EMPLOYMENT TRIBUNALS

Claimant: Mr A Zia-Ud-din

Respondents: (1) HP INC UK Limited
(2) Computacentre UK Limited

Heard at: London Central (by video)

On: 19, 20, 21, 24, 25, 26, 27 and 28 (in chambers) October 2022

Before: Employment Judge E Burns
Mr J Carroll
Mr P Secher

Representation

For the Claimant: In person
For the First Respondent: Ms Cowen, Counsel
For the Second Respondent: Ms Quigley, Counsel

JUDGMENT

The unanimous judgment of the Employment Tribunal is that all of the Claimant's claims fail and are dismissed.

REASONS

THE ISSUES

1. This was a claim arising from the Claimant's employment with the Respondents. The Claimant's employment with the First Respondent began on 1 October 2018. He transferred to the Second Respondent on 1 August 2022. The Claimant's employment ended on 6 August 2022. He had resigned prior to the transfer on 12 July 2022 giving four weeks' notice, which he spent on garden leave.

2. The issues to be determined were agreed at a case management hearing held on 4 February 2022. At the start of the hearing, the Tribunal checked whether there were any changes to the agreed list of issues and confirmed some updates. A copy of the list of issues is attached as an appendix.

THE HEARING

3. The hearing was a remote hearing. From a technical perspective, there were a few minor connection difficulties from time to time. We monitored these carefully and paused the proceedings when required. The participants were told that it was an offence to record the proceedings.

4. The Claimant provided a written witness statement and gave live evidence.

5. For the Respondents we received written witness statements and heard live evidence from:

   - Corrie Naylor, Customer Services Manager for the First Respondent
   - Nicola Harding, who was the First Respondent's Customer Support Manager for the UK and Northern Ireland at the relevant time;
   - Caroline Cooney, First Respondent's Employee Relations and HR Lead for the UK and Ireland
   - Peter Jolly, First Respondent's UK and Ireland Country Manager for Industrial Business
   - Lee Elliott, First Respondent's Services Category Manager for North West Europe
   - Alison Cole, Second Respondent's HR Business Take On Consultant

6. One of the First Respondent's witnesses, Pascale Vandenbroucke, Field and Channel Delivery Manager for the European part of the First Respondent's business, who is based in France, only provided a written witness statement. The First Respondent had planned that Ms Vandenbroucke would travel to the UK to participate in the video hearing. Unfortunately, she was not able to do so for unforeseen, but entirely legitimate medical reasons. Permission had not been given by the French authorities for her to give live evidence via video link.

7. The Claimant did not object to Ms Vandenbrouke's statement being provided to the Tribunal. We arranged for him to be able to ask the witness two lots of questions in writing during the course of the hearing, which she answered in writing. In assessing what weight to give Ms Vandenbrouke's evidence, the Tribunal has taken into account that she was not able to be cross examined in the usual way, but also that her involvement mostly post-dated the Claimant's resignation.

8. The Tribunal ensured that each of the witnesses, who were all in different locations, had access to the relevant written materials which were unmarked. We were satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.

9. There was an agreed bundle of 1764 pages. Some additional documents were admitted into evidence during the course of the hearing with the agreement of the parties. We read the evidence in the bundle to which we were referred and refer to the page numbers of key documents that we relied upon when reaching our decision below in brackets.

10. We explained our reasons for various case management decisions carefully as we went along and also our commitment to ensure that the Claimant was not legally disadvantaged because he was unrepresented.

11. At the start of the hearing an issue arose as to the admissibility of certain evidence. To avoid the Tribunal learning the full detail of that evidence, we arranged, with the agreement of the parties, for a different judge, Employment Judge Adkin, to determine the issue. He decided the evidence should not be admitted and the Tribunal Panel were provided with redacted witness statements accordingly. He also identified some documents (in whole or in part) in the bundle which the Tribunal should disregard. We duly did this. One allegation on the list of issues was also removed.

12. Employment Judge E Burns apologises for the length of time it has taken to send this reserved judgment to the parties.

FINDINGS OF FACT

13. Having considered all the evidence, we find the following facts on a balance of probabilities.

14. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.

Background

15. The Claimant describes himself as a British Pakistani. It was not in dispute that he is a disabled man for the purposes of the Equality Act 2010 by reason of colitis. This is a condition he has had from an early age and for which he takes medication.

16. The Claimant commenced employment with the First Respondent as a Service Delivery Manager ("SDM") based at a client site, Bank of America Merrill Lynch ("BAML") on 1 October 2018 (145 – 163). Prior to this he had twenty five years experience of working in a variety of different roles in IT services, including at managerial level.

17. The First Respondent had first entered into a service delivery agreement to provide certain IT services to BAML in 2000. It was an important contract because it was one of the largest accounts the First Respondent had in the UK. The contract was renewed following a tender process after ten years and was due to be up for tender again in 2020. A one year extension had been agreed because of the Covid pandemic.

18. The First Respondent employed different people with different levels of responsibility for the relationship with the client and the delivery of services.

19. Corrie Naylor held the job title Customer Success Manager ("CSM"). She had the highest strategic level involvement with the client. Her responsibility was client relationship management including oversight of the commercial

arrangements between the First Respondent and BAML, as well pricing and managing the First Respondent's profit and loss arising from the relationship. Ms Naylor was a manage, but had notdirect reports. Ms Naylor had been responsible for the relationship between the First Respondent and BAML since she began her employment with the First Respondent in 2010.

20. The Account Delivery Manager's (ADM's) role was oversight in relation to delivery of the service level agreement commitments to BAML and invoicing. At the relevant time, the role was held by Simon Bayliss-Stranks.

21. The Claimant's role, as SDM had responsibility for day to day operations on site.

22. The contract covered four BAML sites, three of which feel within the Claimant's remit. These were the client's head office in St Paul's where he was based, a back office location in Bromley and a Disaster Recovery Site in Camberley. His team of people ranged in number from time to time between twenty to twenty four people during his period of employment. These were a mixture of staff employed by the First Respondent and people who the First Respondent referred oi as contingent workers. By this they meant, agency workers, some of whom were engaged to work at the BAML site on long term arrangements and some of who were brought in from time to time to [provide cover and or for particular tasks. The fourth site was in Chester. The onsite SDM there was Paul Short. His team, which was also made up a mixture of employees of the First Respondent and contingent workers numbered around seven people.

23. The Claimant and Mr Short were line managed by a line manager who held the role Market Lead & UKI Country Support Manager. In addition, they were required to have interaction with BAML staff, particularly Lee Hill who was responsible for Workplace Services Delivery. Others involved on the BAML side were more senior and included Gavin Van Rooyen and Richard Dickens.

