from emails dating from early on in the process that Miss De Kretser was in principle perfectly happy to keep the claimant on, notwithstanding his fixed-term status. The claimant appeared to recognise this, in that he put to her in cross-examination that her attitude to him changed in this respect, suggesting that the reason for this alleged change of attitude was that he did protected acts. However, this claim about a supposed prohibition on him being lifted and shifted is not a victimisation claim but a fixed-term employee claim. He was always a fixed-term employee, so if her attitude to him did change in late 2019 (and we don't find that it did), it can't have been because of that status.

91. We should perhaps add that the claimant has made a number of other allegations around this that are not part of the claim he has that is before the Tribunal. (The claim that is before the Tribunal is the one in the list of issues and/or the claim forms). For example, he suggested when cross-examining respondent witnesses that the budgets of different departments were manipulated to take him 'out of scope' because he allegedly did protected acts. In this context, "out of scope" meant someone who was not going to be lifted and shifted as part of the restructure. Putting to one side the fact that there is no Tribunal complaint relating to these allegations, they are misplaced. The claimant has a tendency to seize on isolated words and phrases in a small number of documents and to ignore context. We have looked at all the relevant emails and considered Miss De Kretser's evidence – especially her oral evidence – about what was going on when particular emails were sent. All that happened was:

    91.1 funding for the claimant's post had been put in the wrong budget and that needed to be corrected prior to the restructure taking effect;

    91.2 the date when the restructure was due to take effect was put back to 1 April 2020, which was after the expiry of the claimant's fixed-term contact.

92. As explained above, the restructure did not in fact take place until October 2020. We highlight this because it might otherwise be alleged to be convenient or suspiciously coincidental that the date of the restructure was the day after the claimant's fixed-term contract was due to come to an end.

2.1.2 the Claimant was prevented from engaging in a competitive selection process for a position in the Commissioning Support Unit

93. This complaint appears in the claim form (first claim particulars, paragraph (7)(f)(vii)1.) as an allegation that there was an, "act of deliberately removing the Claimant from being able to … engage in any kind of competitive selection process in order to give perm IT Project Managers a job".

94. The claimant has fundamentally changed his case. The relevant allegations he made in his oral evidence and closing submissions were about being denied redeployment opportunities – about, supposedly, not being allowed to apply for any jobs at all. There is no Tribunal complaint about this. Even if there were, any allegation that he was not allowed to apply for any jobs at all and that the reason for this was that he was a fixed-term employee would not be made out on the facts.

95. In his evidence, the claimant was not actually alleging that there was any particular "competitive selection process" that he was denied access to, let alone such a process "in order to give [permanent] IT Project Managers a job".

96. The respondent's evidence, in particular Miss De Kretser's, that there was no relevant competitive selection process at all was not substantively challenged. The contemporaneous documents, in particular a staff engagement pack of December 2019, shows that there was not expected to be any relevant competitive selection process.

97. This claim therefore fails on the facts too.

98. In connection with this, the claimant made further allegations in relation to which he had made no Tribunal complaint. His case seemed to evolve during the hearing. After he had given his evidence, during cross-examination and in submissions, he suggested: first, that he had expressed an interest in one or more posts and the respondent had sent him nothing that would enable him to apply for them – no details of the posts and application process, or application pack, or similar; later, that despite the respondent having not sent him anything, he somehow managed to apply for a particular job and had heard nothing back from the respondent. If either or both of those things had in fact happened, the claimant would undoubtedly have made a Tribunal complaint about them and he did not do so.

3. Direct race discrimination (Equality Act 2010 section 13)

3.1 The claimant says he was treated less favourably because of his colour (he is black).

3.2 Did the respondent do the following things:

3.2.1 Failed to permit the Claimant to participate in the CSU restructure consultation process meaningfully [claim 1, paras. 22-23];

99. The reference in the list of issues to paragraph 23 of the particulars of the first claim appears to be a mistake. Paragraph 23 contains a version of the fixed-term contract employees 'lifting and shifting' claim, dealt with above.

100. This complaint is in the particulars of the first claim (paragraph 22) as: "The Claimant was the only Jamaican black IT Project Manager on a fixed-term contract until 31/03/2020. Whilst other IT Project Managers who do not share the same protected characteristics as the Claimant were able to participate in the CSU restructure without any barriers the fact that the claimant was on a fixed-term contract meant that the 1st Respondent's barrier meant that the only Jamaican / West Indian ethnicity and/or black IT Project Manager was excluded."

101. On the face of this, we don't think it is truly a race discrimination claim, in that the claimant does not seem to be alleging that the reason for the alleged treatment was his race. What he appears in fact to be saying in this paragraph of the first claim particulars is that fixed-term contract employees were "excluded", that he was the only employee on a fixed-term contract who was affected, and that he was the only black IT Project Manager.

102. Be that as it may, in so far as can discern what factual allegations this complaint relates to, it is to the following sentence in an email of 10 December 2019 to affected staff, including the claimant, from Miss De Kretser telling people about the first group consultation meeting on 13 December 2019: "People currently on fixed-term contracts until 31/03/2020 – although out of scope because of the nature of the funding we are including them/you in the consultation to be able to comment on the structure."

103. The claimant's case is that he was prohibited from commenting on anything other than the proposed new structure during the consultation. This was the 'barrier' or 'exclusion' he was referring to in his claim form.

104. That case has no basis in the evidence. The claimant could, within reason, comment on what he liked. The email encouraged people out of scope – including the claimant – to comment on the structure. It did not say or suggest that they may not comment on anything else. The claimant has given no evidence to the effect that that was said or written to him at any other time.

105. Miss De Kretser's evidence about this was clear and credible. As we have already explained, the CSU consultation was not a conventional redundancy consultation; there were no plans for redundancies; it was not a legally required consultation of any kind. It was a consultation primarily for staff who would be working for the respondent after the restructure, but those such as the claimant who would not be (in his case because his fixed-term contract would come to an end before the restructure took effect) were still being given the opportunity to be involved in the consultation. This was because it was thought that they might have some useful insights that would assist the respondent, about the proposed new structure in particular.

106. In terms of consultation, and in particular in terms of what the claimant was permitted to comment on, the claimant was treated the same as everyone else. There was no less favourable treatment or detriment.

107. Further, in relation to all of the treatment which the claimant alleges was race discrimination, including the alleged treatment to which this complaint relates, there is nothing of substance in the evidence supporting a finding that the claimant being black, or his race, or the protected characteristic of race more generally, was any part of the reason for it. This applies to all of the race discrimination and racial harassment complaints. We shan't repeat it when we address each complaint.

108. Finally on this first racial discrimination complaint, the comment to which it relates applied to the claimant not because of his race or because he was on a fixed-term contract, but because he was on a fixed-term contract that ran only until 31 March 2020. Had his fixed-term contract come to an end after the restructure was due to be implemented it would not have been applicable.

109. This is a convenient point to discuss part of the claimant's oral evidence about a discussion he allegedly had on 13 December 2019 with Ms Woodhead, his senior manager. Ms Woodhead was not one of the respondent's witnesses.

110. On day 1 of the claimant's evidence (22 September 2021) he said something to the effect that at or following the first group consultation meeting on 13 December 2019 he did a protected act in accordance with EQA section 27 by alleging that he was being restricted in what he could comment on during the consultation. He also told us that he asked Ms Woodhead whether this supposed restriction was being imposed upon him because of the colour of his skin or because he was a fixed-term employee; that she had said it was a "bit of both"; and that she had agreed with him that part of the reason was the colour of his skin. All this was mentioned for the first time in his oral evidence.

111. We reject those allegations. The idea that a manager would have openly admitted to a subordinate that there had been racial discrimination by the employer in this way and in these kinds of circumstances is inherently implausible. The idea that if Ms Woodhead had done this the claimant would not have put it at the front and centre of his claim from the outset is almost preposterous. Further, there would be no sensible reason why, if at this early stage the claimant was openly making allegations of race discrimination, he would not have repeated them in his email of 17 December 2019 that is alleged protected act 5.1.2 b. (see from paragraph 183 below) and he did not do so. Moreover, the claimant would surely have included what he claims to have said on 13 December 2019 in his long list of alleged protected acts as part of his claim.

3.2.2 Failed to provide the Claimant with an organisational policy [claim 1, para. 24];

112. This complaint, which relates to January 2020, appears in the first claim particulars as: "The Claimant persistently asked for a copy of the organisational policy that the 3rd Respondent [Mr Cusack] 'bragged' was available on the 1st Respondent's intranet – but the 1st Respondent, the 2nd Respondent [Mr Hussain] and the 3rd Respondent failed to produce one."

113. At the relevant time, the claimant had many queries. So far as concerns the thing he wanted that he now describes as an "organisational policy", he has not been clear and consistent.

114. In his oral evidence, the claimant suggested that he was after a particular 'toolkit', which he in fact obtained himself (how and when he did so remaining rather mysterious).

115. In January 2020, however, the claimant was asking for two things – see his 11 page email of 15 January 2020 timed at 18:45 hrs. The first thing he was requesting was that toolkit or, rather, an electronic link to it. The second thing was "the Council's policy for dealing with FOMs", something which did not exist. The fact that there was no such policy separate from the toolkit was not really challenged during cross-examination, nor in the claimant's own evidence.

116. Following that email, and partly in response to it, the claimant was invited to attend the meeting with Mr Hussain and Mr Jewkes on 16 January 2020 at which he could have asked for whatever policy he wanted. In his oral evidence, the claimant alleged that he was subsequently sent an electronic link to the toolkit by Mr Jewkes, that the link didn't work, and that he emailed Mr Jewkes about this, but received no response. Unfortunately, he was unable to point us to any documents corroborating this in any of the bundles.

117. After the hearing, the Tribunal received further correspondence from the claimant relating to this. We could legitimately have disregarded it as it arrived after we had deliberated and made our decision on this complaint, but as it made no difference to what we had decided, we have taken it into account. In that correspondence, the claimant put forward a slightly different case from the one he had been advancing at the hearing. He highlighted particular pages of the bundles: part of his email of 15 January 2020, just mentioned; part of an email he sent on 17 January 2020 in which he referred to the non-existent policy for dealing with FOMs rather than to the toolkit.

118. What the claimant said in his oral evidence – and indeed his case generally in this respect – appears to be inconsistent with what is in paragraph 66 of his witness statement: "the organisational change procedure for FOMs that I requested on 19 November 2019 … never materialised … I was sent by Ian Jewkes a link to a How to guide for HR managers that made no reference to FOMs and it clearly was an attempt to bridge the fact that no such process for FOMs existed". From this, it seems that the claimant agrees with the respondent that it did not have a policy for dealing with FOMs. If that is so then the allegation that it was direct racial discrimination not to provide him with a copy of such a policy (or a working electronic link to it), a complaint he has actively pursued, is without foundation and by his own admission he does not believe in it.

119. Even if the claimant were able to find documents supporting his oral evidence about being provided with an electronic link that didn't work, the claim in the claim form is not about that – it is about the respondent not "producing" a particular policy. In any event, there is not the slightest evidential basis for saying this was less favourable treatment, nor for tying it to the claimant's race.

3.2.3 Failed to answer the Claimant's questions promptly, and when they were, answers being constrained to a

response without the need for dialogue; changing answers to the Claimant's questions [claim 1, para. 25];

120. This is in the first claim particulars as: "The majority of questions the Claimant asked [were] not answered promptly and when they were they were constrained to being designed as a response without the need to engage in dialogue – dialogue appeared to annoy the 1st Respondent, the 2nd Respondent and the 3rd Respondent; and changing answers to the Claimants questions; the few that they published to the wider group to something different and more substantive to their wishes annoyed the Claimant. Their approach to not having a reasonable and meaningful dialogue with the Claimant was summed up when caught red handed altering an answer to a question the Clamant had asked in public they refused to be honest and rectify the point."

121. Although the allegation as set out in the claim form particulars is fairly specific, the claimant's case remains unclear. In so far as we can understand what it is about, it is not made out on the facts. Once again, there is no basis at all in the evidence for a finding of less favourable treatment, nor any treatment because of race.

122. This complaint relates to the consultation process. The respondent encouraged everyone to submit questions to it. It then collated those questions and produced fortnightly lists of questions and answers which were sent out to the interested employees, including the claimant. The claimant then asked his own follow up questions, which were answered, and then further follow up questions to the answers. The relevant further follow up questions were in his email of 15 January 2020 already mentioned.

123. The claimant was carefully questioned about this complaint around the start of the day's hearing on 6 December 2022. When asked about the "changing answers to … questions" allegation, he referred us to the respondent's answer to a particular consultation question, numbered 32. In his email of 15 January 2020, he wrote "when the question was asked … the answer was not as per stated in the answer". This refers back to an answer given directly to the claimant to questions he had asked: "The answer as per the responses in Version 1 is the current council position, however the council encourages individuals to discuss their personal circumstance with their manager or HRA. Anything contrary to that has been advised in error and we apologise for any confusion caused." That in turn appears to refer back to a question about whether staff would be expected to work their notice periods, to which the gist of the answer was: yes. The claimant has not explained in what way this was changed, nor how this could possibly be a detriment to him, nor how the respondent could possibly be getting at him personally, still less getting at him personally because of race.

124. The rest of this complaint turned out to be about the respondent allegedly not including some of claimant's questions in the fortnightly questions and answers documents. In oral evidence he gave us a long list of questions which he had apparently asked of various people in various different ways which he was saying should have been, but were not, answered in these fortnightly documents. As we pointed out when he was giving this evidence, there is no allegation about not answering particular questions he had posed in the Q & A documents in the list of issues or the claim form particulars. It was not put to any of the respondent's

witnesses – not to Mr Cusack, in particular, as it is against him that this complaint seems to be directed – that they deliberately did not include particular questions he had asked in these Q & A documents, nor that they did so because of his race.

125. We do know what this complaint is about if it is about anything else. This is because the claimant could not or would not explain this to us.

3.2.4 Provided a statement of terms and conditions of employment containing falsified details in late November/December 2020 [claim 1, para. 26].

126. From the claimant's oral evidence, this complaint was revealed to be about the cover sheet to a set of 'Green Book' terms of employment that were provided to him by Mrs Tarver in December 2019 and about the fact that in it: the claimant's job title was given as "Project Manager" rather than "ICT Project Manager"; the salary information – specified as the "Starting Salary" – was the correct starting salary but his salary had increased by December 2019; there was a blank in the box for "Continuous service with Local Government".

127. There was, in short: no falsification; no detriment; no less favourable treatment; no connection to the protected characteristic of race.

4. Harassment related to race (Equality Act 2010 section 26)

4.1 Did the respondent do the following things:

4.1.1 the Respondent delivered a letter to the Claimant's neighbour [claim 2, para. 9];

128. This complaint, which concerns Mr Moore hand-delivering on 11 March 2020 the letter of that date from Mr Cusack confirming the termination of the claimant's employment, was effectively withdrawn at the end of the claimant's cross-examination of Mr Moore, and, if not then, during closing submissions.

129. When the claimant was cross-examining Mr Moore, as in relation to other witnesses, we took pains to make sure as best we could that we understood what the claimant's case was and that that case was put to the witness on his behalf if he was unwilling or unable to do so himself, as was frequently the case. It turned out that he was not alleging that Mr Moore had deliberately delivered the letter to the claimant's neighbour, nor that he did so for some reason related to race (or other improper motive). The claimant accepted that Mr Moore might have delivered the letter to the wrong address innocently. He did not allege that Mr Moore was intentionally given the wrong address, or anything of that kind (and the letter had the correct address on it), nor that Mr Moore himself acted as he did because of anything to do with the claimant's race.