24. Although the Claimant's primary responsibility was day to day operations, his job description included the following:

"Discuss and design service quotations for ad-hoc Project activity, ensuring these are delivered on time and successfully, with a health profit margin for HP, in line with HP policy" (712)

25. It is relevant to note that the First Respondent had the following relevant policies which were included in the bundle:

- Harassment-Free Work Environment Policy (111-112)
- Capability Policy (112 -123)
- Disciplinary Policy (124 – 133)
- Grievance Policy (134 – 137)
- Special Leave Policy (165- 171)

26. In addition, all of the First Respondent's witnesses spoke about the "HP Way." According to them, Mr Hewlett and Mr Packard who founded the HP Group in America, had instilled a particular approach to people management in the culture of the corporation. We were told that this involved showing compassion and empathy to employees and creating a work environment built on transparency and openness. It was notable that all of the First Respondent's witnesses were long serving and considered themselves to have the culture engrained into them.

27. We also noted that all of them were white. We were not provided with any information about the ethnic make-up of the First Respondent's workforce otherwise.

28. In the rest of this section we set out the chronology of relevant incidents as we found it occurred, although we note that we deviate from the chronology from time to time.

Claimant's Line Manager

29. The Claimant's direct line manager at start of his employment was Graeme Shields. Mr Shields moved into a different role in September/October 2020 and was due to be replaced by Nicola Harding with effect from January 2021.

30. Ms Harding had worked for the Respondent for more than twenty years and had been a manager since 1997. She was moving into the role from a very senior role as Chief of Staff, Head of Strategy and Planning to the UK and Ireland Managing Director. In the interim between Mr Shields leaving and Ms Harding taking over, Thomas Smith stepped in as the manager for all of Mr Shields' reports. Mr Smith undertook the same role as Mr Shields in a different geographical area and for the interim period he covered both his and Mr Shields' areas.

31. The Claimant and Mr Shields had had a good relationship. Mr Shields undertook annual appraisals with the Claimant for the years 2019 and 2020. Copies were provided in the bundle and included excellent positive feedback for the Claimant (1130 – 1137). In the 2020 appraisal, Mr Shields said:

"I want to finish by thanking [the Claimant] for the last 2 years working together. I appreciate it's been a fast and furious 24 months, but I am in admiration with what [the Claimant] has achieved, and the turnaround on performance for the account. The demand of the role is high, both from the client and [the First Respondent], but you have risen to that challenge.

You have been a great support into me over the last few years, and I value that strongly. I really appreciate not only the work that he has managed, but the way in which he has approached his work. A Can-do Attitude, and always having a great sense of perspective and professionalism.

With [his new line manager] this is a great opportunity for [the Claimant] to continue to develop his professional skills under the guidance of a new

leader. I wish him all the very best, and ongoing success in the team and in [the First Respondent].” (1136)

32. It is notable, however, that in the 2019 appraisal document, Mr Shields was gently critical of the Claimant’s people management skills, suggesting he could have nipped some issues in the bud earlier to avoid having to take a more formal approach (1130 -1131). In addition, in 2020, Mr Shields identified, by way of personal development goals, that the Claimant should find ways to ensure he was accessed more support from others. In addition, he recommended the Claimant review how he managed people in the “*HP Way*.” (1136).

33. Ms Harding intended to have an introductory meeting with the Claimant on 27 November 2021, but this was pushed back to 7 December 2021. A meeting did take place on 27 November 2021, but also included Thomas Smith and was in relation to a different topic as explained further below.

Feedback from BAML (16 October 2020)

34. The first chronological incident that the Claimant has complained about concerns some feedback from BAML that he was expecting to be told about.

35. On 16 October 2020, Mr Hill sent the Claimant an instant messenger message saying that he had “*passed on some feedback to [Ms Naylor} today about the great support we have been getting*”. He added that he hoped it would find its way to the Claimant (1123).

36. Having not received any feedback, on 12 November 2020, the Claimant sent an email to Ms Naylor, Mr Bayliss-Stranks and Mr Shields asking if he had had any direct feedback from BAML, adding that it would be nice to have it for his end of year review. The reference to his end of year review was a ruse. The Claimant was trying to find out what Mr Hill had said to Ms Naylor on 16 October 2020 without specifically asking about it.

37. Neither Ms Naylor nor GS replied to the Claimant’s email. Mr Bayliss-Stranks replied a few days later on 16 November 2020 and said that he had not had anything specific. Mr Bayliss- Stranks mentioned that he was aware that Mr Hill was very happy with some recent project work however. This was a reference to the Refresh Project which was an ongoing piece of work that involved the First Respondent upgrading the IT equipment being used by BAML’s employees on a regular cycle.

38. Much later, on 1 February 2021, the Claimant emailed Ms Harding, copying her the instant message between Mr Hill and himself, to say that it would be nice to see the feedback (1123). Ms Harding has not been in post at the relevant time and therefore asked Ms Naylor about it.

39. Ms Naylor replied to her the following day to say that she thought Mr Hill was referring to the feedback he had given on the Refresh project. Ms Naylor explained that she had not fed this back to the Claimant at the time because it was not a comment about the Claimant specifically, but about the entire team’s performance. In addition, she said that she thought the

Claimant had been already aware of it having been present when Mr Hill had been positive about the Refresh project. Finally, she said that Mr Hill had also said a number of negative things about the Claimant. We took this to mean that she did want to provide feedback to the Claimant that was misleading. She had added:

"To be honest, if he wants to chase down positive feedback from the bank or maybe even suggest that I am withholding it from him, then I think he should be getting the other 95% of the conversation so he can hear the amount of negatives purely about him." (1122)

Manpower (17 November 2020)

40. The next relevant incident took place in November. Although Ms Harding had not yet started in her role, she was contacted by Mr Smith, who asked her to take part in a meeting with him and the Claimant to discuss Manpower. As noted above, Ms Harding had arranged to have an introductory meeting with the Claimant on 27 November 2020, but agreed with Mr Smith that he should use that meeting to discuss the Manpower issue.

41. The Manpower issue had been triggered by a lengthy email from Ms Naylor dated 17 November 2020 to Ms Cooney in HR, copying in Mr Bayliss-Stranks (264-265). Manpower had a contract with the First Respondent to undertake all desk moves for BAML staff. The work was undertaken by contingent workers.

42. In her email, Ms Naylor reported that she and Mr Bayliss-Stranks had some concerns about a few things at BAML that were not compliant with the First Respondent's policies and posed a potential risk to the First Respondent and BAML in terms of contract delivery.

43. Specifically, Ms Naylor's email said:

"Through conversations that both of us have had independently with members of the team, we believe that the SDM in London, is behaving inappropriately and putting the service at risk:

- *[the Claimant] makes no secret of the fact that he does not like Manpower, he thinks that there are performance issues and want to introduce a new supplier called Synergise. [Mr Bayliss-Stranks] has explained that this decision is not his scope and that if he has concerns we need to address with Manpower and with Global Procurement as a starting point.*

- *He has approached [IQUO Limited] directly to see if/how existing Manpower engineers can sign up with them and transfer over to them.*

- *He has approached the Manpower Team Lead (Jamie Parrott) and asked her to decide to change to either [IQUO Limited] or Synergise.*

Apparently she feels intimidated and fearful for her job so has only spoken to a couple of team members rather than doing anything formal.