130. The act of delivering this letter to the wrong address did not have the necessary purpose or effect in accordance with EQA sections 26(1)(b) and 26(4). If the claimant's neighbour opened the letter and harassed the claimant as a result, that harassment is not attributable to Mr Moore or the respondent.

131. We should add we are not satisfied that the letter was delivered to the wrong address. The allegation that it was is based on the claimant's own evidence, on which we can place no significant reliance, for reasons already given.

4.1.2 The Respondent ignored the Claimant's complaints [claim 2, para. 9.a.i];

132. This complaint relates to the claimant's letter, headed "GRIEVANCE – data Breach – Victimisation and Harassment", dated 16 March 2020, which related to the alleged mis-delivery of the termination letter of 11 March 2020.

133. As the claimant is well aware, the respondent did not ignore this letter. Following receipt of it, the respondent held an internal investigation, which concluded it was likely that it had been correctly delivered. The claimant's true complaint seems to be to the effect that the investigation was inadequate and/or that he disagrees with its conclusion. That is not the claim before the Tribunal.

134. Also, even if this complaint was made out on the facts, or if the claimant had put before the Tribunal a complaint relating to the respondent's investigation:

134.1 there is no discernible connection with the protected characteristic of race;

134.2 the conduct had neither the requisite purpose or effect in accordance with EQA sections 26(1)(b) and 26(4).

135. The same applies to every racial harassment complaint being made. This should be borne in mind because we won't repeat it when discussing each of the other complaints.

4.1.3 Ignored the Claimant's post-employment grievance [claim 2, para. 10.l];

136. At the time the claimant gave his oral evidence, it was unclear what this complaint was about. In his witness statement, the only potentially relevant "grievance" referred to was one of 5 September 2020. We believe that to be a reference to the claimant's email of that date in which he complained about a response to a subject access request, which was not ignored – see issue 4.1.5 below. However, this complaint appeared in claim form particulars that were produced in July 2020 and therefore can't be about a September 2020 email.

137. We subsequently worked out that if this complaint is about anything at all, it is about a letter from the claimant of 3 July 2020 addressed to Mr Cusack in which, amongst other things, the claimant complained about the lack of an appeal against dismissal. In that letter, there is a heading "POST EMPLOYMENT GRIEVANCE" under which the claimant suggests that the respondent should "re-consider having an appeal" and alleges that not doing so is "further post-employment victimisation".

138. This complaint is, then, broadly the same complaint, albeit with a different cause of action, as the following victimisation complaints – 5.3.43 Ignored the Claimant's appeal against dismissal dated 16.03.2020 [in the list of issues there is a reference to "claim 1, para. 98"; it should be to paragraph (97)]; 5.3.51 Dismissed the Claimant's appeal on predetermined grounds without a hearing – and to the following protected

disclosure detriment complaint: 7.1.14 Ignored the Claimant's appeal against dismissal. It is convenient to deal with all four complaints together now.

139. The claimant wrote on 15 March 2020 seeking to appeal the decision to dismiss him. The respondent communicated its appeal decision by a letter from Mr Jeffcoate of 1 July 2020. The claimant's letter of 3 July 2020 appears to be a response to that and in that letter, the claimant is in effect trying to appeal that appeal decision.

140. There is a short answer to the complaint about not responding substantively to this post-employment grievance, and a longer one that also fully explains what happened in relation to the claimant's appeal against dismissal and why the respondent did what it did.

141. The short answer is: the respondent as a matter of policy would not deal with any post-employment grievance of this kind from anyone, nor would we expect it to.

142. This is the longer answer.

    142.1 On or around 19 March 2020, Mr Cusack, having discussed the matter with Ms Cowen (in-house solicitor), took a decision not to have an appeal hearing and to deal with the claimant's appeal of 15 March 2020 on paper and to reject it.

    142.2 The reasons for that decision were those set out in the bullet points that come after "for the following reasons" in Mr Jeffcoate's letter of 1 July 2020.

    142.3 We are satisfied that those were Mr Cusack's real reasons and that he was uninfluenced by race, by any alleged protected act, or by any alleged protected disclosure.

    142.4 After Mr Cusack had communicated that decision to Ms Cowen, it was for her to write the letter to the claimant containing the decision without further reference to Mr Cusack.

    142.5 19 March 2020 was, of course, just before first Covid lockdown. We heard evidence from Ms Cowen, a transparently honest witness, as to why there was a delay from that point onwards.

    142.6 There is no claim before the Tribunal about the delay; although, in fairness to the claimant, the original claim – in its final version – was about the respondent allegedly ignoring his appeal and his case is that it was ignored until he made a claim about it. At that point the claim became about the decision that was made on appeal and not reconsidering the appeal decision following his letter of 3 July 2020.

    142.7 When, in early April 2020, a colleague had unexpectedly to go off early on maternity leave, Ms Cowen was the only employment lawyer the respondent had dealing not just with the claimant's appeal and Tribunal proceedings, issued on 22 March 2020, but with all of the very considerable employment law-related fallout from the pandemic. She was also having to home-school and look after her three children. Writing to the claimant, an ex-employee, to

communicate a negative appeal decision was understandably not top of her list of priorities.

142.8 It was not until 25 May 2020 that Mr Jeffcoate arrived with the respondent and there was someone to provide her with assistance. Mr Jeffcoate took over primary responsibility for dealing with Mr Whitehead's claim and related matters, such as communicating the appeal decision. However, when he took over, the claimant's Tribunal interim relief hearing, listed for 3 June 2020, was imminent. Mr Jeffcoate's first task was to deal with that and with the fallout from it. He then had to get on top of the case generally, which, given the volume of paperwork even at that stage, would have been no mean task. In the circumstances, it is unsurprising that the letter dealing with the appeal did not go out until 1 July 2020.

142.9 The letter of 1 July 2020 included this: "As litigation was commenced against our client in March, it would appear that the moment has passed with regard to the hearing of any appeal against our client's decision to dismiss you." Given the existence of a victimisation complaint about the appeal decision, this wording is unfortunate, to say the least. In another case on slightly different facts it would potentially have been enough to reverse the burden of proof in accordance with EQA section 136. However, we are satisfied that this was Mr Jeffcoate's wording and that Mr Cusack took all relevant decisions relating to and connected with the appeal. This was not Mr Cusack's wording, nor was it part of his appeal decision.

142.10 We note that Mr Jeffcoate did not start with the respondent until more than 2 months after the claimant appealed. We accept Mr Jeffcoate's explanation that what he meant was no more than that time had passed and things had moved on, making an appeal pointless.

142.11 We also note that if the claimant had not been dismissed when he was, his employment would have come to an end only two weeks' later, on the expiry of his fixed-term contract. The claimant told us in terms that he was not looking for an extension of his fixed-term contract. Instead, he was looking for a permanent post with the respondent. The appeal against dismissal therefore became an irrelevance after 31 March 2020. In those circumstances, what Mr Jeffcoate was trying to communicate about the pointlessness of the appeal was legitimate and understandable.

143. Accordingly, all four complaints fail.

4.1.4 **Failure to properly comply with the claimant's SAR** [subject access request] **made on 27 August 2020, including failing to provide the claimant's P45 and payslips which he specifically highlighted he was requesting**;

144. This is broadly the same complaint as victimisation complaints 5.3.50 and 5.3.54 and we shall deal with all three together. All three complaints fail.

145. Part of these allegations is set out in the second claim particulars in paragraph (10) a: "Deliberately not sent the Claimant any notification of final salary payments and a P45 thus meaning the Claimant has no idea of what any payment received post-employment".

146. We have struggled to find where the allegations about the SAR is made in any of the claimant's claim forms. However, the respondent has not suggested this complaint is not before the Tribunal. We shall therefore assume that it is.

147. The claimant confirmed when Mr Jewkes was giving his evidence that this complaint relates to the letter headed "Subject access request" dated 27 August 2020 that appears from page 1280 in the main hearing bundles, and that it is about two things:

    147.1 non-provision of a P45 and a final wageslip or P60 until 28 September 2020, i.e. after he had made the second claim;

    147.2 the alleged fact that he was not provided with particular documents and was not provided with more than 2 or 3 pages of documents under cover of a letter from the respondent's Information Rights Manager of 15 October 2020.

148. The termination of the claimant's employment coincided with Covid-related lockdown. The respondent therefore took to sending out P45s and wageslips and the like by email. The respondent's payroll department did not have an email address for the claimant on record. We also note that the claimant had complained about things being sent by email, going so far, in a letter of 3 July 2020, to allege that sending things by email was victimisation and an attack on him and his family.

149. The claimant did not to our knowledge write to the respondent asking for his P45 and final wageslip before he made a claim about it in Particulars of Claim relating to the second claim dated 21 July 2020.

150. On 4 August 2020, Mr Jeffcoate wrote to the claimant explaining the situation and in particular the fact that if the claimant gave an email address, his P45 and wageslips would be provided to him. The claimant chose not to provide an email address.

151. After 4 August 2020, if the non-provision of these documents was a detriment to the claimant, it was entirely self-inflicted. So far as concerns the position before 4 August 2020, the claimant has not come up with a plausible suggestion for how or why some unidentified individual in Payroll would both know of his race and his alleged protected acts and take it upon themselves to do him down by deliberately not providing him with a P45 and final wageslip.

152. The claimant made what is being referred to as DSAR3 [data subject access request number 3] on 27 August 2020. Probably because he made two SARs on that date (DSAR2 and DSAR3), which caused confusion, DSAR3 was overlooked until the claimant wrote on 5 September 2020 complaining about it apparently not being dealt with. As is recorded in the statement of Mr Leach, solicitor, DSAR3 was located on 17 September 2020. It was passed to Information Rights and to Mrs Davies, Senior HR Practitioner, because she was in HR and the SAR was largely HR-related. Information Rights sent out the relevant documents in two tranches: on 28 September and 15 October 2020.

153. The claimant has alleged that he had a telephone conversation with an unidentified member of the information team, possibly shortly after 15 October 2020, where that individual said that the respondent was not going to provide him with relevant documents because he and the respondent were in a legal process. The claimant did not mention this alleged conversation in any of the many letters and emails he was sending to the respondent and the Tribunal from then onwards. It wasn't mentioned in his witness statement. So far as we are aware, the very first time it was mentioned was in his oral evidence on 7 December 2022.

154. We reject the allegation. It is highly unlikely that any member of the respondent's personnel would openly admit to the claimant that it was victimising him like this; and even more unlikely that if they did so, the claimant would not have mentioned it prior to December 2022.

155. So far as concerns the allegation that what the claimant received on 15 October 2020 was deficient:

155.1 the allegation that the respondent sent him only 2 to 3 pages in this second tranche of documents was not made in his oral evidence or witness statement. The claimant revealed that this was part of his case during Mr Leach's evidence;

155.2 however, in his oral evidence the claimant did suggest that he was not provided with everything that he should have been, albeit he provided no specifics at this stage. Based on his oral evidence, this allegation is impossibly vague;

155.3 if it were true that he had received only 2 to 3 pages, he would surely have complained about this in terms at the time, and also have specified at the time precisely what he thought was missing;

155.4 we therefore conclude that it is not true.

156. Mr Leach told us from his own knowledge that 443 pages of documents were prepared with a view to them being sent to the claimant on 15 October 2020 by Information Rights. The claimant confirmed to us he was not alleging that anyone at Information Rights was guilty of discrimination or victimisation. The only person the claimant identified as a potential discriminator and victimiser in this respect was Mrs Davies. However, despite being repeatedly reminded of the need to put his case, when she gave her evidence, the claimant did not put that allegation to her. It was anyway clear from her oral evidence that she was not responsible for precisely what was or was not sent out by the Information Rights Manager on 15 October 2020.

157. On balance, we find that 443 pages of documents were indeed sent out to the claimant on 15 October 2020, and that they were sent out as part of a good faith attempt to provide the claimant with all of the documents he was entitled to be provided with, further to his DSAR3.

4.1.5 Claimant's request for a review of the SAR/complaint including complaint of discrimination/post-

employment grievance made on 5 September 2020 was ignored.

158. There is an equivalent victimisation complaint, which we deal with together with this racial harassment complaint: 5.3.55.

159. We cannot find this claim in any of the claimant's claim forms. We are not sure it is before the Tribunal, but we shall proceed as if it is.

160. The request for a review and the grievance and the complaint in the claimant's letter of 5 September 2020 were for all intents and purposes the same thing. The request / grievance / complaint was not ignored. It was responded to by a letter of 7 October 2020. In evidence, the claimant denied receiving that letter, even when he was taken to his response to it, a detailed email of 20 October 2020. We are satisfied both that it was sent and that it was received. Both complaints therefore fail.

161. There was further correspondence in relation to this between the parties which it is logical to deal with here. It included a correctly addressed letter to the claimant from Ms Cumming, Senior Solicitor dated 3 November 2020 and with a franking mark showing it was posted to him the following day. That letter was returned to Ms Cumming on 9 November 2020, addressed to her in an offensive way and enclosing an offensive note. We refer to paragraphs 28 and 29 of her witness statement, in which the text of the note is set out in full.

162. Whoever wrote the note and addressed the returned letter evidently:

    162.1 opened the letter. Most people wouldn't do this;

    162.2 had read the letter and formed a view about its comments;

    162.3 was familiar with the letter from the claimant to which Ms Cumming's letter was responding;

    162.4 had seen fit to type out a note that made gratuitously offensive personal remarks about Ms Cumming and was rude about the respondent;

    162.5 had something against the respondent;

    162.6 despite having opened the letter and seen that it – the letter itself – had the claimant's address on it, had decided not to hand-deliver or forward it to him.

163. It is most unlikely that the person responsible is who they purported to be: a random resident living in Leys Gardens, Wellingborough (the claimant was living nearby, in Leys Road), who was unfamiliar with the claimant and who was a stranger to Ms Cumming, and who had received Ms Cumming's letter because it had been delivered to an address in Leys Gardens instead of to the claimant's address in Leys Road.

164. On the balance of probabilities, the person who returned this letter to the claimant and who was author of the enclosed note was either the claimant himself or someone acting on his behalf, under his instruction and/or with his consent and knowledge.

165. November 2020 was well after the claimant had alleged, as part of the first claim and prior to it, that the respondent had in March 2020 "letter-bombed" various houses on the claimant's street and adjoining streets by hand-delivering copies of letters addressed to the claimant connected with the termination of his employment. When the claimant made that allegation, the only concrete evidence he had to support it to any extent was the fact that the termination letter of 11 March 2020 had been returned to Mr Cusack together with a rude and rather aggressive typed note suggesting that that letter had been hand-delivered to the wrong address (see paragraph 80 c. of Mr Cusack's statement; the note to Mr Cusack is at page 1214 of the main bundles). It seems to us likely that returning Ms Cumming's letter of 3 November 2020 to her with the offensive covering note was an attempt to bolster the claimant's letter-bombing claim.

166. The same applies to other returned letters and accompanying typed (not hand-written) notes and letters sent to the respondent around late 2020, which appear in the main bundles from page 1327. They all have features that make it probable that they were not written by the claimant's neighbours, or anyone else not very familiar with the claimant and his dispute with the respondent, and that they were in fact written by the claimant or by someone else at his behest.

167. The chances are very slim of there being one of the claimant's neighbours, let alone several of them: who did not know where he lived or who chose to pretend not to know; who all happened to be the unfortunate recipients of mis-delivered letters addressed to him; and who were motivated to take the series of strange steps they would have to have taken for this part of the claimant's case to be factual. According to the claimant, those strange steps included sending a selection of their accompanying notes / letters to him (see his letter to the Tribunal dated 26 November 2020 that begins at page 1334 of the main bundles), showing that they knew his address and could therefore simply have passed on any mis-delivered letters to him.