- *There have been complaints about how he is treating some of the Manpower [contingent workers], some of which have worked with us for many years and are now apparently considering leaving. There are examples of contractors being texted not only after hours but also very late at night*

"The other concern that we have is that despite many conversations with both [the Claimant] and [Mr Shields] in the past about responsibility for customer pricing and commercial decisions residing with the ADM and CSM, [The Claimant] continues to challenge and want to make his own decisions, regardless of the internal [position] or the contracts we have put in place with the customer. We thought that this issue had been resolved earlier this year however, recently we have an example where he wants to provide break/fix service free of charge for a new device type when it is very clearly a chargeable item. After several discussions we are now working it through as a chargeable change request, however, we are not confident that the core issue is resolved." (262)

44. In his evidence to the Tribunal, the Claimant accepted that he had been unhappy with the service provided by Manpower and had raised this. This was because he felt that Manpower was too expensive. He wanted the First Respondent to put an alternative in place at BAML. His view was that this was part of his remit because his job description included the reference noted in paragraph 24 above.

45. The First Respondent disagreed that this type of issue came within the scope of his role, particularly as the First Respondent's Global Procurement department was responsible for the arrangements with Manpower. In addition, the First Respondent told the Tribunal that the Claimant did not have full visibility of the commercial arrangements between the First Respondent and either BAML or Manpower as this sat with others more senior to him. He was therefore not in a position to assess the costs of the Manpower service. We find that notwithstanding the Claimant's job description, the Respondent's stated position in relation to this point was the accurate one.

46. The Claimant also accepted that he had approached the other agencies to discuss how he might go about setting up a flexible team via them that could do the work being done by Manpower.

47. In addition, he accepted that he had asked Jamie Parrot about whether she could move from Manpower to another agency, but denied intimidating her. He told us that once Ms Parrot had told him that she was signed up with Manpower and was unable to transfer agencies, he had accepted this and did not raise it any further. The Claimant also denied treating Manpower operatives badly. The Tribunal was not presented with any evidence that corroborated the allegations involving Jamie Parrot or the

Manpower operatives. The First Respondent did not investigate them at the time.

48. The Claimant told us that he felt ambushed by the change of topic at the meeting. He had prepared a power point presentation introducing himself and his team to Ms Harding and was not able to deliver this. We find that the reason for the change of topic was Ms Naylor's email and that the change was instigated by Mr Smith, who led the discussion at the meeting. It was Mr Smith who wanted to raise the Manpower issue with the Claimant, but who wanted Ms Harding to be involved, given that she would be starting in her new role in January 2021.

49. The outcome of the meeting was that the Claimant agreed not to pursue his ideas about creating a team to replace the Manpower team. However, notwithstanding the meeting, there were on-going discussions about the Claimant's attitude towards Manpower. An example can be seen in an email chain from 15 to 16 December 2020 which concerned a project to refresh IT equipment for BAML staff based in Camberley (366 – 391). The Claimant, who was on leave at the time, complained in emails sent to Mr Bayliss-Stranks, Mr Biggs and Mr Short about Manpower needing five days to do what he considered to be three days' work. Although Mr Bayliss-Stranks confirmed that this was all agreed with BAML, the Claimant continued to challenge it. This culminated in Ms Naylor emailing him, copying in the others, on 16 December 2020 to say:

"Please can I remind you of a few things – some of which we have been through many times. In no particular order:

1. *Cost, pricing and P&L are not within your scope. I fully support [Mr Bayliss-Stranks] with his position on this.*

2. *We need to take into consideration the bank's request, the criticality of this activity, the upcoming RFP and the current Covid situation.*

3. *[Mr Biggs] has been managing this specific activity extremely successfully for many years. He has the banks trust and I also trust him and his judgement implicitly in terms of what is needed to deliver the project and satisfy the customer. Likewise, I implicitly trust [Mr Short] both as Chester SDM and overall lead when he is in that position. We have all worked together for over 5 and a half years.*

4. *Manpower have been a loyal, reliable and trusted partner to [the First Respondent], providing this custom service for over 10 years. If you have issues or any concerns with them, then we need evidence so that it can be addressed through the appropriate channels.*

With all of the above, plus the fact that our entire team continue to give 100% throughout this extremely difficult times, I am struggling to understand why energy is being spent on email battles over something that is logical and straightforward. We have greater priorities." (370)

Graham Hill and Paul Short (30 November 2020)

50. The next relevant incidents occurred a few days after the meeting. On 30 November 2020 Paul Short spoke to Ms Harding to inform her that he had concerns about the Claimant's behaviour. The concerns were with regard to the Claimant not working collaboratively. Ms Harding told us that Mr Short was quite emotional when speaking to her and she felt he was being genuine.

51. Mr Smith had been prompted to speak to Ms Harding after an email exchange with the Claimant about billing on 24 November 2020. After some mistakes were found in some invoices the Claimant said that he thought the London team should be responsible for its own billing, even though a member of Mr Short's team was responsible for it. He said that the reason was because he would rather be in control of the London billing. Mr Short replied to him saying, "*Yes, but you'd rather be in control of everything!*" The Claimant replied to say that he was sorry Mr Short felt like this (996).

52. On the same day, Ms Harding also received an email from Mr Smith forwarding an email chain between Graham Hill, a senior manager on the print side of the business and the Claimant (311).

53. Mr Graham Hill had emailed Mr Smith on 27 November 2020 complaining a difficult conversation he had had with the Claimant that morning. He described it as "*amongst the most heated of which I've had in my 34 years at HP*" (312). He described the call as confrontational and said that it ended abruptly. He provided Mr Smith with the email exchange that gave the history and flavour of the exchange the Claimant had first had with others that was then escalated to Mr Hill. We note that one of the Claimant's emails says quite simply, "*Graham…..shoddy service*." (315)

54. Mr Hill added that this was not the first instance where the Claimant had tried to engage him at the last minute to in an issue which should be routine activity. He concluded his email to Mr Smith saying: "*I think it is fair to say we've all been in a position at some point in our HP careers where things don't go as planned. The HP way in which we solve these situations is to work harmoniously and collaboratively for the best possible Customer and HP outcome. From my dealings with [the Claimant] I'd suggest that these are principles he has failed to adopt, to everyone's detriment*." (314).

55. Ms Harding thanked Mr Smith for the email and mentioned to him that she had spoken to HR about the Claimant in light of the complaint she had had from Paul Short. She asked Mr Smith if he wanted her to pick the issue with Mr Graham Hill up too. He replied saying: "*If you can pick up with [Mr Graham Hill] would be good. It might also be a good idea to quickly talk to Graeme Shields as well…Just to make sure this isn't a crusade against [the Claimant"]* (311)

56. As suggested, Ms Harding spoke to Ms Shields about the matter. She replied to Mr Smith saying, "*I think it is 60 - 40 in [the Claimant's] favour from having spoken with Graeme S.*" (311)

57. The complaints by Mr Short and Mr Hill were not brought to the Claimant's attention at this time. When asked about it at the Tribunal Hearing, the Claimant did not accept that he had communicated with Mr Graham Hill in an inappropriate way.