168. The odds lengthen even further when we take into account the implausibility of what else the claimant has to be alleging: that in late 2020 members of the respondent's staff suddenly started deliberately mis-addressing the envelopes that contained letters to him (but not the letters themselves) and posting them, and/or travelling from Warwick to Wellingborough to hand-deliver letters to what they knew to be the wrong address, in a bizarre attempt to get at him.

169. For similar reasons, we reject the claimant's 'letter-bombing' allegation, which we shall consider in more detail from paragraph 318 below, and conclude it is most likely that it was the claimant or someone acting on his behalf who returned Mr Cusack's letter of 11 March 2020 to him with the rather aggressive covering note.

170. Returning to events around early November 2020, when the claimant was being cross-examined about these complaints 4.1.5 and 5.3.55, we had a further very clear example of the claimant's disregard for the truth, in this instance even where the matter under discussion appears to us not to have been particularly important.

171. The claimant's birthday is a particular day in November which in 2020 fell on a Wednesday. In November 2020, the day before his birthday, an email was sent in his name using the email address "itsmybirthdayonwednesday@outlook.com" to a number of people at the respondent. During the course of these proceedings, various email addresses have been used to send messages from the claimant, so the fact

that this came from an address that hadn't previously been used was and is unremarkable. The email's contents fitted in with previous correspondence between the parties and mentioned things specific to the claimant and the respondent and to the dispute between the two of them, including naming those at the respondent with whom he had had contact. It was sent to five specific respondent email addresses, including the addresses of three named individuals at the respondent. It plainly came from the claimant or someone close to him who was well informed about these Tribunal proceedings.

172. On the face of it, the email showed that the claimant thought the respondent had sent him something by special delivery, but he didn't know what because the post office had lost the letter. (How he knew the letter came from the respondent if he hadn't seen it and it had been lost is unclear, but that is by the by). At the time he was being questioned about the email, he seemed to have thought that if he admitted to having sent it, this would contradict evidence he had given earlier about not having received certain correspondence. In fact it was not, upon analysis, inconsistent with what he had previously said, but that wasn't realised at the time. We think this is why, even though the email clearly came from him, or from someone acting on his behalf, he decided to deny that it did.

173. The claimant suggested under cross-examination that his neighbours might have the knowledge necessary to have sent this email, a far-fetched suggestion. It would require a neighbour, for no discernible reason: to have read multiple pieces of correspondence between the claimant and respondent; to know the state of that correspondence at the relevant date; to know relevant email addresses to send it to; to know the claimant's birthday; to be motivated to set up an Outlook email address highlighting the claimant's birthday; and to send this email. His case about this was that someone was pretending to be him to cause mischief. But in terms of its contents, this email is relatively anodyne and inconsequential. If someone had all that knowledge and was so intent on mischief that they were prepared to go to those lengths, they would surely have written an email that was in some way damaging to the claimant.

5. Victimisation (Equality Act 2010 section 27)

5.1 Did the claimant do a protected act as follows:

5.1.1 brought tribunal proceedings under the Equality Act 2010;

174. There is no dispute that the claimant did this, the first claim form having been presented on 22 March 2020.

5.1.2 made an allegation that another person infringed the Equality Act 2010 by:

a. Prior to employment with the Respondent, supporting a colleague who was being victimised [claim 1, para. 8];

175. This allegation appears in the first claim particulars as: "Prior to working for the 1st Respondent, the Claimant worked at a company called Pegasus in Northamptonshire. At this company the Claimant came across the 4th Respondent [Mr Savage] when he supported a colleague who was being victimised. The 4th Respondent was one of the HR staff dealing with the issues". There is nothing there to the effect that the claimant did a protected act.

176. The claimant's written evidence about this was: "I know Andrew Savage from my days temping at a company called Pegasus Software PLC [something the claimant did around 1990] … he called me a "gob shite that was a one in a million class clown" when we worked together and I am certain that the reason the employment agency I was working for said I was not required to carry on temping at Pegasus was due to 'Monsieur Savage's' behest after I supported a colleague … who had an issue that as far as I can remember Mr Savage was 'dealing' with". Again there is nothing saying a protected act was done.

177. During cross-examination, after it was pointed out to the claimant that nowhere prior to production of the list of issues had he said that his alleged prior dealings with Mr Savage had involved him making allegations of breaches of the EQA, he suggested that the colleague who he said he had been supporting had been alleging "inequality". This was at least partially inconsistent with what he wrote in an email to Mr Savage of 6 February 2020 – "At Pegasus you dealt with me as witness in relation to a disciplinary – not mine – and a grievance – not mine" and with what was in the claim form particulars about victimisation (as distinct from "inequality" or discrimination).

178. Even on the claimant's own case, Mr Savage had no involvement of any significance with the claimant until mid January 2020. When asked how those at the respondent alleged to have victimised him before then could possibly have known about what allegedly passed between him and Mr Savage 30 years or so previously, he said he had raised this verbally on a number of occasions. Asked for more detail, he said he had told Ms Woodhead and Ms Derby.

179. This became something of a theme: there would be nothing in the claimant's witness statement or documentary evidence to support a particular allegation; when this absence of evidence was put to him in cross-examination, he would say it came from a conversation with Ms Woodhead and/or Ms Derby. This first happened after a discussion in Tribunal near the start of the hearing in September 2021 about the fact that neither of these two women would be giving evidence for the respondent. The knowledge that they would definitely not be coming to Tribunal to contradict anything he said appears to have encouraged his creative tendencies.

180. When cross-examined further as to what he had supposedly told Ms Woodhead and/or Ms Derby about the alleged protected act he did during his dealings with Mr Savage around 1990, he ended up telling us that he had told Ms Derby and Ms

Woodhead, in terms, that he had supported an individual who was making – specifically – a race discrimination claim.

181. Even ignoring the difference between the victimisation referred to in the claim form particulars and race discrimination (a difference with which the claimant is familiar) and the failure to mention race discrimination in the relevant paragraphs of his witness statement, this part of the claimant's oral evidence borders on the absurd. We ask ourselves: prior to January 2020, why would the claimant be discussing with his managers the details of an alleged run-in 30 years previously with someone he had nothing to do with at the respondent? We cannot envisage how such conversations might possibly have come about. We are afraid we think this is yet more invention on the claimant's part.

182. We note that we have already given another example of the claimant inventing a conversation with Ms Woodhead to strengthen his case: see paragraphs 109 to 111 above.

b. **Voicing concerns in writing on 17.12.2019 about the ICT and CSU restructure** [claim 1, para. 27];

183. The claimant sent an email to Miss de Kretser at 16:26 hrs on 17 December 2019. The part that is alleged to be or to contain a protected act is: "I would be grateful if you could .. provide the following …: c. The Equality Impact Assessment (EIA) for the ICT FOM you [are] conducting. As your aware an EIA is a process designed to ensure that the ICT FOM does not discriminate against any disadvantaged or vulnerable people. I would therefore like to see an explanation of how the ICT FOM does not discriminate against people on: … ii. their race, sex, gender or disability".

184. This is not an allegation that the respondent has contravened the EQA. It is asking a question, potentially with a view to making such an allegation in the future. Although the possibility of a victimisation claim based on the respondent believing that the claimant had done or might do a protected act is there in the list of issues, that is not how the claimant's case has been advanced in practice, nor was it put to the respondent's witnesses, including Miss De Kretser. The claimant is therefore not entitled to pursue a claim on that basis.

185. In conclusion, there was no protected act here.

c. **Stating at a meeting on 19.12.2019 that he could provide comparators to prove what he was saying [concerning his email of 17.12.2019]** [claim 1, para. 28];

186. In relation to what was said at this meeting, we heard evidence from the claimant and from Mrs Amorsen, Senior HR advisor.

187. The claimant has produced some handwritten notes of the meeting. They are very detailed and read as if they are, or purport to be, almost word for word. If it were true that they were notes he took at the meeting itself, which is what the claimant alleges, then that would make his note-taking skills very impressive, but it would also cast doubt on the truth of what he told us about the extent to which his dyslexia affects

him, which was the basis upon which we granted his application to audio record the hearing.

188. At the end of the notes is this: “Recording of meeting stopped”. We took from this that, obviously, the meeting had been audio recorded (without permission from Mrs Amorsen). Initially, the claimant confirmed that this was so.

189. The claimant said he hadn’t intentionally recorded the meeting and that he had recorded it by accident on his phone, which was in his back pocket and which he had sat on. That is implausible and we don’t accept it. Accidentally making a telephone call from a phone in a pocket is something that happens, but phones don’t randomly record things when people sit on them, unless a recording app is already open and ready to go; and why would the claimant go into the meeting with such an app open on his phone unless he was intending to record it?

190. When the claimant was cross-examined about the recording, he made another implausible suggestion: that he had provided a copy of it to Ms Woodhead. When asked why he hadn’t provided a copy to the respondent as part of disclosure, he said that no one had asked him for it. When, in closing submissions, respondent’s counsel pointed out that this was demonstrably untrue, in that a specific disclosure application for a copy of the recording had been made in August 2021, the claimant said that in fact no recording had been made at all and that he must have been mistaken when he said that one had; and that possibly he had been mixing up this meeting on 19 December 2019 with some other meeting.

191. We don’t think the claimant was confused about what meeting he was being asked about. The cross-examination was very specifically about the meeting to which allegation 5.3.8 relates (see below), being his only relevant meeting with Mrs Amorsen, and about the evidence in paragraph 70 and 71 of his witness statement.

192. The sense we had that the claimant was making it up as he went along was magnified by:

192.1 his suggestion (which we found ridiculous), after he said he hadn’t audio recorded the meeting, that the words “Recording of meeting stopped” in his notes simply signified that that was the point when he stopped making notes;

192.2 the convoluted and unbelievable story he embarked upon in an attempt to explain why, if there wasn’t an audio recording of the meeting, there was at the end of his meeting notes, also in manuscript but seemingly in a different hand, what appeared to be a short list of things to do, the second of which was “Transcribe recording”. We refer to and adopt what is said about this in paragraph 41 d. of respondent’s counsel’s written closing submissions.

193. In conclusion, even if we were minded to give the claimant’s evidence about other things some weight, we would give none to his evidence about this meeting. Similarly, we give no weight to these notes as evidence of what was said at the meeting. We doubt they were produced contemporaneously and we have no confidence at all in what the claimant said about them. There may be a recording of the meeting that has not been disclosed and we would draw adverse inferences from such non-disclosure. The only thing we are confident about is that the claimant told us lies in relation to the meeting, the notes, and the recording.

194. Notwithstanding all of that, the clear implication from Mrs Amorsen's own evidence – see in particular paragraph 8 of her witness statement – is that she understood the claimant to be alleging sex discrimination, albeit she couldn't understand the basis of that allegation. Making an allegation of discrimination that is misconceived is still doing a protected act, so long as it is not made in bad faith. Bad faith was never put to claimant in cross-examination in relation to any of his alleged protected acts.

d. **Raising a formal grievance on 17.01.2020 regarding, amongst other things, discrimination** [claim 1, para. 40];

e. **Writing to the Respondent on 16.01.2020** [claim 1, para. 42];

195. The respondent concedes that both of these were protected acts.

f. **Raising a formal grievance on 13.02.2020 in relation to his employment being actioned differently from others** [claim 1, para. 62];

196. The claimant sent a number of emails on 13 February 2020 and it took a little time to ascertain that the one being relied on by the claimant here was: that sent by him at 21:35 hrs to Mrs De Kretser (page 1020 of the main bundles) in which he refers to the EQA in terms three times and to the public sector equality duty.

197. Although, this email appears at first blush clearly to be a protected act, in that the claimant is by implication alleging that the respondent has breached the EQA, upon analysis it isn't. What the claimant is actually alleging is a breach of fixed-term employees' rights, and therefore of the fixed-term employees' regulations. He seems to be labouring under a misapprehension that being a fixed-term employee is a protected characteristic.

g. **Raising a formal grievance on 13.02.2020 in relation to equality issues** [claim 1, para. 64];

198. The claimant confirmed in his oral evidence that he was referring to, and only to, the following phrase in an email to Mr Cusack that was in fact sent on 15 February 2020 (main bundle page 1028-9): "I have evidence in the form of …. my observations of comparators being treated my [more] favourably etc".

199. This was not a protected act. There was no allegation of a breach of the EQA, even by implication. The phrase in the email we have just quoted is a reference to things written by the claimant in previous correspondence. For the most part, where the claimant was talking about more favourable treatment of comparators, the comparison being made was between him as a fixed-term employee versus them as a permanent employee. As with the previous alleged protected act, the allegation being made was not one of less favourable treatment because of a protected characteristic.

200. In the email, the claimant also referred to “harassment”, but this was explicitly a reference to the Protection from Harassment Act 1997 rather than to harassment in accordance with EQA section 26.

h. Raising a formal grievance on 16.02.2020 in relation to victimisation by the Respondent and Craig Cusack [claim 1, para. 71];

i. Raising a formal grievance on 16.03.2020 in relation to victimisation by the Respondent and Craig Cusack [claim 1, para. 100];

201. This allegation was confirmed to be a reference to an email from the claimant to Mr Powell (Mr Cusack’s line manager) of 15 February 2020 that is at pages 1051 to 1053 of the main bundles, and in particular to the phrases: “being victimised”; “victimisation of myself after I did not accept offer”; “I have evidence in the form of …. my observations of comparators being treated my [more] favourably etc”.

202. The email has as an appendix the claimant’s email to Mr Cusack that is relied on as protected act g., which we have just dealt with and decided was not a protected act.

203. In relation to the phrase, “I have evidence in the form of …. my observations of comparators being treated my [more] favourably etc”, we repeat what we just wrote about alleged protected act g.

204. “Victimisation” has a technical meaning and a different, broader meaning in everyday language. In this email to Mr Powell, in context, the claimant is plainly not using it in its technical sense and is using it to mean being punished for not accepting an offer of settlement.

205. There is no explicit or implicit allegation in the email of a breach of the EQA.

j. Writing an email to a Director of the Respondent on 24.12.2019 concerning two overlapping and intertwined organisational restructures [claim 1, para. 106] (originally referenced as para. 105);

206. This email to Mr Powell was a protected act. Although there is no explicit allegation of breach of the EQA, the email contains an implicit allegation that the respondent cannot have conducted an equality impact assessment that accorded with its obligations under the EQA. In addition, where the claimant writes “As a BAME / BME” and “as a BAME”, he is alleging race discrimination.

k. Writing an email on 16.01.2020 in relation to the Public Sector Equality Duty and the Respondent’s approach to Equality Impact Assessments [claim 1, para. 109].

207. This was confirmed to be the same allegation as e. (see paragraph 195 above) and is a protected act.

5.3 Did the respondent do the following things: [see below]

5.4 By doing so, did it subject the claimant to detriment?

5.5 If so, was it because the claimant did a protected act?

208. We note the findings we have already made about alleged protected acts a. and b. and about an alleged protected act on 13 December 2019, and the fact that, as mentioned above, the claimant's case was not pursued and put to the respondent's witnesses on the basis that they thought the claimant had done or might do a protected act. Given these, all victimisation detriment complaints about anything that happened before 19 December 2019 necessarily fail. The first seven complaints fall into this category. We shall nonetheless deal with them.

209. In addition, we note, in relation to all 55 numbered victimisation complaints, that the evidence taken as a whole does not support a finding that the reason for any of the alleged detriments was the claimant doing the things he alleges were protected acts (in so far as he actually did them).

5.3.1 Inviting the Claimant on 06.12.2019 to a meeting to take place on 09.12.2019, and insisting that the meeting date and time would not change [claim 1, para. 14];

210. This is one of a number of similar allegations about allegedly being unwilling to move meetings that the claimant made. In relation to all of them (unless otherwise indicated) and to this particular one: there is no suggestion in the contemporaneous correspondence that the respondent would have been unwilling to move the meeting date and time if the claimant had asked; nor that he asked to move it and had a request refused.

211. The only evidence to support the allegation is the claimant's own evidence, which came for the first time when he was being cross-examined, that he had spoken to someone at the respondent and had been told it couldn't be moved. We do not accept that evidence. As explained above, the claimant was, generally, wholly lacking in credibility. In relation to this specific allegation:

    211.1 there was no plausible explanation for this alleged conversation not being mentioned anywhere prior to the claimant's oral evidence;

    211.2 the claimant was never slow to complain when he felt wronged, in writing and usually at length and in forceful terms, and it is highly improbable that if a request to move the meeting had been refused he would not have complained about it at the time.

5.3.2 Denied the Claimant the ability to be accompanied to the consultation meeting of 09.12.2019 [claim 1, para. 15];

212. What went for complaint / issue 5.3.1 immediately above also goes for this allegation. There is no evidence other than the claimant's own word that he asked to be accompanied and no evidence of unwillingness on the respondent's part for the

claimant to be accompanied to this and other meetings. In addition, there was no requirement in law or in accordance with normal industrial relations practice for the claimant to be permitted to be accompanied to a meeting of this kind.

213. Further, what this and other similar allegations boil down to on the facts is an assertion that because he wasn't given a great deal of notice of particular meetings, his preferred trade union representative would not have been able to make it, had he asked them, which there is no evidence other than the claimant's say-so that he did or would have done. That is very different from the allegation that he was denied the right to be accompanied.

214. In relation to the claimant's trade union representation, our understanding is that: at some relevant stage at least, the claimant was a member of the GMB; the GMB was consulted with by the respondent, to the extent it wanted to be, in relation to the reorganisation that the claimant's claim arises out of. The claimant copied a GMB representative into some of his correspondence with the respondent. However, for whatever reason, the claimant was also a member of the Professional Footballers Association ("PFA") and the claimant said he wanted to be accompanied to certain meetings by a PFA representative. There is, however, no substantial evidence of correspondence or other communication about this or anything else from the PFA or any PFA representative to the respondent or to the claimant, or from the claimant to them.

5.3.3 **Informed the Claimant on 08.12.2019 that colleagues on fixed-term contracts, that the end of their fixed-term would stand** [claim 1, para. 16];

215. It is true that he was told this. It was accurate information and was provided to confirm to affected employees, and not just to the claimant, what the situation was. If this information had been withheld, the affected employees – including the claimant – would have had legitimate cause for complaint. If the claimant considered the provision of this information to be to his detriment, it was unreasonable of him to consider it as such.

5.3.4 **On 09.12.2019 changed the Claimant's electronic HR records to reflect that he was being made redundant at the end of his contract** [claim 1, para. 17];

216. On 9 December 2019, a series of automated electronic messages from one of respondent's HR systems – "Your HR" – was sent to the claimant. The messages on the face of them suggested that various things had been changed. At some stage – possibly around this date or possibly later – he may have been sent one such message suggesting that the reason his fixed term contract would be ending was redundancy. We think this is what the claimant is referring to in this complaint. He seems to be alleging that on 9 December 2019 someone decided that he would be made redundant on the expiry of his fixed term contract.

217. The evidence does not show one way or the other if a message on 9 December 2019 suggested that something was indeed changed to be "redundancy". If it was, that was not a detriment to the claimant. He was always on a fixed-term contract with a set end date. When it ended, redundancy would be a favourable outcome for him, because it

would potentially mean compensation based on his whole continuous local government service and because the alternative would simply be termination without compensation by reason of the fixed-term contract coming to an end. Moreover, the claimant himself told us in closing submissions that he had no problem at all with being put at risk of redundancy and indeed ultimately being made redundant, so long as he was given the same opportunities to find alternative employment as other staff.

218. The Your HR system sent these kinds of messages out whenever anyone did anything in a particular person's electronic HR record. They can be misleading in that they didn't necessarily mean that anything had actually changed; they often just reflected what was already recorded on the system. We can see this clearly from the fact that, in January 2020, similar messages were sent out by the system in circumstances where we know that the things the messages related to had not changed at that time.

5.3.5 Adam Hussain refused to consult with the Claimant on 09.12.2019, refused to explain details of the decision to terminate the Claimant's contract on 31.03.2020, and walked out of the meeting [claim 1, para. 18];

5.3.6 Replaced Adam Hussain, then ended the meeting of 09.12.2019 after telling the Claimant that his post-holders were being lifted and shifted from ICT to CSU and that he would need to speak to those conducting the CSU restructure to know what their plans were for his post [claim 1, para. 19];

219. The only evidence to support these allegations is the claimant's word, which we do not accept for reasons already given. We prefer Mr Hussain's and Mr Jewkes's accounts of the meeting, which were much more credible.

5.3.7 Inviting the Claimant on 10.12.2019 to a meeting to take place on 13.12.2019, and insisting that the meeting date and time would not be changed [claim 1, para. 20];

220. As for 5.3.1; see paragraphs 210 and 211 above.

5.3.8 At a meeting with the Claimant on 19.12.2019, asked him if he was seeking to cause trouble, stated that the Claimant's reference to comparators could be seen as him looking to cause 'shit', and asked him if he had a problem with equalities [claim 1, para. 28];

221. We reject the claimant's evidence and allegations about this meeting. See paragraphs 186 to 193 above.

222. It is highly unlikely that any HR professional would use this kind of language. It sounds much more like the kind of language the claimant would himself use. In so far as this allegation has not been deliberately invented by the claimant, we can make an

educated guess as to why he might have made it. We noted during this final hearing that when asking questions of respondent witnesses, the claimant had a tendency to put allegations to them and then proceed as if the witness had agreed with him, when they had not in fact done so. It may well be that the claimant, during the course of this meeting, said something like, "are you saying I am looking to cause shit about equalities", or something like that, and then ignored Ms Amorsen's negative answer and carried on as if she had answered yes.

5.3.9 Inviting the Claimant on 16.01.2020 to a meeting to take place on the same day and insisting that the meeting date and time would not be changed [claim 1, para. 34];

223. As for 5.3.1; see paragraphs 210 and 211 above. In this instance, the invitation email specifically offered him the opportunity to reschedule.

5.3.10 Consistently refused to provide the Claimant information on 16.01.2020, did not permit the Claimant to ask any question other than 'controlled' questions, and ended the meeting after the allotted time [claim 1, para. 35];

224. The only tangible factual thing that we can extract from the evidence that the first two parts of this complaint might be about is that the claimant wanted a copy of the Gartner report and the respondent would not provide him with a copy of it.

225. The Gartner report was not provided to any individual consultee. The claimant was treated no differently from anyone else in this respect. It was not provided because, first, it was not necessary to provide it in order to consult adequately with the affected individuals and, secondly, because it contained confidential and sensitive information. The relevant trade unions had agreed that it should not be provided to individuals. The claimant had been told it would not be provided to him or to any other affected individual before the meeting. This was why it was not provided to him at the meeting or afterwards. It had nothing to do with any protected act, actual or alleged. Also we do not accept that, in all the circumstances, a reasonable person in the claimant's position could consider its non-provision to be to their detriment.

226. Moreover, we are not satisfied that the claimant genuinely considered this to be a detriment. We think that as time went on, his primary motivation became to cause as much inconvenience to the respondent as he could, possibly with a view to securing some kind of pay-out or other favourable outcome, on the expiry of his fixed-term contract or otherwise.

227. So far as concerns ending the meeting "after the allotted time", the meeting was scheduled for an hour and on the evidence that was how long it lasted. Keeping to time is not detrimental.

5.3.11 Ignored the Claimant's request to reconvene the meeting of 16.01.2020, and to meet on the last day of consultation [claim 1, para. 36];

228. This complaint misrepresents what happened.

229. On 17 January 2020 at 10.32 am, the claimant emailed Mrs Tarver and Ms Woodhead stating he was "in the office today seeing if the business want to meet again … They did promise to reconvene and provide me with what I was asking for, well some of the stuff today". Putting to one side the fact that what he said in the email about a "promise" was inaccurate, if the claimant was asking for a meeting, he was doing so in a rather obscure way.

230. That email was one of many he sent on 16 and 17 January 2020 about meetings. The number of emails he was sending and the number of different people he was sending them to appears almost to have been designed to cause confusion and certainly did so. At 8.43 am on 17 January 2020, he had sent an email to Mr Jewkes, copying in Mrs Tarver and Ms Woodhead (amongst others), in which he again requested a copy of the Gartner report, which he knew he was not going to be provided with. The gist of the relevant part of that email was that its provision was a pre-condition of reconvening the meeting.

231. If the claimant was genuinely wanting to have another meeting with Mr Hussain urgently, on the 17th, he would have emailed Mr Hussain and/or would have followed the respondent's usual practice for booking meetings, which was to go into someone's Outlook diary and book a meeting in for a time and date they were free.

232. In conclusion, we are not satisfied that the claimant genuinely wanted an urgent meeting on the 17th and therefore that the lack of a response to any meeting request was a detriment to him.

233. Finally, we are also not satisfied that any meeting request was deliberately ignored, still less that if it was this had anything to do with the claimant's alleged protected acts.

5.3.12 The Claimant being forced to have one of his line managers attend as accompaniment to the meeting of 16.01.2020 [claim 1, para. 37];

234. Factually, what the claimant is actually complaining about is that he wasn't – according to him – given enough notice of the meeting to be able to arrange to have a PFA representative present and so he asked to have Mrs Tarver as his companion, a request that was granted. He wasn't forced to have anyone in particular as his meeting companion; he chose her.

235. The claimant has not explicitly alleged this (except in complaint 5.3.18 – see paragraph 244 below), and did not put it to the respondent's witnesses, but we note that we reject any allegation to the effect that anyone at the respondent deliberately gave him, or caused him to be given, short notice of meetings with a view to causing him difficulties, or anything like that.

5.3.13 Failed to investigate the Claimant's grievance of 17.01.2020, sought to control the investigation, sought to blackmail the Claimant into agreeing not to having his grievance investigated [claim 1, para. 41];

236. Having considered all of the evidence and in particular the claimant's own evidence, this and all similar allegations boil down on the facts to the following:

236.1 the claimant raised a number a number of grievances over an extended period of time. Later, they – seven of them – were collected together and sent by him in a single email, at 15:20 hrs on 25 February 2020, to Ms Fraser. From that email, we can identify everything labelled a grievance by the claimant that he apparently expected the respondent to deal with;

236.2 after consulting with Ms Fraser, Mr Cusack appointed Mr Savage as the investigator;

236.3 pausing there, the claimant alleges that Mr Savage could not properly be appointed because there was nothing in the respondent's grievance policy stating in terms that a grievance could be investigated by someone who was not one of the respondent's employees. He is wrong about this. The policy is not contractual; it is a guide. It includes provision for there to be an investigator. The policy, which appears to us to be an entirely conventional one, does not say who the investigator should be. It is perfectly normal in appropriate cases for the employer to have the investigation carried out by someone external, or quasi-external as in Mr Savage's case. It was in an employee's own interests for there to be a degree of distance between the investigator and the individuals a grievance is about. In the case of these grievances of the claimant, it was an eminently sensible decision to appoint as the investigator someone who was not in the line management chain above the claimant;

236.4 the grievances were not properly investigated, but this was because the claimant himself took steps to ensure that they wouldn't be;

236.5 part of the steps the claimant took was to make it in practice impossible for Mr Savage to carry out the investigation, meaning the respondent sought alternative investigators, to which the claimant also raised spurious objections.

237. So far as concerns "blackmail", this is just the claimant's hyperbolic rhetoric. If he is referring to anything specific and potentially meaningful at all, it is to the contents of without prejudice discussions and/or of the protected conversation in late January 2020. We heard no evidence about the detail of any negotiations, neither side applied for us to do so, and we would have been very reluctant to do so. All we know is that there was something that was labelled a protected conversation and that the respondent made an offer of some kind to the claimant, presumably for voluntary termination of employment in return for payment of a sum of money, which he refused. Those facts seemed to us to be irrelevant to what we had to decide.

5.3.14 Disingenuously and deliberately misrepresented facts and lied in claiming that the consultation meeting of

20.01.2020 was cancelled at the Claimant's request, which also denied the Claimant the opportunity of a 1:1 meeting [claim 1, para. 43];

238. The only person acting disingenuously and misrepresenting facts in connection with meetings was the claimant himself. The claimant's case seems to be that unless he wrote or said in terms "I am not coming to this meeting", he was not asking for the meeting to be cancelled or postponed. However, he consistently wrote things which to any objective reader communicated that he did not want meetings to take place as planned and/or that he was not going to attend.

239. In relation to this particular meeting, we refer to and adopt paragraph 47 of respondent's counsel's written closing submissions. The claimant was still demanding the Gartner report, despite knowing it was never going to be provided to him.

5.3.15 Craig Cusack confirmed to the Claimant on 22.01.2020 that the Respondent would not continue to consult with him, and told him that any points he wished to raise should be by way of grievance [claim 1, para. 44];

240. This allegation is factually accurate, in that on 22 January 2020, Mr Cusack wrote to the claimant to say, "I would also require that you cease any further email communications with the ICT consultation team, i.e. Adam Hussain, Ian Jewkes or I. Any outstanding issues from that process, which is now closed, should be included in your grievance."

241. What happened was that the claimant sent an email on 17 January 2020, early in the morning, posing a number of questions and again asking for the Gartner report. We mentioned it above (paragraph 230), in relation to complaint 5.3.11. Mr Cusack did not see that email on the day. ICT Consultation closed for everyone on 17 January 2020. Its closing had already be postponed at least once; it had been due to close some time in late 2019. The claimant is effectively suggesting that it should have been kept open just for him. It would have been wholly unreasonable and unfair to others for the respondent to have done that. It was favourable treatment, and not a detriment, to confirm to the claimant that although the consultation had closed, any further issues he had could be dealt with as grievances. Mr Cusack's email of 22 January 2020 was sent purely and simply because consultation had closed and because the respondent was trying to find a way for the claimant to raise whatever concerns he had in a fair and reasonable way, notwithstanding the fact that consultation had closed.

5.3.16 On 30.01.2020, attempted to rearrange the grievance investigation meeting of 04.02.2020 to 05.11.2020 [claim 1, para. 47];

242. The claimant was sent an email that had an obvious typographical error in it as to a date. He cannot possibly have believed when he presented this claim, let alone by the time of trial, that the respondent had been seeking to arrange a meeting to take place in November 2020. Even if this was what the claimant believed at the end of January and the start of February 2020 – and we don't think it was – the day after he

complained about it (he sent an email on 5 February 2020), he received an email from Mr Savage confirming that the reference to November was a typographical error and that he meant February; and the claimant acknowledged that email, thanking Mr Savage "for clarifying the date typos".

5.3.17 Wrote to the Claimant on 05.02.2020, a few weeks before it was due to comply with his Data Subject Access Request ('DSAR'), claiming not to know his identity, and not having processed his DSAR and refusing to start processing his DSAR until he confirmed his identity to the respondent [claim 1, para. 49];

243. We refer to and adopt as our findings of fact paragraphs 6 onwards of Miss Tshuma's witness statement. She was a transparently honest witness. In summary: she never claimed that she did not to know the claimant's identify; she followed her own and the respondent's standard procedure, followed in relation to SARs from anyone, of requiring the individual making the SAR to provide particular forms of ID; there was nothing more to it than that.

5.3.18 Invited the Claimant on 06.02.2020 to a meeting to take place on 10.02.2020 [claim 1, para. 50];

244. In the claim form, this is an allegation about being given what is described as "short notice" of a meeting. In other words, the allegation is that the respondent deliberately gave the claimant four days notice rather than more notice of this meeting. It is an allegation we reject. We also don't think there was any relevant detriment to the claimant.