1 December 2020

58. On 1 December 2022, in the course of an email exchange collating information for reporting purposes, the Claimant challenged a decision taken by Mr Short. The decision was to recruit a contingent worker on a three month contract. The Claimant's reason for challenging the recruitment was because he considered work levels were quiet due to COVID-19 and Mr Short did not need the additional resource. Mr Bayliss-Stranks was copied into the email and he forwarded it to Ms Naylor, without either Mr Short or the Claimant having been copied in saying:

"I can see [the Claimant's] point regarding how quiet it is at present, but don't think he should be questioning how [Mr Short] runs Chester. Just causes tension in an already stress[ed] world 😉"

Ms Naylor replied saying:

"He's out of order and needs to look after his own issues!" (323)

59. On 1 December 2020, Ms Harding emailed Mr Shields and her line manager, Pascale Vandenbroucke, Head of Delivery NE, UK & I, CE, SE Markets with some of the complaints she had received about the Claimant. At this time, Ms Vandenbroucke was in the process of determining whether the Claimant should be given an equity award for his performance in 2020. Based on a recommendation from Mr Shields, Ms Vandenbroucke had recommended the Claimant for equity. However, as result of Ms Harding's concerns and her own view that the Claimant was using a pushy and inappropriate behaviour to drive his business, she decided to recommend the equity proposal be removed. Her email confirming this explains that she was "*ok with him receiving a bonus as a reward for past performance"* but she felt equity would encourage the wrong behaviour (329)

Introductory meeting

60. Ms Harding conducted the postponed introductory meeting with the Claimant on 3 December 2020. Ms Harding came away with a positive view of the Claimant and said in her evidence to the tribunal, *"This was a very pleasant call, and I was impressed with his professional demeanour."*

Richard Henry

61. The Claimant took a fortnight's leave from early December 2019. While he was absent on leave, Mr Short covered his role remotely.

62. While the Claimant was absent, Mr Short was contacted by Jackie Tolhurst, a Consultancy Manager from IQUO Limited. She raised concerns with him about the Claimant and the position of one of her contractors, Richard

Henry. He was supplied to work on the BAML contract under the Claimant's management at the Bromley site. Mr Short asked Ms Tolhurst to put her concerns in writing which she did (336). Mr Short forwarded the email to Ms Harding on 7 December 2019 (335).

63. Ms Tolhurst said in her lengthy email that Mr Henry had been offered a three month extension to his contract, but felt unable to accept it because he wanted to take January off. She explained that he had worked full time every week in 2019 and felt exhausted. According to her, Mr Henry had asked for holiday earlier in the year, but this was not granted and instead he was required to work on standby. She added that Mr Henry felt he was being "*emotionally bullied into coming to site each day*" by the Claimant and both she and Mr Henry felt they could not approach the Claimant directly "*without suffering consequences*".

64. Ms Harding thanked Mr Short for forwarding the email and said she would pick it up with Ms Tolhurst directly. She did this by telephone on 10 December 2020. The call lasted about an hour. Ms Harding had not met or spoken to Ms Tolhurst prior to this so some of the call was an opportunity for Ms Tolhurst to introduce herself and IQUO Limited to Ms Harding. During the call Ms Tolhurst also raised the concerns about Mr Henry.

65. Ms Harding agreed with Ms Tolhurst that Mr Henry could take the month of January 2022 off. She did not contact the Claimant to tell him this, nor speak to him about the email from Ms Tolhurst at this time. The Claimant found out that Mr Henry was taking January off when he returned from leave on 29 December 2020.

66. When asked about Mr Harding's previous leave request at the Tribunal Hearing, the Claimant explained that he felt he had treated Mr Henry fairly in relation to the week he had worked on standby. He said that the issue over Mr Henry's leave resulted from there being strict COVID-19 protocols in place which meant that in order to provide cover for him in Bromley, the Claimant would have had to ask one of the team based in Head Office team to isolate for two weeks before he or she would have been permitted to enter the Bromley site. He would also have needed them to isolate for a further two weeks afterwards, before they were able to return to Head Office.

67. The Claimant's solution was to allow Mr Harding to take a week off in September 2020 as long as he remained on standby in case of emergencies. The Claimant did not consider that he had treated Mr Henry unfairly. In fact, he felt that the arrangement had been to Mr Henry's advantage because it meant he continued to get paid, whereas as a contractor he would not normally have been entitled to paid leave. He said that Mr Henry had not had to deal with any calls and so had benefited from a week of paid standby without having to do any work. We disagree with this assessment. Being on standby does not all an individual the level of rest required when taking annual leave.

Russell Lawrence

68. Another event occurred while the Claimant was absent on annual leave. The father of a member of his team, Russell Lawrence, died. He had had a diagnosis of terminal cancer two years earlier.

69. On 11 December 2020, Mr Short emailed the Claimant, Ms Naylor and Mr Bayliss-Stranks to inform them that he had been passed the sad news about Mr Lawrence's father and mentioned that Mr Lawrence had said that he would appreciate it if he could be left alone for a period of time to grieve with his family.

70. On Monday 14 December 2020, the Claimant replied to the email saying:

"Hi Paul, did you speak with Russell about his return, I'm conscious Russ has the break/fix billing to complete" (356)

71. In response to the email, about twenty minutes later, Ms Naylor replied to all, but addressing the email to the Claimant saying:

"As Russell's father has sadly passed away I do not think that we should be asking when he is back. We should use backup for invoicing – if it cannot be done in London then I'm sure that Chester can pick up again." (356)

72. Around a further thirty minutes later, Mr Short also replied to all to say that he agreed with Ms Naylor. He said that he had not spoken to Mr Lawrence to ask him when he was coming back as he did not think it would be appropriate, given that he had made a made a point of asking to be left alone with his family. Two hours later, Mr Bayliss-Stranks also replied to all saying he agreed that Mr Lawrence should not be approached. He suggested a way forward to get the December billing done.

73. The Claimant replied around twenty minutes later, copying in Ms Harding so that she became part of the email, confirming the December billing would be done, but suggested that he needed to know a return date for Mr Lawrence in order to be able to plan accordingly. He added that Mr Lawrence had been supported over the past few months and then said, "*As per the policy (attached) leave needs to be approved between the manger and employee and that was the reason for my initial question as I didn't speak with Russell*" (355).

74. Ms Naylor then replied to all, addressing her email to the Claimant saying:

"I completely agree that we need to plan however I would expect us to already have back-ups and training in place so that we always have a contingency plan. This has been a topic that we have had periodically over the past couple of years as people have left or when unfortunately unexpected events have happened. Russ' situation is sadly not out of the blue so I would have thought that everything was already in place on standby." (354)

75. Having been copied in by the Claimant, Ms Harding joined the email chain at this point, even though it was 7:42 pm. She began by saying how sorry she was to hear of the loss of Mr Lawrence's father. She said that she felt that Mr Short had acted appropriately and that they should not be asking Mr Lawrence for a return date at that time due to his bereavement. She suggested that the normal amount of compassionate leave for a close relative was one to two weeks. She requested the Claimant refrain from reaching out to Mr Lawrence until after the Christmas break to give him the time he needed. She also suggested discussing contingency planning with the Claimant and Mr Short in the New Year (353 – 354).

76. The Claimant responded straight away to all to say that there was no issue with backup or contingency for Mr Lawrence's role, but that there was a problem with a lack of backup for a task for which he was responsible, namely preparation of the monthly and weekly governance (GSM) packs. He said that issued needed to be resolved (353).

77. He then replied, the following day, privately to Ms Harding. He criticised Ms Naylor's intervention saying, "*Once again Corrie has confused the issue with having back-ups, that is not the case*." He defended his position saying:

"According to policy, Russell should be back on Friday if his father passed on Thursday, however, I think his passing was earlier. Paul should have checked with Russell.

We are stretched in London, I'm off, Russell [Lawrence] is away, we have a major project ongoing and Lee [Biggs] is managing on his own so it would have been good to know what time Russell needs. (352)

He then added:

"As for the billing, Paul [Short] should be checking in on the London team to see how they are getting on but I don't think he's done that so it's up to me.

On the GSM pack, Paul [Short] and I were both shown how to complete but Paul has refused." (352)

78. Ms Harding did not address the points made by the Claimant, but replied to say that she would arrange a one to one meeting between them in early January 2021 (352). She told the Tribunal that she personally found that the Claimant's lack of empathy for Mr Lawrence's position to be shocking.

79. Mr Lawrence subsequently requested his compassionate leave be extended to 11 January 2021. He also asked if he could continue to work form home so he could support his mother.

80. On 30 December 2020, the Claimant, who was back at work, emailed Ms Harding about this request to say that he needed Mr Lawrence in the office as soon as possible along with another member of his team, Lee Biggs. He noted that Mr Lawrence had been away since 9 December, albeit on annual

leave between 21 to 31 December 2020, and he queried whether Mr Short had told HR about Mr Lawrence's absence.

81. The Claimant then forwarded Ms Harding an email exchange between him and Mr Lawrence dating back to October 2020 whereby Mr Lawrence had requested that he be permitted to work from home due to his father being in a terminal condition. In his email to Ms Harding, the Claimant said he had asked Mr Biggs and Mr Lawrence to rotate home working, but that had not materialised and they had both been working from home. He said that there was a lot to do that could not be done remotely and concluded by saying, "*We can't limit ourselves by team members arbitrarily choosing to WFH*" (412)

82. Ms Harding replied on Sunday, 3 January 2021, copying in HR, to say that from her perspective, she would like to honour Mr Lawrence's request for compassionate leave until 11 January 2021. She asked HR for advice on Mr Lawrence's position going forwards given his need to support his mother. She then asked the Claimant to replying setting out his requirements for an on-site resource (412).

83. As a result of Ms Harding's intervention, Mr Lawrence was not required to return to work until 11 January 2021. Ms Harding also ensured that Mr Lawrence was credited back the annual leave he had taken between 21 and 31 December 2020 and that this was treated as compassionate leave. She explained to the tribunal that although the Respondent's policy on Compassionate leave refers to one to two weeks being the typical length of time that employees would be given as paid leave for an immediate family member, the period can be shorter or longer depending on the particular individual's circumstances. She felt that allowing Mr Lawrence to take until 11 January 2021 was appropriate in his case because he was supporting his mother and helping arrange the funeral, as well as dealing with his own grief.

84. On Sunday 10 January 2021, the evening before his return to work, the Claimant emailed Mr Lawrence, copying in Mr Biggs saying:

"Hi Russ, please can we arrange a collection for the 19/20th Jan.

Darren has also sent a list." (479).

85. Having been copied into the email, Mr Biggs decided to bring it to the attention of Mr Short, Ms Harding and Ms Naylor. He forwarded it to them that evening with a cover email saying:

"Please witness below email from [the Claimant] to Russ, another example of [the Claimant's] very very shocking people skills Shocking compassion and shocking management of humanity!!!!!!

No mention at the very least, "welcome back Russ, hope you and your family are well."

No!!!!! Straight into the robot work mode… work mode that has put others at risk and let's face it, shoddy management.

I am completely disgusted with [the Claimant's] ongoing lack of alliance for people & staff.

*We now live in a new world, a new world that requires more compassion than ever before. A Covid Vaccine is the first step, but has [the First Respondent] a Vaccine to prevent the like of [the Claimant]…(*479).

86. None of Mr Short, Ms Harding and Ms Naylor did anything about the email. The Claimant only learnt about the email as part of the litigation disclosure. He did not see it at the time or at any time before his subsequent resignation.

87. When giving evidence, the Claimant acknowledged that he did not express condolences to Mr Lawrence in this or any other email, but said that he did this in person when Mr Lawrence was in the office. We note that in the Claimant's earlier reply to the email from Mr Lawrence informing the Claimant that his father's condition had become terminal (12 October 2020) the Claimant had replied saying, *"Hi Russ, I'm sorry to read this. I wish you and the family well at this difficult time. You have my support*" (413). He maintained that Mr Lawrence should not have been given as much time off as he had been given and that Ms Harding had undermined him by allowing Mr Lawrence an extended period off.

88. Our factual conclusion is that Ms Harding's actions were necessary to ensure that Mr Lawrence was supported and that the Claimant failed to manage him in an HP Way.

BAML Covid Testing Station

89. In early January, BAML was setting up a Covid testing station and wanted the First Respondent's assistance to get the computer side of this up and running. This work was outside the main contract. Ms Naylor and Ms Harding were unhappy that the Claimant had committed to doing it without first involving them to discuss the pricing and operational demands.

Lockdown January 2021

90. On 4 January 2021, a further period of full lockdown was announced in England. From 6 January 2021, this meant a legal obligation to work at home unless it was impossible to do so.

91. The First Respondent issued a statement to all its employees confirming it would be mandating a work from home policy. It included guidance for HP Engineers working at customer sites that they must wear masks at all times when on customer sites, even if the customer was not requiring this (455-456).

92. Following a call with the Claimant, Ms Harding challenged the Claimant about not wearing a mask at the BAML site. Rather than accept that he was required to do so, the Claimant challenged the requirement (428). He told

the Tribunal that he thought the guidance applied to engineers who were visiting customer sites, rather than his team who were based at the client's site.

93. Because of the new lockdown, various members of the Claimant's team raised concerns about on-site working and having to travel to work (429 – 431). Ms Harding contacted the Claimant and Mr Short to ask them to send a message to their teams (454) and to set up a discussion as to what impact the lockdown would have on them (523). This included inviting members of the teams to say if they had any reasons for not being able to work on-site at any time.

94. Ms Harding's aim from the discussions was to achieve a balance whereby the First Respondent was complying with the law, but at the same time able to meet its service level commitments to BAML. She envisaged this would be best achieved by developing an on-site rota that provided on-site cover as needed, but enabled all members of the First Respondent's Team at both sites, including the Claimant, to do some work from home. In addition, she explored whether it would be possible to arrange for BAML or the First Respondent to pay for taxis for anyone attending on-site to avoid them having to use public transport.