245. Four days was not an unreasonable amount of notice to give. It was a meeting to ask questions of Miss De Kretser as part of the CSU consultation, where the claimant was, as already explained, not in scope.

246. CSU consultation closed on 10 February 2020 and on that date the claimant wrote to the respondent to the effect that he would not be attending the meeting then. He did not write this in terms but that is how his email was, reasonably, interpreted. He was then written to with answers to questions he had asked and, as with the ICT consultation, was told that the CSU consultation had been closed and that any further issues he had should be raised under the grievance procedure.

5.3.19 Failed to investigate the Claimant's grievance of 07.02.2020, sought to control the investigation, sought to blackmail the Claimant into agreeing not to having his grievance investigated [claim 1, para. 55];

5.3.20 Failed to investigate the Claimant's second grievance of 07.02.2020, sought to control the investigation,

sought to seek the Claimant's agreement to not having his grievance investigated [claim 1, para. 57];

247. It remains unclear to us what these complaints are about; the claimant sent many emails to many different people on 7 February 2020; we could not get clarity from him in this respect. Possibly, they are about one or more of the following emails of 7 February 2020: one sent to Ms Woodhead at 02:10 hrs complaining about "the council's apparent investigation of my continuous service"; and/or one sent at 08:53 hrs to Mr Cusack complaining about protected conversations and containing an allegation of "effectively being 'blackmailed' to prove what the council wants or receive less than what I am entitled to as verified by another competent Local authority"; and/or one sent to Mrs Tarver at 01:21 hrs complaining about allegedly not having been given a written statement of terms in 2019 within 2 months of starting work for the respondent.

248. There was no substantial evidence about any of this from the claimant or from the respondent's witnesses. The claimant did not question any of respondent's witnesses about it. There is no basis for us to uphold these complaints.

249. There was within the apparently comprehensive list of his outstanding grievances that the claimant provided to Ms Fraser on 25 February 2020 (see paragraph 236.1 above) the emails of 7 February 2020 respectively to Mr Cusack and Ms Woodhead that we have just mentioned. These would have been investigated by Mr Savage had the claimant not himself sabotaged Mr Savage's investigation.

250. We do not know what the claimant means by "sought to seek the Claimant's agreement to not having his grievance investigated", unless it is about a protected conversation / settlement discussions, in which case see paragraph 237 above.

251. So far as concerns this particular allegation of "blackmail", if the claimant was complaining about being asked to provide information relating to how much local government continuous service he had, that was an entirely reasonable request.

252. Alternatively, the "blackmail" may relate to the respondent's suggestion that an organisation called West Midlands Employers ("WME") could investigate his grievance. WME operated a recruitment website on which local public sector employers advertised jobs. They also, separately, provided HR consultancy services to public sector employers. After the claimant had made Mr Savage's position untenable, Ms Fraser and Mr Powell, looking for an independent, external person to investigate the claimant's grievances, agreed, after taking advice from legal services, that WME could provide an HR consultant. When that suggestion was put to the claimant by email, he expressed a concern that he had "applied for posts with them a few weeks back … If it is them I'm not going to do my employment prospects any good". He did not, though, say whether or not he was willing for them to act as investigator.

253. Ms Fraser naturally assumed that what the claimant was writing about was having applied for jobs through the website operated by WME and that his concerns about damage to his employment prospects were misplaced. The claimant told us in evidence that he had in fact applied for one or more jobs working directly for WME, but he did not make this clear to the respondent at the time. If it were true that he had applied for such jobs (and we cannot simply take his word for it or for anything else,

as we have explained) it would make any genuine concerns about his employment prospects more understandable, although still probably misplaced.

254. Ultimately, on 6 March 2020, the claimant sent Ms Fraser a lengthy, unconstructive email, containing sarcastic and patronising comments and unwarranted suggestions to the effect that what she had previously written to him was in various ways inappropriate. Although he persisted in not giving a straight answer to Ms Fraser's request for confirmation as to whether he wanted his grievances progressed through WME, (as Ms Fraser put it in paragraph 17 of her statement) "it appeared from his response [the email] that it was unlikely that he would be willing to meet with any HR consultant sourced through WME in respect of his grievances". In light of this, the respondent abandoned the plan to use WME and, reasonably and legitimately, concluded it was pointless to try to hear and decide the claimant's grievances. Plainly, the claimant did not want his grievances heard.

255. There was no blackmail or anything like it involved in the proposal to have an HR consultant with WME investigate his grievances.

5.3.21 Craig Cusack failed to attend the consultation meeting of 10.02.2020 [claim 1, para. 58];

256. Mr Cusack was never going to attend this meeting; it was to have been a meeting with Miss De Kretser. In any event, the meeting did not happen because the claimant made clear he was not going to attend.

5.3.22 Adam Hussain directed the Claimant to HR in response to his email of 11.02.2020 in relation to the end of his fixed-term contract [claim 1, para. 59];

257. This complaint is about this sentence from an email sent by Mr Hussain: "I have CC'd in HR colleagues to assist and progress further with yourself". We cannot see what is detrimental about this, even in theory. We adopt wholesale paragraph 55 of respondent's counsel's written closing submissions.

5.3.23 Failed to attend the proposed end of fixed-term contract meeting on 12.02.2020 [claim 1, para. 60];

258. This complaint is more than a little disingenuous. Well before the meeting was due to take place, the claimant had made it clear beyond a shadow of doubt that he did not want to have a meeting with Mr Hussain and that he thought such a meeting would be inappropriate.

5.3.24 Craig Cusack closed consultation on 13.02.2020 having only answered questions that he thought were relevant and as per he wanted to respond, did not allow/seek/tolerate any input from the Claimant [claim 1, para. 61];

259. The complaint about closing the consultation is the mirror image of complaint 5.3.15 about the closing of the ICT consultation and we refer to what we say about that

complaint in paragraphs 240 and 241 above. We note that, like the ICT consultation: the CSU consultation had also already been extended; what the claimant was being told was that any outstanding concerns would be addressed as a grievance.

260. The charge that Mr Cusack "only answered questions that he thought were relevant and as per he wanted to respond, did not allow/seek/tolerate any input from the Claimant" is a false one.

261. We also note that:

261.1 before the consultation closed, the claimant chose not to attend a consultation meeting with Miss De Kretser on 10 February 2020, citing lack of notice. See paragraphs 244 to 246 above;

261.2 he was out of scope and this was not a statutory or conventional redundancy consultation. In permitting him to be involved to any extent in the consultation, the respondent was going well beyond what it needed, as a reasonable employer, to do.

5.3.25 Failed to engage in reasonable and meaningful consultation in relation to the restructure of the ICT and the CSU [claim 1, para. 61];

262. This appears to be no more than a summary of the other complaints about consultation, and has no more merit than they do.

263. This was large restructure, affecting a very large number of employees. Unions were involved. The claimant was given the same opportunities as everyone else. There is no proper basis in the evidence for saying that how he was treated had anything to do with any actual or prospective or alleged protected acts.

5.3.26 Failed to investigate the Claimant's grievance of 13.02.2020, sought to control the investigation, sought to blackmail the Claimant into agreeing not to having his grievance investigated [claim 1, para. 63];

5.3.27 Failed to investigate the Claimant's second grievance of 13.02.2020, sought to control the investigation, sought to blackmail the Claimant into agreeing not to having his grievance investigated [claim 1, para. 65];

264. These complaints lack any merit. See in particular paragraphs 236, 237 and 247 to 254 above.

5.3.28 Craig Cusack stalked the Claimant, dictated responses informing the Claimant, justified the actions of anyone coming into contact with the Claimant,

dismissed out of hand negative points or complaints that the Claimant raised [claim 1, para. 66];

265. This allegation appears in the first claim particulars as: "Instead of receiving an email from HR as stated by the 2nd Respondent concerning end of the Claimants fixed-term contract, the Claimant received an email from the 3rd Respondent who by this time was stalking the Claimant and regardless of the collectively agreed procedures and policies of the 1st Respondent was following literally stalking the Claimant in regards to dictating responses including informing the Claimant and justifying the actions of anyone the Claimant came into contact with or contacted and dismissing out of hand any negative points or complaints that the Claimant made."

266. There was no "stalking", literally or metaphorically. What the claimant refers to as Mr Cusack "stalking" him is in practice no more than the effect of Mr Cusack being the line manager of various people the claimant was corresponding with and of the respondent's decision that Mr Cusack should be the single point of contact for the claimant for everything other than day-to-day work matters and grievances. This was an entirely sensible decision given the increasingly scattergun nature of the claimant's correspondence and was taken because of this. It necessarily involved, amongst other things: emails the claimant had sent to others being forwarded to Mr Cusack; Mr Cusack requiring his subordinates to check with him before responding to the claimant's correspondence and sometimes telling them how to respond; from time to time Mr Cusack responding on behalf of his subordinates; his subordinates, such as Ms Fraser, seeking and being given by him advice as to how to deal with the claimant procedurally and administratively.

267. We note that in connection with this the claimant alleged that what he had been told was to deal with Mr Cusack only in relation to non-work matters. This was not put to Mr Cusack or to anyone else and is anyway not true. The relevant email is the one sent to the claimant by Mr Cusack at 17:36 hrs on 14 February 2020, which states, "I am instructing you not to continue to involve other members of staff in this process. You are required to direct anything other than day to day work matters to me, or if in connection with your grievance, to Andy Savage." The claimant ignored this unambiguous instruction.

5.3.29 Craig Cusack wrote an open letter referring to the alleged process concerning the meeting to which he invited the Claimant on 27.01.2020 [claim 1, para. 68];

268. This is another reference to the email of 17:36 hrs on 14 February 2020. That email was in reply to an email the claimant sent at 8.54 am on 7 February 2020 in which the claimant had referred to, "an email that refers to a conversation that [was supposed] to be held on a 'without prejudice' basis as far as the Council is concerned. The extracts of the said conversation being referred to in open correspondence to support the Councils position and clearly prejudice mine". Mr Cusack's reply included: "With regard to the 'without prejudice conversation' I'm afraid I am unclear as to the point you are making. To clarify, the only correspondence that is covered by the 'Confidential under 111A Employment Rights Act 1996 and Without Prejudice and Subject to Contract' heading are those in relation to the protected conversation held with you on 27 January and correspondence in relation to this matter. This does not include your grievance or matters contained within this. There is no attempt to 'cloak'

or 'blackmail'. You have declined the offer as is your right and this matter is now closed."

269. We do not understand the claimant's point here. If the claimant is complaining about Mr Cusack's email of 14 February 2020, all Mr Cusack was doing was addressing, in a reasonable way, something the claimant had written. If the claimant is complaining about the email referred to in his email of 7 February 2020: the complaint specifically refers to a letter from Mr Cusack, not from anyone else; something that is covered by so-called 'without prejudice privilege' does not cease to be covered by being referred to in other correspondence that is not marked "without prejudice". There is no discernible detriment to the claimant here, nor (as with every other victimisation complaint) any discernible link to any actual or alleged protected act.

5.3.30 Failed to investigate the Claimant's grievances of 15.02.2020 and 16.02.2020, sought to control the investigation, sought to blackmail the Claimant into agreeing not to having his grievance investigated [claim 1, para. 70];

5.3.31 Failed to investigate the Claimant's second grievance of 16.02.2020, sought to control the investigation, sought to blackmail the Claimant into agreeing not to having his grievance investigated [claim 1, para. 72];

5.3.32 Andrew Savage refused to meet the Claimant on 17.02.2020 for the grievance investigation. Andrew Savage stood by as Adam Hussain and Craig Cusack implied that the Claimant had declined to, or made it difficult to, meet [claim 1, para. 73];

270. We repeat what we wrote in relation to previous complaints about grievances, in particular paragraphs 236, 237 and 247 to 254 above. We also note our findings in relation to alleged protected act 5.1.2 a. – see paragraphs 175 to 181 above – and to alleged victimisation detriment 5.3.16 – see paragraph 242 above.

271. What happened as between the claimant and Mr Savage is accurately set out in Mr Savage's witness statement, to which we refer, from paragraph 5 onwards.

272. On 30 January 2020, the claimant was told that Mr Savage was the investigator and was invited to an investigation meeting on 4 February 2020.

273. The claimant declined that invitation, on the basis that he didn't have enough time to organise a trade union representative to accompany him, but hinting that he had other reasons too, and suggesting to Mr Savage that the two of them might be former work acquaintances.

274. It is noteworthy that the claimant did not at this stage object to Mr Savage being the investigator, nor did he suggest that he definitely knew Mr Savage and that there was, from his point of view, 'bad blood' between them. That came later, as we shall explain.

275. Reading the contemporaneous correspondence, the impression that might be given was that the claimant was initially unsure it was the same Mr Savage with whom he had (allegedly) had a run-in around 1990 and that he only realised it was him after Mr Savage confirmed that he had worked for a firm in Kettering “many years ago” in an email of 6 February 2020. However, during the hearing, when telling us about having supposedly told Ms Derby and Ms Woodhead in late 2019 about his dealings with Mr Savage 30 years or so previously (see paragraphs 178 to 181 above), he gave evidence along these lines: that he had seen Mr Savage around at the respondent, enough to have recognised him for who he was. In any event, the claimant was definitely aware of who Mr Savage was by 6 February 2020 at the latest, because in an email of that date he referred to what had allegedly happened between them around 1990. Again, though, the claimant did not write anything to the effect that he strongly objected to Mr Savage being the investigator.

276. We think that if the claimant had genuine and legitimate concerns about Mr Savage, he would have raised them, vigorously, at the outset. Instead, he effectively strung the respondent along, wasting everyone’s time, before raising a fundamental objection to Mr Savage just before the crucial meeting.

277. On 10 and 11 February 2020, a meeting was arranged between Mr Savage, the claimant, and an un-named PFA representative at 10.30 am on Monday, 17 February 2020. When being cross-examined, the claimant said that when, on 11 February 2020, he confirmed his availability for this meeting, he intended to attend it. We don’t think that is true. We think it was always his plan to take steps to ensure that the meeting would not take place.

278. On 13 February 2020, at just after 9 am, Mr Savage confirmed the date, time and location of the meeting. The following day, at 12:42 hrs, the claimant emailed Mr Savage suggesting that he was “marking” the meeting “as tentative”, raising spurious procedural and other issues connected with the meeting and the grievance process, and unreasonably demanding a response by 4 o’clock that afternoon.

279. Mr Savage managed to get a response out at 4.39 pm. His email was measured and unobjectionable. He dealt with the claimant’s points to the extent he could reasonably have been expected to. He made clear that if the claimant did not attend the meeting on Monday 17th, the respondent might decide to close the grievance process.

280. The claimant responded 7 minutes later stating that, “We will be attending the meeting on Monday”. Confusingly, he also threatened Employment Tribunal proceedings if the respondent carried out its threat to close the grievance process if he did not attend.

281. In an email to Mr Savage sent on Saturday, 15 February 2020 at 11.18 am, the claimant stated, “I think you need to consider if it’s appropriate to meet with you at all” and unreasonably raised GDPR and ECHR article 8 issues, as well as suggesting that the claimant might be going to bring an Employment Tribunal claim about Mr Savage’s alleged conduct. The email very clearly communicated the message, albeit not in so many words, that the claimant objected to Mr Savage investigating the grievances and did not want to meet with him.

282. Nothing relevant to whether a meeting could or should take place had changed from, at the latest, 6 February 2020 onwards. All that apparently changed on the face of the

correspondence was the claimant's attitude to it and to Mr Savage; and there was no good reason for any such change.