95. At some point during his discussions with Ms Harding about the rota, the Claimant mentioned that he was taking medication that result in him being immunosuppressed because of a long term health condition.

96. The Claimant told the tribunal that taking immunosuppressant drugs made him particularly vulnerable to catching COVID-19. He did not, however, adduce any corroborating evidence to support his contention.

97. The Claimant did not tell Ms Harding that he was at an increased level of risk or say to her that he needed to shield or work from home as a result. He also did not say that he considered himself to be suffering any kind of disadvantage as a result of having to work on-site. We find, as a matter of fact, that if the Claimant had told Ms Harding that he was at risk because of his medical condition, she would have taken all necessary steps to ensure that he was able to work from home. This is based on the view she took of others who needed to work from home.

98. In any event, Ms Harding encouraged the Claimant to consider some work from home. He was given responsibility for creating a rota that would enable him to share the on-site management responsibility with Mr Biggs so that they could take it turns to be on site, but chose not to do this. He also refused the option of travelling to work in a taxi, saying he preferred to travel by tube.

99. Although the Claimant had allowed certain members of his team to work from home, he was unhappy with other members of his team doing this, in his view, without his approval. His key concerns were centred around Mr Biggs, Mr Lawrence and two other employees Kevin Frost and Vasi Sothirajah.

100. Mr Biggs' position was that he was prepared to work on-site when needed, but he believed that he could do the majority of his role remotely. He spoke directly to Ms Harding about this and confirmed that he was happy to attend on-site when the work needed could not be done remotely.

101. Mr Lawrence was continuing to work from home following his bereavement so that he could provide support to his mother. Mr Sothirajah wanted to work from home as much as possible due to home schooling commitments. The Claimant did not believe that either of them should be permitted to do so.

102. Mr Frost requested that he be permitted to work from home because of concerns about shielding family members. Ms Harding arranged a call with him and the Claimant to better understand this request on 11 January 2021. When the Claimant did not attend the call, she agreed, in the Claimant's absence, to Mr Frost being allowed to work from home for the immediate future (488). Her reason was that she accepted that Mr Frost had a genuine need to do so. The Claimant felt undermined by this and did not accept that Mr Frost should be allowed to work from home. His view was that the situation did not fall into the Government's guidelines for support bubbles and so Mr Frost should not be allowed to work from home.

103. Ms Naylor and Mr Bayliss-Stranks discussed the Claimant's reaction to his colleagues concerns in a private exchange of messages on 6 January 2021. Ms Naylor described the Claimant as *"heartless*" and commented that she thought he did not believe in Covid. Mr Bayliss-Stranks described him as "*delusional*" and also said that he was a "*dickhead, oblivious to the real world*". He commented that "*several of our team lost people though all this period and he's got his head in the sand" (422-423).* Mr Bayliss-Stranks also emailed Ms Harding on 7 January 2021 to say that he thought, *"The Claimant doesn't get the enormity of this all [referring to COVID-19).* He added, *"Apologies for being a bit quiet on the calls. My Dad passed away from Covid in April so it is all still a bit close to home."* (453)

104. During this period, the Claimant failed to attended some video meetings that Ms Harding arranged with the team to discuss the on-site working arrangements. He also failed to respond promptly to some of her emails and when he did, his emails were abrupt. Ms Harding considered them to be combative. Our finding is that her interpretation was correct. The emails were not at all collaborative, in stark contrast to the emails Ms Harding was sending to the Claimant.

105. For example, on Tuesday 12 January 2021, Ms Harding emailed the Claimant and Mr Bayliss-Stranks at 20:05 to clarify some points ahead of a meeting arranged with the entire team the following day to discuss the BAML on-site requirements. This was one of the meetings that the Claimant did not attend.

106. The Claimant replied at 21:38 with a lengthy email in which he responded to the points. Of particular note, he accused Ms Harding of giving Mr Biggs implied permission to work from him by not responding to an email Mr Biggs had sent to her in which he said he intended to work from home. He also

said that he did not understand why Ms Harding thought there was no rota in place as the London team had been rotating for many months.

107. Ms Harding replied at 21:49 to say that the Claimant should not reply further as she felt a telephone conversation would be a more constructive way to discuss the issues, but made some points in response to those made by the Claimant. Among these she said that the Claimant's comments about Mr Biggs were an "*unacceptable statement*" She added, *"[Mr Biggs] works for you. You should follow up with him to address his concerns as his manager. We had a call this week to discuss getting a comms in place to get staff on site which you failed to join. This could have been part of the discussion*." In response to the Claimant's comments about the rota she replied, "*The rotation file you shared last week has some staff on site five days a week. This is not a rotation on reduced site presence. I'm still waiting for this view*." (542-543)

108. Ms Harding forwarded the email exchange to Ms Naylor who replied at 10:13 pm saying:

"Not sure what to say now…. I hoped that by talking to you both and the pip tomorrow, we could start to get a breakthrough, but obviously not. He is blatantly rude and disrespectful, his responses are not coherent and none of it adds up. He has dismantled all of the flexibility, teamwork, basic POM, comms, tracking, etc that was put in place by [Mr Shields] and the previous leads….

I feel really bad that you have come into it. If there is anything that I can do, let me know. Stay strong, we WILL get through it!!!!" (534)

109. Notwithstanding Ms Harding's instruction not to reply to the email, the Claimant did so at 22:17 that same night simply saying, "*On [Mr Biggs] – did you agree with [Mr Lawrence] and [Mr Frost] that they could work from home – because I didn't approve and I should have as their manager so I'm assuming you did?" (541)*

110. Ms Harding replied at 7:05 am the following morning, saying:

"For [Mr Frost] we had a call this Monday at 9 am which you failed to turn up to, so I then had to step in listen to [Mr Frost's] concerns re his family circumstances. As you were not there and had not asked to reschedule the mtg I advised Kevin that in the Pandemic situation and with the risk levels he described, particularly with getting to work he could work remotely until the situation was assessed on Tuesday 12th with yourself, [Mr Bayliss-Stranks] and [Ms Naylor] Corrie. Again, you failed to join this call on 12th. This is the reason I have been repeatedly asking for a review of reduced site attendance during the Tier 5 set up and London major incident.

As for [Mr Lawrence] I agreed his compassionate leave to 11th. You were included in all mails. I have not discussed his working from home, but his family setup clearly indicates that he is not in a position to be on site. It's your role as his manager to be in touch verbally with him and talking through

the issues of risk and then plan accordingly to manage that workload if he cannot be on site.

Extraordinary times means as managers we have to manage new setups and manage change. It is not business as usual and its [Mr Bayliss-Stranks'] role to clear any proposal you bring to the table with [BAML]." (541)

111. Ms Harding forwarded the email chain to HR. She also forwarded it to Lee Elliott, UK & I Services Category Manager marked '*Private and Confidential, do not forward'* saying *"So you can see what I am up against.*" (541) Ms Harding told the Tribunal that she did this because in his role, Mr Elliott was the sales lead for BAML and she had been discussing the process of retendering for the BAML contract with him. She told us that although she had had interaction with Mr Elliott in her previous role, she did not know him well. She felt it was important that he was aware of any concerns at BAML however, to ensure the First Respondent had the best chance possible of winning the contract when re-tendered.

112. On Friday 15 January 2021, Mr Van Rooyen rang Ms Naylor to tell her that someone from the First Respondent (whom he refused to name) had told him that the First Respondent intended to reduce the on-site presence regardless of the implications for service delivery and its contractual commitments to BAML. She emailed him on 19 January 2021 after speaking to Ms Harding and Mr Bayliss-Stranks to reassure him that the First Respondent was revisiting its rota for on-site presence in light of the new lockdown, but had no intention of reducing its commitment to service delivery (688). Ms Naylor believed that the person who had spoken to Mr Rooyen was the Claimant. The Claimant did not dispute this when giving evidence to the Tribunal.

GMS Deck Issue

113. A further issue that arose related to the preparation of the GSM packs. This was the material that was provided to BAML on a weekly basis and at the monthly governance meetings.

114. When the Claimant first started in his role, the material had been collated by another team. That team had been disbanded around six months after his arrival. Although the person responsible for preparing the material had held a handover / training session with both Mr Short and the Claimant, the Claimant had taken on responsibility for the GSM packs ever since. He had worked at weekends to do this. He also did it while he was on leave in December 2020, and as can be seen from above, raised this as a concern to Ms Harding when they were exchanging emails about Mr Lawrence.

115. At the beginning of January 2021, the Claimant emailed Mr Short to say he did not have time to do the pack that month. This led to exchanges of emails involving Ms Naylor, Mr Bayliss-Stranks and Ms Harding. Mr Short said he was unable to help without training as he had not been involved in the preparation of the materials and the handover session had taken place over 18 months earlier.

116. In one email sent on 6 January 2021, the Claimant said simply "*I would suggest Paul follow the work instruction and if he has questions I will answer*." Mr Short began his reply in a confrontational way by challenging how engaged the Claimant must have been in a meeting they were both attending, if he was sending emails during it. He then went on to say that he considered that the preparation of the GSM report was an administrative task which needed "*to be handed over properly with contacts at both locations so that [the First Respondent] have cover for holiday and sickness*." He added, "*I would suggest Aqueel that if you stopped doing tickets yourself and managed the team, then you would have time to handover correctly. I have never completed this report myself*." (1,000)

117. Ms Naylor asked the Claimant to arrange the suggested handover, but he was reluctant to do so. This was discussed in emails sent over the weekend of 9 and 10 January 2021. The Claimant's email in response to being asked by Ms Naylor to meet for one hour to go through the work required, was a one line email saying, "*Meeting to show how to cut and paste into Powerpoint?*" This led to Ms Harding intervening. Ms Naylor emailed Ms Harding to thank her for her intervention and added, *"It's getting to the point where he seems to be deliberately obstructive on pretty much every topic*" (443 – 448 and 481-487).

118. Our finding is that this problem was created by the Claimant taking the task of producing the GSM packs on himself exclusively from the beginning. The crisis he complained about in January 2021, could have been avoided if he had taken the time to train a team member to support him earlier, particularly bearing in mind that the role was largely administrative. In addition, the Claimant's expectation that Mr Short could pick the task up without any handover was entirely unrealistic.

Informal PIP

119. As a result of concerns being raised with her about the Claimant, Ms Harding had begun seeking advice from HR about him for a while before she started in her role. The advice was provided by Caroline Cooney, Employee Relations and HR Lead for the UK and Ireland. They exchanged emails on 7 December 2020 and set up a meeting to discuss the best approach to address the concerns that had been raised at that stage. On 10 December 2022, Ms Harding forwarded the appraisals Mr Shields had completed for the Claimant, to Ms Cooney. In her cover email she said:

"*Here you go Caroline…this will be tough as his feedback is very good – Graeme does call out his management style*" (347)

120. Ms Harding told the tribunal that she did not write this email with the aim of trying to get rid of the Claimant. What she anticipated being tough was getting through to the Claimant to make him understand where he needed to improve his performance. From around this point forward she began to fill in a case tracker of all instances when she perceived of poor behaviour by the Claimant. The tracker template was provided to Ms Harding by Ms Cooney. The completed tracker was used later in the disciplinary proceedings against him (462 – 464).

121. Having decided that she needed to address the Claimant's performance with him, Ms Harding invited the Claimant to a meeting to discuss her concerns. On 8 January 2021, she sent two zoom meeting invites. The first was to Ms Cooney and was sent at 12:39 that day. It invited Ms Cooney to a short meeting between 15:20 and 15:30 that same day with the message, "*Lets take 10 mins – Just want to update you and set a slot for a PIP discussion for next week*." (1766)

122. The second zoom invite email was sent at 15:35 to the Claimant and Ms Cooney and invited them to a zoom call on 13 January between 14:30 and 15:30. The invite contained the following message:

"I need to ask you to please join a call to discuss some areas of concern in your performance. Ms Cooney will also participate in the call" (548)

123. The Claimant did not receive the email containing the invite until 11 January 2021 at 14:28 (1765).

124. Earlier that day, 11 January 2021, at 12:14, the Claimant had forwarded the email exchange concerning the GSM deck to Ms Cooney and her line manager in HR, Debbie Irish. He sent it with a cover email raising concerns about Ms Naylor and Ms Harding's conduct towards him. Specifically, he complained that Ms Harding was micromanaging him and undermining his authority when it came to leave requests involving his team and her authorising people to work from home. He also complained that the level of reporting required of him was proving to be a heavy burden and adding to his already heavy workload that required him to work evening and weekends. He also mentioned that he had been told to expect some feedback by BAM back in October 2020, but had not been given it and that he felt Mr Short was also working against him (495).

125. Debbie Irish replied to the email at 14:24. She sent the reply on behalf of herself and Ms Cooney as Ms Cooney was away from the office that day. Having reviewed the email exchange, she recommended that the Claimant talk to Ms Naylor and Ms Harding about his concerns in the first instance. When the Claimant replied to say that "*I'm afraid Nicola and Corrie are the problem*" she sent a further email noting that she was aware that Ms Harding had scheduled a meeting with the Claimant where she intended to discuss the full situation with him, including her perspective on events. She added:

"*I appreciate you have stated that you see [Ms Harding] and [Ms Naylor] as being a problem but as [Ms Harding] is your manager it is very important that you hear what she has to say and of course you will also be able to express your concerns, issues and asks.*

From what I can see this is a reasonable approach and a necessary first step towards addressing concerns, which will hopefully enable you to understand the situation.

I don't know the detail of the discussion and of course I cannot pre-empt the outcome, but if after manager engagement you ultimately still feel that there is an issue not addressed, do please reach out to [Ms Cooney] or me and we can talk about how best to proceed." (494)

126. Unsurprisingly, given that he received the invite to the meeting a couple of hours after he had sent his email to HR, the Claimant assumed that his email to HR had triggered the meeting of 13 January 2021. He assumed Ms Harding would be aware of what he had said in his email. However, neither Ms Irish nor Ms Cooney shared the Claimant's email with Ms Harding. This meant that when the meeting with the Claimant took place, Ms Harding was unaware that the Claimant had complained about her to HR.