283. In an email sent at 8.13 am on 17 February 2020 (i.e. 2 ¼ hours before the meeting was due to start), amongst other things, the claimant:

283.1 accused Mr Savage of racially bullying and victimising him;

283.2 referred to Mr Savage as a "hired gun";

283.3 again raised spurious procedural objections to the grievance process being followed;

283.4 stated, "you're the same person who in my opinion and it is my opinion had a run in with me at a software company you were working at when I supported an employee. The incidents mean a lot to me as that person I understand was so upset that they tried to take their own life. Therefore 'yes' I have a real issue with you being loaded upon to me as an 'independent' investigator".

284. The obvious implication from the part of the email just quoted is that Mr Whitehead was accusing Mr Savage (around 1990, when he and Mr Whitehead were both working at a firm in Kettering) of having so upset someone the claimant was supporting that that person attempted suicide. The claimant has throughout these proceedings, to the very end of the final hearing, continuously insisted not only that that was not what he subjectively meant, but also that that was not objectively the meaning or implication of his words.

285. Mr Savage had personal reasons to feel particularly upset by the claimant's accusation. But even if those reasons were not present, no one in Mr Savage's position could reasonably continue as the grievance investigator having received an email like the claimant's of 17 February 2020. The claimant's intention in sending it must have been to force Mr Savage to step down and so ensure that the meeting could not take place. Nevertheless, the claimant wrote in the email that he and his trade union representative would be attending the meeting.

286. This is an example of one the claimant's patterns of behaviour: a meeting would be arranged; at the last minute, he would raise an objection to the meeting taking place, making abundantly clear that he did not want it to take place, but without in terms saying "I will not be attending" or "please cancel the meeting"; the respondent would then cancel or postpone the meeting, in light of the claimant's objection; the claimant would then pretend that he had wanted the meeting to take place and seek to criticise the respondent for having cancelled it.

287. In the email, the claimant also wrote, "bearing in mind we use Teams at the Council I have made the meeting a teams meeting so that I and my advisers can attend without the expense of physically coming on site and should you object to their presence they will leave the meeting". In his oral evidence the claimant said that, notwithstanding his supposed desire to avoid "the expense of physically coming on site", the claimant and his PFA representative turned up anyway. The claimant's explanation for this, and more generally for what he says occurred that morning, was incoherent and nonsensical.

288. We note that the respondent had reasonably requested the identity and credentials of the claimant's representative in the run up to the meeting and that the claimant had never provided them. Most unusually, we have no emails at all to or from the representative, or into which they were copied, and they had no apparent involvement in arranging the meeting. The claimant was seemingly unable to provide their name to the respondent at the time and at this final hearing could only give us a first name. We are not satisfied, on the evidence presented to us, that this PFA representative, in so far as they existed, ever attended, nor even that the claimant ever arranged for them, or expected them, to attend.

289. In conclusion, we think the claimant never intended for this meeting to take place.

290. To complete the narrative, the respondent cancelled the meeting on the basis that it needed to be face-to-face and not on Teams. At the same time, Mr Savage was reviewing his own position in light of the claimant's email and reached the conclusion, entirely reasonably and understandably, that he should no longer be the investigator.

5.3.33 Adam Hussain called a mobile phone number belonging to the Claimant on 24.02.2020 an inappropriate number of times even after having been asked to stop [claim 1, para. 79];

291. This is another false factual allegation. Given the contradictions and inconsistencies and implausibilities in the case, or rather cases, advanced by the claimant at this final hearing in relation to this complaint, he must have been lying about it.

292. On or about 24 February 2020, there was a discussion between Mr Hussain, Mr Cusack, and respondent HR and legal about dismissing the claimant. A decision was taken for Mr Hussain to have a meeting with the claimant about this. The claimant had made himself difficult to track down and Mr Hussain, according to him at the request of HR and during normal office hours, rang a number that the respondent had for the claimant in order to make contact with him. Mr Hussain says he rang that number twice, that no one answered, and that he did not leave a message. The claimant says he rang many more times than that, but agrees that no messages were left.

293. Anyone looking at the phone when Mr Hussain called would have been able to see that the calls came from him because his name and number were in the phone's 'contacts'.

294. The claimant has not disclosed the relevant electronic call logs from the phone that would prove how many times Mr Hussain rang and when. The claimant still has the phone – or at least has access to it (it was produced in Tribunal) – but it no longer has stored on it the electronic call logs from late February 2020. We think the claimant would have preserved them and disclosed them had they supported his case.

295. In both the claim form and in his witness statement, the claimant wrote that the calls were made on 24 February 2020. However, when being cross-examined, he said they were made on the 25th and that he had made a mistake when he had written that they were on the 24th. When he was cross-examining Mr Hussain, the claimant put that Mr Hussain had been making repeated calls on both the 24th and on the 25th.

296. The claimant's case is that when Mr Hussain made the calls, the phone was in his nephew's possession and that his nephew is blind. He gave different and contradictory accounts as to how it came to be in his nephew's possession and as to other details: that he and his 17 year old nephew shared the phone; that he gave the phone to his nephew and his nephew put his own SIM card in it, meaning the phone had a new number, and that it had become his nephew's phone, and that the claimant had given the respondent this new number belonging to his nephew – now said to be nearly 20 years old – as his emergency contact; that the telephone number of the phone was a private number that the claimant had used for work purposes in the past – see paragraph 299 below.

297. On 24 February 2020, at 6.36 pm, the claimant left a voicemail message for Mr Hussain. When cross-examining Mr Hussain, the claimant put to him that the message consisted of him [the claimant] saying something like: "Why have you been harassing my nephew? Is it to get back at me? If you want to contact me feel free to give me a call." The claimant's case, as put to Mr Hussain, was therefore that by the evening of 24 February 2020:

    297.1 Mr Hussain had called the phone enough times for this to constitute harassment;

    297.2 the claimant knew that Mr Hussain was responsible, meaning that the claimant must have met up with his nephew and looked at the phone and seen who the calls were from, and we can assume from that that his nephew would have known from then too, because the claimant would have told him.

298. On 25 February 2020, two WhatsApp messages were sent to Mr Hussain from the number he had called the claimant on. The messages were sent at 7 and 13 minutes past 8 o'clock in the evening. The first reads, "Hi you called my number a couple of times and not left a message. I share this phone with my uncle would you please tell me who you are?" The second reads, "Hi can I ask you not to call this number consistently on if your not prepared to identify yourself. If that's an issue I have your number and will be happy to pass it on to the authorities thanks" [sic].

299. These messages are internally inconsistent and inconsistent with the claimant's other evidence. Amongst other things:

    299.1 the first message talked about the phone being shared with the author's uncle, presumably the claimant, which is not what someone would say about a phone given to them as a gift into which they had put their own SIM card, such that it became their own phone;

    299.2 the first message, consistent with Mr Hussain's evidence but not with the claimant's, referred to Mr Hussain having called only "a couple of times". Why would the claimant have telephoned Mr Hussain more than 24 hours earlier to complain of harassment if there were only a couple of calls?;

    299.3 if the couple of calls were made on 24 February 2020, and the author of the messages was sufficiently worried about them to send the first message, why did they wait more than a day before sending it?;

299.4 the second message was sent only 6 minutes or so after the first one and complained about the number having been called "consistently" and threatened to report the caller to the authorities. The only way to marry the two messages would be to assume that in that 6 minute period, Mr Hussain repeatedly called the number and refused to identify himself when the phone was answered, which does not seem very likely at all;

299.5 both messages suggest their author does not know the identity of the sender, yet the claimant apparently knew who it was the previous evening. In his witness statement, the claimant wrote, "On 24 February 2020, … My relative informed me that they had received silent telephone calls and asked the caller … to stop calling … When [Mr Hussain] failed to stop calling my relative informed me that [he had threatened] to inform the police … The matter caused much harm and distress and is being treated by the police as racial hatred". If the claimant's nephew was so distressed by the couple of calls he had received by 8.07 pm on 25 February 2020 that he got in touch with the claimant the previous day and caused the claimant to go to him and examine the phone and see that the caller was Mr Hussain and then to call Mr Hussain alleging harassment, it is inconceivable that the claimant would not have told his nephew who the caller was, to set his mind at rest;

299.6 the claimant tried to explain why his nephew did not immediately know who the caller was, given that the phone would have flashed up with Mr Hussain's name when the call was coming through, by referring to his nephew being blind. In order for that to be true, the software that facilitated the phone being used by someone with a severe visual impairment would have to be sufficiently sophisticated to enable the claimant's nephew tell that a series of calls came from the same number and to be able to send the WhatsApp messages, but not sophisticated enough to say out loud the name of a caller whose identity was known. This is not credible.

300. Early on 26 February 2020, the claimant wrote to Mr Hussain stating, "In reference to your attempts to contact me within the 24 hours you refer to I note that I understand that: a. The telephone number that you called me on is a private number. This has been used for work purposes in the past but is answered on a 'best efforts' basis …. In calling me you made repeated calls but left no message or responded when the phone was answered and refused to identified yourself when contacted back by text, WhatsApp etc. To the extent that your number was blocked as a malicious caller as neither I or my disabled relative who had the phone knew it was you." Even putting to one side the inconsistencies between the contents of this letter and the other evidence, this was a disingenuous thing to write in circumstances where the claimant knew the caller was Mr Hussain by the evening of 24 February 2020.

301. Our conclusion is that the messages were most probably sent by the claimant himself, or by someone else on his behalf and with his knowledge. A possible motive would be to create a narrative that would both explain and excuse him not taking Mr Hussain's calls and would put the respondent on the back foot and in the wrong.

5.3.34 Denied the Claimant paid leave to seek alternative employment on 25.02.2020 [claim 1, para. 80];

302. On the evidence presented by the respondent, the claimant was paid in full for the month of February 2020, i.e. there was no deduction from the claimant's wages for the leave he took on the 25th. We were taken by Mrs Davies to internal HR documents corroborating this and have seen the relevant payslip. The claimant was unable to point us to any document showing that a deduction was made for that day.

303. In the course of discussing this allegation, when cross-examining the respondent's witnesses, the claimant alleged for the first time that he had not been paid at all for the month of March 2020. This is illustrative of his tendency to elaborate on his claim during course of the hearing. It is inconceivable that if this was the case the claimant would not have made a Tribunal claim about it.

5.3.35 Suspended the Claimant on 24.02.2020 [claim 1, para. 82];

304. It is factually correct that the claimant was told in an email from Mr Hussain of 24 February 2020 not "to attend work, or conduct any remote duties" until after the two of them and Ms Fraser had had a meeting, planned for 28 February 2020, to discuss the early termination of the claimant's fixed-term contract. This could be described as a "suspension" and is capable of being a detriment as a matter of law.

305. The reason for the suspension was that the respondent was proposing to dismiss the claimant. That begs the question: why was this being proposed? That question is answered in paragraphs 62 to 65 of Mr Cusack's witness statement. In summary, the reasons were: the claimant adopting a confrontational and obstructive approach in connection with his concerns, which prevented any progression or resolution of matters; the relationship between the claimant and the respondent had broken down irremediably; the impact on others of the claimant's voluminous correspondence; his work was being side-lined in favour of challenging the respondent; his manager felt unable to manage him.

306. When cross-examining the respondent's witnesses, and Mr Hussain and Mr Cusack in particular, the claimant sought to suggest that his correspondence was entirely reasonable. In fact, both in content and in quantity, it was unreasonable – its volume, evidenced by what is in the hearing bundles, speaks for itself – and its purpose appears more to have been to cause inconvenience than to engage in constructive dialogue with a view to seeking any kind of resolution.

307. As to the reasons for him thinking that dismissing the claimant was desirable, Mr Cusack's oral evidence was even clearer than his written evidence and was compelling. In particular, the fact that the claimant was alleging discrimination was neither here nor there. The critical point for Mr Cusack was when, in his words, the claimant turned from being an apparently unhappy employee to one making harmful and hurtful allegations, particular against Mr Savage. Mr Cusack pinpointed the moment he began to think that early termination of the claimant's fixed term contract was appropriate as when the claimant accused Mr Savage of being a hired gun and of causing a suicide.

5.3.36 Andrew Savage stated on or around 26.02.2020 that the Claimant was stating that he was someone responsible for the suicide attempt of the Claimant's friend. Andrew Savage stood by as Adam Hussain and Craig Cusack lied to use this to substantiate the Claimant's dismissal [claim 1, para. 84];

308. There was no lie. This was what the gist of what the claimant had written. See paragraphs 283.4 and 284 above.

5.3.37 Demanded that the Claimant conduct work activities on 28.02.2020, and meet a deadline of 06.03.2020, knowing that the Claimant was signed off work sick [claim 1, para. 86];

309. The claimant produced a GP fit note on 27 February 2020. The condition for which his GP had signed him off had been redacted for no discernible good reason. We are not satisfied that anyone at the respondent knew he was signed off with stress.

310. On 28 February 2020 Mr Hussain wrote to the claimant. The reason he wrote was that he was replying to an email the claimant sent on 26 February 2020 about the meeting to discuss the early termination of his fixed-term contract, which had been planned for the 28th. The claimant is alleging that receiving and being expecting to read letters is "work activities" which he should not be expected to do. He went so far as to suggest during the hearing that he thought that the respondent should not have written to him at all if he was signed off sick. If that is what the claimant believes, he is mistaken. Contacting employees who are off sick is not just a reasonable thing to do, it is unreasonable to do otherwise. We have no doubt that if, for example, Mr Hussain had not replied to the claimant's email of 26 February 2020, the claimant would be complaining that Mr Hussain was victimising him by ignoring him.

311. The reference in this complaint to a "deadline" of 6 March 2020 is something of a mystery. The only thing that could conceivably be characterised as a deadline was a request that the claimant confirm a date and time during the week commencing 9 March 2020 for a meeting to discuss termination of employment, which by implication he would need to confirm before that week. The fact that someone is too unwell to work does not mean the employer is prohibited from inviting them to meetings, including meetings about the termination of employment.

312. It is obvious to us that the claimant's aim was to prolong his employment and to prevent the respondent from terminating it. His complaints about the respondent communicating with him at all were part of this.

5.3.38 Failed to investigate the Claimant's grievance of 06.03.2020, sought to blackmail the Claimant into agreeing not to having his grievance investigated [claim 1, para. 88];

313. We again repeat what we wrote in relation to previous complaints about grievances, in particular paragraphs 236, 237 and 247 to 254 above. The respondent made

considerable efforts to deal with the claimant's grievances and they were frustrated by the claimant himself. The respondent reasonably took the view in light of this that it would be a waste of time and resources to make further attempts in relation to further grievances. In addition, we are not satisfied that there was any detriment to the claimant. From well before 6 March 2020, we think the claimant was raising grievances without any desire or expectation that they would be investigated.

5.3.39 Around 09.03.2020, terminated the Claimant's access to the work email account and network, tried to remotely wipe another device provided to him [claim 1, para. 89];

314. The claimant's access to work email and systems was terminated because he was being dismissed, albeit the claimant alleged that he had not received a dismissal letter by 9 March 2020.

315. There was no substantial evidence before us relating to the allegation that an attempt was made to "remotely wipe another device provided to him", it was not put, and there is no basis for us to make any findings about it.

5.3.40 Dismissed the Claimant between 09.03.2020 and 18.03.2020 [claim 1, paras. 91-93];

316. The reasons for dismissal are set out in paragraphs 305 to 307 above. They do not include anything to do with actual or alleged protected acts.

5.3.41 Wrote to the Claimant on 12.03.2020 refusing to comply with his DSAR [claim 1, para. 95];

317. We repeat paragraph 243 above and adopt paragraph 72 of respondent's counsel's written closing submissions.

5.3.42 On 11.03.2020, delivered a letter to the Claimant's neighbour, 'letterbombed' various houses on the Claimant's street and adjoining streets starting with 'Leys' with copies of letters of 09.03.2020, 10.03.2020, 11.03.2020 (letters of dismissal) [claim 1, para. 96];

318. This complaint goes together with racial harassment complaint 4.1.1 above (see paragraphs 128 to 131 above), which was not in the end pursued. In paragraph 96 of the first claim form particulars, the factual basis of both complaints is put like this: "On 14th March 2020 the Claimant was made aware via a disturbance outside his house that his neighbours had been that morning been hand delivered a letter from the 1st Respondent at which they first thought the postman had delivered, at which point they remonstrated with the postman to deliver it to the Claimant. On the same day it is understood to be the case that the 1st Respondent effectively 'letter bombed' various houses down the Claimants street and [adjoining] streets that all have the same starting name i.e. 'Leys' by hand delivering copies of the 3rd Respondents is understood letters of the 9th, 10th and 11th March 2020 posted to the Claimant."

319. In his witness statement, the claimant wrote something similar about 14 March 2020 in paragraph 141 and, in paragraph 143, this: “I became aware of the Respondents delivering their correspondence to other houses in my street including my next-door neighbour and thus causing a data breach as well as sending to others sensitive personal health data about me. After he bragged about receiving it and used its contents to at first racially taunt me, then attack and assault me. … The neighbour also pointed out that he had written to the Respondent telling them that they had got the wrong house.”

320. The letter supposedly delivered to the neighbour was the letter dated 11 March 2020 from Mr Cusack confirming the termination of the claimant’s employment, which had the claimant’s correct address in it. The claimant had previously told the respondent that he had suspected Covid. The only direct or indirect reference to this fact in the letter, or in the enclosed letter dated 28 February 2020 from Mr Hussain (see paragraph 310 above), or in any other letter from the respondent that is relevant to this complaint, was Mr Cusack mentioning his understanding that the claimant would be “isolating yourself at home” during his one week notice period, from 11 to 18 March 2020.

321. What the neighbour had allegedly written to the respondent “telling them that they had got the wrong house” was the note to Mr Cusack referred to in paragraph 165 above. Mr Cusack’s letter of 11 March 2020 had been returned to him together with that note.

322. We know from, amongst other places, Mr Moore’s unchallenged evidence that the letter supposedly delivered to the claimant’s neighbour was in fact delivered on 11 and not 14 March 2020. The claimant has himself devoted a lot of energy to ‘proving’ that Mr Moore in fact delivered the letter to the neighbour on 11 March 2020. He produced video / private CCTV evidence of his own front door that was said to be from that date and made much of it around the start of this hearing in September 2021. (Both sides seemed to want us to watch the video in September 2021, but we did not do so because of the hearing having to be adjourned part-heard – see paragraphs 110 to 114 of the written reasons for our decision of September 2022 refusing the claimant’s recusal application. When we resumed in December 2022, neither side suggested they wanted us to watch it and given that complaint 4.1.1 was effectively abandoned it would only have been only peripherally relevant, if relevant at all). In September 2022, we were also asked to by the claimant, and did, make a third-party disclosure order against Northamptonshire Police for public CCTV footage and other evidence specifically relating to 11 March 2020 – see the written reasons for our refusal to make another such order on 2 December 2022, signed by the Employment Judge on 8 February 2023. The claimant also gave a date of 11 March 2020 in his first letters making these allegations around mis-delivery of correspondence, which we shall come on to shortly.

323. The discrepancy in the dates between 11 and 14 March 2020 has a potential importance over and above the fact that there is an inconsistency in this respect in the claimant’s evidence. The claimant’s case on paper, set out above, seems to be that he was made aware of the delivery of the letter and that his neighbour had an argument about it, with the postman and with him, including about its contents, on the same day the letter was delivered, which he now seems to accept was 11 March 2020.

324. During cross-examination, the claimant stated that on 14 March 2020 – not the 11th – the postman handed him the letter, saying that it had been given to him by the claimant's neighbour. The claimant added that the postman said the neighbour had asked the postman to pretend he [the postman] had delivered it by accident to the neighbour and the postman had refused on the basis that it didn't even have a stamp on it. The claimant was adamant that the first time he saw the termination letter was 14 March 2020. Putting to one side the implausibility of this evidence – why did the neighbour want the postman to pretend he had mis-delivered it? why did the neighbour not just put it through the claimant's letterbox himself? – this oral evidence is in practice irreconcilable with his allegations about the neighbour's altercations with him and with the postman, and with the fact that the letter was sent back to Mr Cusack.

325. The claimant was similarly definite in his oral evidence that what he received on 14 March 2020 was Mr Cusack's letter of 11 March 2020 and not the original employment termination letter of 9 March 2020. He told us that he did not receive the original termination letter until April 2020. This is obviously wrong because when he wrote to Mr Cusack on 15 March 2020 appealing against the termination of his employment (see paragraph 139 above) and when he wrote to Ms Cowen on 16 March 2020 (see paragraphs 328 and 348 below) he referred to the 9 March 2020 letter and its contents.

326. On or about 16 March 2020, the claimant wrote to Mr Cusack and others at the respondent making the letter-bombing allegation for the first time.

327. His letter to Mr Cusack dated 16 March 2020 included the following: "I understand that you recently wrote me a letter. I am aware as I am not sure what the contents is as … due to my self-isolating the post was temporarily disrupted. … as I can gather the street are talking about a letter delivered on 11th March 2020 to various people by hand where it is understood you refer to my employment, my being off sick my being apparently stupid and arrogant and having 'coronavirus disease (COVID-19)'. If true, surely even you can't start telling me that the Council have a right to act in this disgraceful manner or as per some apparently [unpublished] policy? I now understand the word down the street literally is... "Cusack from Warwickshire delivered a letter by hand to people down the street and we understand you're the virus house". So, I'm the virus house and the house that people would rather not go near... amongst other things. … it's not nice to have people cross the road to avoid my house or tell their kids to not go near it as 'I have the virus!' Or be ridiculed and shouted at as caught on camera the other day about catching the virus".

328. His letter to Ms Cowen of 16 March 2020 included this: "As of today I was only aware of the Council's letter dated 9th March 2020 and that my employment was terminated with immediate effect on 9th March 2020. I therefore, refer you to the appeal of that decision as per the enclosed letter. However, I am led to understand from the guys in the flats in the street who think I have the 'Aids virus' as apparently the letter you delivered to them possibly refers to me having a virus, they are aware that I am employed until the end of this week."

329. If the contents of those letters were true, it would mean that, contrary to his oral evidence, the claimant had not by 16 March 2020 seen Mr Cusack's letter of 11 March 2020.

330. It would also mean that:

330.1 a number of people to whom the letter had allegedly been mis-delivered had chosen not to pass it on to the claimant but instead to open it and read it;

330.2 once those people had opened it, and so knew, if they didn't know beforehand, who it was for and where they lived, they had still not passed it on and had not stopped reading at the claimant's address but had decided to read at least a significant part of it;

330.3 those same people were gossiping about how a particular individual, who they identified as "Cusack from Warwickshire", had himself been hand-delivering letters up and down the claimant's street;

330.4 some of those people had assumed, presumably from the reference to the claimant "isolating", that he had Covid and as a result were behaving towards him in a way that is quite different from our experience of how anyone acted at any stage of the pandemic;

330.5 others who had opened letters addressed to the claimant had for some reason jumped to the conclusion that the claimant had HIV/AIDS.

331. Virtually none of that is remotely plausible.

332. The claimant also said while being cross-examined something along these lines: "What I understand is that other people received letters from the respondent and they were not happy about this. The first one said to me, "Oy! Do you work for Warwickshire City Council? Can you tell them to stop f***ing sending stuff to me?"."

333. The claimant then told us that there were about 40 houses on his road and that the occupants didn't know his name. That evidence was seemingly given in an attempt to explain away the alleged fact that people did not simply hand-deliver to the claimant the letters that had been mis-delivered to them in the way that neighbours generally do. The problem it created was that it made it very difficult to explain how the person referred to in the previous paragraph had identified the claimant as someone possibly working for the respondent.

334. In addition, the only way that person could have identified the claimant as possibly working for the respondent would be if they knew who he was. If they knew who he was:

334.1 they would know he worked – or had worked – for the respondent and wouldn't be asking him if he did;

334.2 they would know the letters allegedly delivered to them were for him, and they would surely be talking about that to him, not asking him to tell the respondent to stop sending unspecified "stuff" to them.

335. Perhaps realising these discrepancies in his own evidence, the gist of what the claimant then said, contrary to the evidence he had given only minutes earlier, was that his neighbours knew him and that he would be surprised if people didn't know who he was because of his involvement in the local community. If this was right it made even more improbable his evidence to the effect that his multiple neighbours

had opened and read letters addressed to the claimant that had been mis-delivered to them, had not passed those letters on to him, and had then verbally abused him because of the contents of those letters.

336. We return to the note sent to Mr Cusack when his letter to the claimant of 11 March 2020 was returned to him. We repeat what we wrote earlier (paragraphs 161 to 169 above) about that note and about the returned letters and accompanying notes sent to the respondent in or around November 2020. In some of those November 2020 notes there were references to the respondent having misdelivered letters in March 2020. It is far more likely that the claimant, or someone acting on his behalf and with his authority, returned the letters and prepared the notes than that his letter-bombing allegation is true and that he has such a quantity of extremely eccentric neighbours.

337. Our last point on the probabilities of the situation is that if Mr Cusack, or anyone else, had wanted to get at the claimant, hand-delivering copies of his letters of 9 and 11 March 2020 to the claimant's neighbours would be an odd way to go about it. Apart from anything else, how could Mr Cusack know that those neighbours would not do the three things they were overwhelmingly most likely to do:

337.1 pass the letters on to the claimant without opening them;

337.2 if the envelopes in which the letters were sent did not have 'windows' and were incorrectly addressed and the recipients did not know the claimant and/or where he lived, either return them to sender or open the letters to see who they were for, and then pass them on to him;

337.3 if they were lazy and/or ill-disposed towards the claimant, throw the letters away?

338. A little after midnight on 16 December 2022, which was to be the last day of evidence, the Tribunal received an email with attachments from the email address "statecraft1971@hotmail.com" (1971 being the claimant's birth year) in the name "Adrian Adrian". It stated that is was sent on the claimant's behalf by his "American Cousins". It purported to be an "Application for an order from the employment tribunal (general) rule 30(1)". It was discussed at the start of the hearing on that day. It turned out not to be an application, but a point the claimant wanted to make about the returned letter and accompanying note received by Mr Cusack, which is seemed to us was a point for submissions. The claimant raised similar and related arguments in a letter dated 21 December 2022 and received by the Tribunal on 4 January 2023. We did not ignore that letter, as we could properly have done (given that it was sent well after closing submissions on 19 December 2022 and received after the date we had told the parties we were expecting to complete our deliberations – 21 December 2022), because it said nothing of substance that was new and made no difference to our decision.

339. The point is this:

339.1 on or about 8 April 2020 the respondent put together an electronic file of documents in preparation for the interim relief hearing that was listed to take place the next day;

339.2 in the index to that file of documents, and allegedly at the hearing itself, the returned letter and accompanying note were referred to as “Response from neighbour with handwritten notes on Letter to C - 11.03.20”;

339.3 according to the claimant and (if they exist and are not simply the claimant himself) his “American Cousins”, this is a concession that the note to Mr Cusack was in fact from a neighbour of the claimant.

340. We disagree. How a document is referred to in an index to a hearing file / bundle, which is supposed to be neutral, is not an admission of anything. This is particularly so where the bundle was necessarily prepared in haste and at the last minute, where the respondent could not know with certainty who returned the letter and wrote the note, and where the reference to the note in the index accurately reflected what the note purported to be. Moreover, if the index had stated that the note was a “Response purporting to be from neighbour”, or something like that, the claimant would probably have objected.

341. Finally, it is to be noted that, contrary to the suggestion made in the claimant’s letter to the Tribunal dated 21 December 2022, it was not suggested during the hearing on 16 December 2022, or at any other time, that Mr Jeffcoate, was present during the telephone hearing on 9 April 2020. Mr Jeffcoate gave evidence in his witness statement and at this final hearing, on 9 December 2022, that he was first employed by the respondent in May 2020. The respondent has never said anything to the contrary. The reference to him being present at the interim relief hearing was to the hearing on 3 June 2020.

342. In summary, this letter-bombing complaint is based on a false allegation and fabricated evidence.

5.3.43 Ignored the Claimant’s appeal against dismissal dated 16.03.2020 [claim 1, para. 97 [claim form says 98]];

343. As for complaint 4.1.3 above.

5.3.44 Sent a letter on 13.03.2020 regarding the Claimant, and including his sensitive and personal data, to solicitors, without the Claimant’s knowledge and consent. Lied about events concerning the Respondent’s visit to the Claimant’s property, his whereabouts on 11.03.2020, and a data breach carried out by the Respondent [claim 1, para. 99];

344. By 13 March 2020, the claimant had been regularly copying Mr Williams of Scott Fowler Solicitors into his correspondence with the respondent, particularly correspondence relating to the termination of employment, for over a month. That correspondence contained personal and private information about the claimant. It was a reasonable assumption for the respondent to make that that firm were acting for him. If they weren’t, the claimant should not have been copying them in.

345. Around that date, the claimant was doing his best to avoid receiving any communication from the respondent, including denying receipt of hand-delivered

letters and (see paragraph 43 above) refusing to accept telephone calls and emails from the respondent. The respondent was keen to ensure that the claimant had a copy of its letter terminating his employment and that he could not deny receipt of it, by, for example, pretending that it had been mis-delivered. Purely as a good faith attempt to achieve this, and because there appeared to be no other way of reliably doing so, Ms Cowen made a decision, ill-advised with the benefit of hindsight, to send a copy to the claimant care of Scott Fowler Solicitors.

346. The respondent did not lie about events concerning Mr Moore's visit to the claimant's property on 11 March 2020, which was the only potentially relevant visit. What the claimant means by the respondent lying about "his whereabouts on 11.03.2020, and a data breach carried out by the Respondent" is not discernible from the evidence presented to us, nor from what the claimant put to the respondent's witnesses in cross-examination.

5.3.45 Failed to investigate the Claimant's grievance of 16.03.2020, sought to blackmail the Claimant into agreeing not to having his grievance investigated [claim 1, para. 101];

347. This complaint is about the claimant's letter of 16 March 2020 in which he first made what became the 'letter-bombing' allegation. It is broadly the same factual allegation as is made in racial harassment complaint 4.1.2. We repeat paragraph 133 above and refer to and adopt paragraph 76 of respondent's counsel's written closing submissions. The claimant's true case, which is that the investigation that was carried out was inadequate, is not part of any complaint that is before the Tribunal, and the conclusion of that investigation – that the note purportedly sent to Mr Cusack by a neighbour of the claimant had in fact been sent by the claimant himself – is one we agree with. This particular allegation of "blackmail" is as misconceived as previous ones.

5.3.46 Ignored the Claimant's email of 16.03.2020 regarding the letter of 13.03.2020 [claim 1, para. 103];

348. This complaint relates to a letter the claimant sent to Ms Cowen complaining about her having sent him a letter care of Scott Fowler Solicitors (see paragraphs 344 and 345 above).

349. This complaint fails on the facts. The evidence of Ms Cowen (paragraphs 13 and 14 of her witness statement) that she did not ignore it but acted upon it, was not substantially challenged in cross-examination and we accept it.

5.3.47 Ignored the Claimant's email of 19.03.2020 requesting return of his property [claim 1, para. 104];

350. In the first claim particulars, this complaint includes an allegation of apparent theft.

351. In the main bundles, there is a letter (not an email) dated 16 (not 19) March 2020 from the claimant to the respondent asking for advice as to when and how the respondent proposed to return 22 items that he alleged were in his locker or in a

kitchen at the respondent's offices. The respondent's case is that it did not see this letter until disclosure.

352. On the balance of probabilities, we think this letter was created by the claimant after the fact to bolster his case.

353. We refer to and adopt paragraph 78 of respondent's counsel's written closing submissions. It is not believable that the claimant had left, amongst other things, £400 in cash in his locker at the respondent's offices and made no attempt to recover it other than to write one letter in March 2020.

354. We note that on 10 July 2020, the respondent wrote to the claimant complaining that he had still not told them "what this property consists of or where it is located" and inviting him to provide this information and to withdraw the allegation of theft. The claimant's response, in a letter mis-dated 7 July 2020, was, rather extraordinarily: "It would be inappropriate as the Claimant for me to respond to what appears to be attempts to pressurising me into with drawing parts of my claim with what clearly is another attempt to undermine myself for your client's benefit concerning litigation." If, as the claimant alleges, he had a copy of the letter listing allegedly missing property dated 16 March 2020 in his possession at that time, his refusal to provide it or the information contained within it to the respondent was irrational and self-sabotaging.

355. In connection with this allegation, we should mention the oral evidence the claimant gave in an attempt to prove that he had posted the letter to which this complaint relates to the respondent at the time it was supposedly written.

356. The claimant provided evidence that he posted some correspondence to the respondent on 16 March 2020. There were four 'signed for' first class large letters and one guaranteed next day delivery / special delivery. Initially, he told us, categorically, that the letter we are concerned with was the one that was sent guaranteed next day delivery / special delivery. When it was pointed out to him that, for various reasons, this was not right, he then told us he was absolutely sure that it was a particular one of the four 'signed for' first class large letters; and that he knew this from its long reference number shown on the proof of posting document, which he somehow recognised or remembered. This was further evidence that appeared to us to be being made up by the claimant.

5.3.48 Ignored the Claimant's complaints about the Respondent's delivering correspondence to his neighbours [claim 2, para. 9.a.i];

357. As for complaint 4.1.2 above.

5.3.49 Refused to inform the Information Commissioner's Office of a data breach [claim 2, para. 9.a.i.3];

358. We refer to and adopt paragraph 80 of respondent's counsel's written closing submissions.

5.3.50 Deliberately failed to send the Claimant his P45 and final salary payment notification [claim 2, para. 10.a];

359. As for complaint 4.1.4 above.

5.3.51 Dismissed the Claimant's appeal on predetermined grounds without a hearing [claim 2, para. 10.c];

5.3.52 Ignored the Claimant's further claims of victimisation [claim 2, para. 10.k];

5.3.53 Ignored the Claimant's post-employment grievance [claim 2, para. 10.l];

360. As for complaint 4.1.3 above.

5.3.54 Failure to properly comply with the claimant's SAR made on 27 August 2020, including failing to provide the claimant's P45 and payslips which he specifically highlighted he was requesting;

361. As for complaint 4.1.4 above.

5.3.55 Claimant's request for a review of the SAR/complaint including complaint of discrimination/post-employment grievance made on 5 September 2020 was ignored.

362. As for complaint 4.1.5 above.

6. Protected disclosure

6.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

6.1.1 What did the claimant say or write? When? To whom? The claimant says he made disclosures on these occasions:

6.1.1.1 By writing an email on 24.12.2019;

363. The email relied on is one to Mr Powell and Mr Cusack, sent at 14:11 hrs on 24 December 2019, with the subject "ICT FOM and CSU FOM". In it, the claimant makes the following relevant disclosures of information:

363.1 that the respondent has allegedly not done a suitable Equality Impact Assessment ("EIA");

363.2 that a suitable EIA would show that the respondent's planned reorganisation would have negative impacts on those with fixed-term contracts expiring on 31 March 2020 "whom as I understand [comprise] mainly of: women, some of the youngest employees; and BAME/BME";

363.3 that the claimant was concerned about this;

363.4 that a post was being advertised in the new structure, before the end of consultation;

363.5 that the loss of fixed-term contract holders was being forecast as a saving, prejudging the outcome of the consultation process, and therefore that the consultation was neither real or meaningful;

363.6 (as part of his allegations about the genuineness of the consultation process) that his requests for meetings were being ignored;

363.7 that he [the claimant] was not being given the same opportunities as permanent staff.

364. In the list of issues, the allegation in summary is that in this email the claimant was alleging breach of a legal obligation by the respondent failing to conduct a suitable EIA and by breaching the Fixed-Term Employees Regulations. He was also, possibly, alleging breach of an alleged obligation to consult properly and meaningfully with him, but that is not suggested in the list of issues.

365. The difficulty the claimant has in connection with all of the alleged protected disclosures is as to the issue (issue 6.1.5): did he believe that the disclosure of information tended to show breach of legal obligations, and so on? The claimant has proved to be such an unreliable witness that we are not satisfied he believed anything in particular, in terms of breaches of legal obligations etc. or otherwise, when sending this email of 24 December 2019, or any of the other correspondence allegedly containing protected disclosures.

366. He has the same problem in relation to issue 6.1.3: did he believe the disclosures of information were made in the public interest? We are not satisfied he did; it is most likely that he did not. We think his only concern at all times was for his own position and that the reason he was raising any concerns at all was to attempt to secure a favourable outcome for himself: getting permanent employment or a payoff.

367. It follows that none of the alleged qualifying and protected disclosures were qualifying and protected disclosures. For that reason, whatever else, all of the 'whistleblowing' complaints fail.

368. For the sake of completeness, however, we shall examine the rest of the alleged qualifying and protected disclosures, the complaints of detriment, and the complaint of automatically unfair dismissal.

6.1.1.2 By replying to an email on 16.01.2020;

369. Within this email (page 816 of the main bundles) there is, arguably, information which potentially tends to show unlawful discrimination. In particular, there is reference to

the existence of individuals who are comparators that prove there was less favourable treatment. The email also contains similar information to that in the email of 24 December 2019.

370. However, this was not a qualifying and protected disclosure for the reasons given above.

6.1.1.3 By raising a formal grievance on 15.02.2020;

371. Putting to one side the difficulties common to all of the alleged qualifying / protected disclosures, although this email (pp 1028-9 of the main bundles) does contain potentially relevant information, we would not be satisfied that the claimant believed it tended to show breach of legal obligations and so on, as set out in issues 6.1.5.1 to 6.1.5.5, let alone that he believed the disclosures to be made in public interest. This was one a number of emails sent between 14 and 17 February 2020 by the claimant in a bid, we think, to sabotage the grievance process and prevent there being any kind of grievance outcome. His motivation remained to secure a favourable outcome for himself, in terms of permanent employment with the respondent or a payoff. Even if we took the email at face value, it is focussed on the claimant's own interests and situation rather than on any broader public interest.

6.1.1.4 In contacting the Respondent on 06.03.2020;

372. This relates to an email complaining about Mr Hussain that runs from page 1214 of the main bundles. A number of the allegations made in it are part of the claimant's Tribunal claim and we have decided they are without foundation.

373. The email certainly contains information about things that, in the abstract, someone might think were breaches of legal obligations. However, we think the claimant did not believe most of the factual allegations he was making, nor did he believe that, singly or as a whole: the information in the letter tended to show any of the things set out in issues 6.1.5.1 to 6.1.5.5; the disclosures were made in the public interest.

6.1.1.5 In contacting the Respondent and Craig Cusack on 15.03.2020.

374. This issue concerns the letter appealing against the termination of employment.

375. The letter contains some information, albeit most of it is expressions of opinion and/or bare allegations of wrongdoing rather than specific factual allegations.

376. In the list of issues, the relevant alleged failure is to comply with a legal obligation to dismiss the claimant fairly (issue 6.1.5.3). As the claimant himself conceded in closing submissions, there was no such obligation because he had less than 2 years' service. In theory, however, the claimant could have genuinely believed that there was such an obligation. If he believed this, the letter contains an implicit allegation that such an obligation was breached.

377. However, once again: we are not satisfied that the claimant believed anything in particular at the time in terms of whether legal obligations of any kind were being or had been breached by the respondent; there is no basis for a suggestion that he believed information tending to show this had been, was being, or was likely to be

deliberately concealed (issue 6.1.5.5); he did not believe that any information disclosed was being disclosed in the public interest; his only concern was to improve his own situation.

378. We note the date on this letter was the day the claimant started Acas early conciliation. It was, we think, sent tactically, in connection with the Tribunal claim he was about to bring.

7. Detriment (Employment Rights Act 1996 section 48)

7.1 Did the respondent do the following things:

7.1.1 Andrew Savage and Craig Cusack refused twice to meet the Claimant to conduct a grievance investigation meeting, then falsely accused the Claimant of declining to, or making it difficult to, attend the meeting;

379. In relation to the allegation against Mr Savage, we repeat what we wrote above about victimisation detriment complaint 5.3.32 (from paragraph 271).

380. The allegation concerning Mr Cusack is similarly baseless. There was never any suggestion that the claimant might meet with him for a grievance investigation. The proposed meeting on 5 March 2020 was to discuss the termination of employment and it did not take place because the claimant made clear he did not want it to. We do not know what the claimant is referring to here, nor what the claimant is referring to by anyone refusing to meet "twice".

7.1.2 Craig Cusack stalked the Claimant;

381. As for complaint 5.3.28; see paragraph 266 above.

7.1.3 Used the Claimant's exercise of the bullying and/or grievance policy as a means to justify dismissal;

382. We don't know what the claimant meant by this, because he did not tell us; nor what part of which claim form this complaint appears in, if it is in any of them.

383. In his letter of 28 February 2020 (see paragraph 310 above), Mr Hussain made no attempt to justify the proposed dismissal of the claimant by reference to the claimant's exercise of the bullying and/or grievance policy.

384. Possibly what is being referred to is the contents of the letter from Mr Jeffcoate of 1 July 2020 rejecting the claimant's appeal against dismissal (see from paragraph 139 above). To our knowledge, the closest the respondent came to using "the Claimant's exercise of the bullying and/or grievance policy as a means to justify dismissal" – and it was not close at all – was referring in that letter, entirely legitimately, to the excessive volume of correspondence from claimant and to the offensive and upsetting allegations made by him about Mr Savage.

385. We have already explained the reasons for dismissal. They were nothing to do with any information disclosed in documents relied on as qualifying and protected disclosures.

7.1.4 Dismissal in relation to 'a pack of lies';

386. See above. There was no pack of lies or a single lie from the respondent's side that we know of.

7.1.5 Adam Hussain suspended the Claimant;

7.1.6 Adam Hussain denied suspending the Claimant and refused to state the management procedure and/or policy being applied;

387. As for complaint 5.3.35. See from paragraph 304 above.

388. It is true that Mr Hussain denied suspending the claimant. Although we accept that in practice what happened to the claimant was much the same as if he had been suspended formally, the respondent's reluctance to use the language of suspension was understandable in circumstances where it was not using the disciplinary procedure and was proposing to have a meeting very shortly afterwards where the claimant would be dismissed because of a breakdown in trust and confidence.

7.1.7 Adam Hussain and Craig Cusack subjected the Claimant to humiliating and demeaning comments, implying that he could not communicate in a sensible manner in his letter of 28.02.2020;

7.1.8 Craig Cusack endorsed the humiliating and demeaning comments regarding the Claimants communication following his letter of 28.02.2020;

389. The reason for the contents of the letter of 28 February 2020 was that that was how the claimant's communications were perceived. Mr Hussain's and Mr Cusack's perception of them was justified, in our view.

7.1.9 Ignored the Claimant's grievance of 16.02.2020;

390. As for complaints 5.3.30 and 5.3.31 above.

7.1.10 Andrew Savage unreasonably accused the Claimant of stating that Andrew Savage was responsible for the suicide attempt of the Claimant's friend;

391. As for victimisation complaint 5.3.36 above.

7.1.11 'Letter-bombing' residents on the Claimant's street and adjoining streets with the Claimant's letters of dismissal;

392. As for victimisation complaint 5.3.42 above.

7.1.12 Lied about delivering a letter to the Claimant's address on 11.03.2020 and ignored the Claimant's evidence to the contrary;

393. See paragraphs 346 and 347 above.

7.1.13 Ignored the Claimant's grievance of 06.03.2020;

394. As for victimisation complaint 5.3.38 above.

7.1.14 Ignored the Claimant's appeal against dismissal;

395. See from paragraph 138 above.

7.1.15 Lied and accused the Claimant of not assisting in relation to his redundancy;

396. We refer to and adopt paragraph 107 of respondent's counsel's written closing submissions.

397. If this complaint is about anything at all it is about the following in the letter of 28 February 2020: "You have been unwilling to engage with the Council … concerning your employment history, following your request for redundancy figures." This was a factually accurate comment. In an email sent at 11.07 am on 23 January 2020, Ms Woodhead had asked the claimant for particular information and had explained to him why he needed to provide it if he wanted the respondent to agree with him that he had continuous local government service going back to 2011. For no discernible good reason, the claimant refused to provide it.

7.1.16 Lied to justify his dismissal.

398. As above, the respondent told no lies.

7.2 By doing so, did it subject the claimant to detriment?

7.3 If so, was it done on the ground that he made a protected disclosure / other prohibited reason?

399. What really happened is explained from paragraph 379 above. If and to the extent there were detriments, the reason the respondent subjected the claimant to them was not to any significant extent any information disclosed in the documents relied on as qualifying and protected disclosures.

8. Unfair dismissal

8.1 Was the reason or principal reason for dismissal that the claimant made a protected disclosure?

400. For reasons explained at length above, the answer is: no. There were no protected disclosures and the reason for dismissal was a complete breakdown in the employment relationship, brought about by the claimant's unreasonable conduct.

9. Employment Relations Act 1999 - right to be accompanied, s.10

9.1 Did the respondent fail to comply with the Claimant's right to be accompanied:

9.1.1 Was the Claimant required or invited to attend a disciplinary hearing;

9.1.2 Did the Claimant request to be accompanied at that hearing;

9.1.3 Was that request reasonable;

9.1.4 Did the Respondent fail to permit, or threatened to fail to permit, the Claimant to be accompanied …

401. This claim fails because:

 401.1 the right only applies to grievance and disciplinary hearings, not to investigation or consultation meetings. There was not a single disciplinary or grievance hearing at any stage;

 401.2 the claimant would have been permitted to have a companion in accordance with the legislation at all and any potentially relevant meetings;

 401.3 the claimant has made no claim for breach of subsection (4) of section 10 of the Employment Relations Act 1999 (where a chosen companion is not available and the worker proposes a reasonable alternative time for the meeting) and on the facts the requirements of that section were never met;

 401.4 see paragraph 113 of respondent's counsel's written closing submissions. The right was not denied at or in relation to either of the meetings this claim is apparently about;

 401.5 so far as concerns the grievance investigation meeting with Mr Savage scheduled for 17 February 2020, there was no suggestion of the claimant being denied a companion. If the right to be accompanied had applied to that meeting, which it didn't, asking to see the claimant's trade union representative's credentials beforehand (see paragraph 288 above) would not have been a denial of it. The meeting never took place and the claimant was wholly responsible for this – see paragraphs 276 to 286 above;

401.6 the termination meeting scheduled for 28 February 2020 was not in our view a disciplinary meeting, although we can see the argument for saying that it was. In any event, the invitation letter permitted the claimant to have a companion, the meeting never took place because in a letter dated 26 February 2020 the claimant complained that he and his trade union representative had been given inadequate notice of it, and he did not ask to be allowed to have a companion at the meeting before he wrote that letter.

10. Wrongful dismissal / Notice pay

402. On the evidence, which includes the relevant payslip, the claimant's notice period was one week and he received one week's pay.

403. During this final hearing, after he had finished giving his evidence, the claimant alleged that he had not even been paid for one week. That allegation had previously not been part of his case and was contradicted by paragraph 141 of his own witness statement.

Employment Judge Camp

23 March 2023