127. From Ms Harding's perspective, she treated the meeting as the start of an informal PIP process under the First Respondent's Capability Process, section 7 (116). She did not use this terminology with the Claimant. However, we find that from what she had said in her email invite, it should have been clear to him that she was concerned about his performance.

128. No notes were made of the discussions at the meeting, but both Ms Harding and the Claimant confirmed in their evidence to the Tribunal they believed it was a constructive meeting. At the meeting, Ms Harding spoke about her plan for future meetings between her and the Claimant, some of which would include Ms Cooney.

129. Following the meeting, the Claimant sent the first follow up email to Ms Harding (copying in Ms Cooney) to apologise for his lack of response to her requests and saying that he would work with her "*100% now that we've had a good discussion*". In his email to Ms Harding, he said that he did not feel that Ms Cooney would need to attend future meetings between them (550). Although he had been given the option by Ms Irish to raise any residual issues with her or Ms Cooney after his meeting with Ms Harding, he did not feel the need to do so.

130. Ms Harding replied to the Claimant's follow up email with her own follow up. In it she thanked the Claimant and outlined the next steps, which included setting up two calls a week, one of which would be to cover "performance review topics" and the second to discuss ordinary day to day operational matters. She said that Ms Cooney would continue to be involved.

131. Ms Harding did not expressly refer to the ongoing performance review meetings being undertaken in accordance with the Capability Procedure. The meetings were different and separate to business as usual meetings, however. Ms Harding described the purpose of the meetings as being for "performance review" however, and wanted Ms Cooney to be present.

132. Ms Harding also said in her email that she felt, "*We have a real opportunity to support the Bank and HP together going forward on a united front. I think we had a really good discussion today*". She concluded saying: …"*Here's to new beginnings.*" (550).

133. On 22 January 2021, Ms Harding had a performance review call with the Claimant. She reported back to Ms Cooney that the call had been a "reasonable" one. She noted that she had briefly challenged the Claimant about the messaging into BAML around remote working and intended to pick this up again with him.

134. Despite the Claimant apologising for not attending meetings convened by Ms Harding, he continued to do this. For example, he missed a staff meeting that she held on 25 January 2021. He did not let her know in advance that he was not going to be able to attend the meeting and only apologised for and explained his absence (which was for a good reason) later when she emailed to ask him why he had not been there (694).

135. The issue of the rota for on-site presence was not resolved by the end of January. As far as Ms Harding was concerned, the Claimant had still not sent her a satisfactory rota for discussion and agreement. Her evidence to the tribunal was that he never sent her one.

Objectives

136. The Claimant and Mr Short were required to send Ms Harding suggested objectives for 2021 for the purposes of their appraisals. They both sent her suggestions on 25 January 2021, which was slightly later than she had asked. The objectives they had each identified were strikingly similar, being largely based on the ones from the previous year.

137. In his cover email, the Claimant apologised for the lateness and said, "*Goals attached*." Ms Harding replied on 27 January at 08:30, "*Lets discuss in your one to one…I would like to avoid having your normal day job as part of your goals – it should be areas of stretch or areas that need issues resolving*" (991).

138. In his cover email, Mr Short apologised for the lateness and said, "T*his is what I have so far, some elements still need fleshing out.*" Ms Harding replied to him on 27 January 2021 at 08:37 (seven minutes after replying to the Claimant) saying, "*Looks great Paul, no need to apologise. Please go ahead and upload and we can discuss in your next 1 to 1."* (705)

139. The Claimant highlighted this to the Tribunal as an example of a difference in the way she was treating him to Mr Short.

Feedback from BAML (26 January 2021)

140. The monthly governance meeting for January was held with BAML on 26 January 2021. Following the meeting Ms Naylor reported on some key points that had arisen to Ms Harding. She also observed that during the meeting Mr Lee Hill had sent her several WhatsApp messages. According to Ms Naylor, Mr Hill raised the following concerns:

    (1) That the Claimant did not appear to grasp that the First Respondent was on track with the Refresh plans to update BAML computers because the volume was spread across the year and split into quarters. Mr Hill

expressed concern that the Claimant should not be seeking to run ahead of the plan because of the lease dates on the equipment.

(2) The Claimant was closing a high volume of break/fix tickets personally, although Mr Hill was not sure if this was because the Claimant was doing the actual fix work or just completing the tickets for the engineers.

Ms Naylor also mentioned a concern of her own saying:

"*Lastly, there is a section on the deck where positive feedback is shared. To be honest it was a little embarrassing today because most of the feedback that [the Claimant] had put was about himself, the bank's comments on how great he is. It came across as [the Claimant] showing everyone how great he is showing everyone else up. Maybe I'm wrong and I don't know what could be done easily, but I think we need to be careful that it is not turned into the Aqueel show, especially when we have the current issues.*" (692)

141. Ms Naylor spoke to Mr Hill after the meeting. Mr Hill raised a number of concerns about the Claimant with Ms Naylor. She summarised these in an email dated 28 January 2021 to Ms Harding and Mr Bayliss-Stranks as follows:

"Performance is great but overall concerned about who is doing what because [the Claimant] seems to be doing everything himself:

- *No refresh lead, Alberto was not replaced. [The Claimant] still does not understand the full requirements, process, etc In meetings sometimes it's as if he is still new or seeing date for the first time, cannot answer*
- *Large proportion of [break/fix] tickets done by him*
- *Apparent power/control issues, no trust in the team and there are conflicts.*
- *He still does not know how everything works and does not use the team, so there is a dependency on someone who was not fully aware.*
- *When he was off for 2 weeks before Christmas everything worked extremely well – specifically the BCP work in Camberley – however he heard from some of the team that he was still checking in with them daily*
- *The team sometimes go to [Mr Biggs] to complain about [the Claimant] and [Mr Biggs] tells them to talk to [the Claimant] himself, [Mr Bayliss-Stranks] or me because he cannot get involved.*

The only positive, he said, is that the Claimant is super responsive – when the bank asked for something he does it immediately" (711).

Re-Tender Process

142. BAML began the process of putting the contract for IT services out for tender on 31 January 2021. It issued a request for proposals (RFP) to all IT vendors it was currently using, setting out its requirements, and asked for proposals by 19 March 2021. BAML's wanted the new contract to commence on 1 August 2021.

143. The First Respondent has a specific team that deals with tenders called the Pursuit Team. The Pursuit Team put together a team to work on its RFP. The team included the Customer Success Manager (Ms Naylor) and the Account Delivery Manager (Mr Bayliss-Stranks) as it was the First Respondent's standard practice to include the people who held these roles in the team preparing the RFP. In addition, the First Respondent decided to ask Mr Short and another individual, Colin Patterson, who reported to Mr Short to participate in some meetings to assist with the process as 'subject matter experts'. Three meetings took place to which Mr Short and Mr Patterson were invited in February 2021. There were many more meetings to discuss the RFP, however, and overall the input of Mr Short and Mr Patterson into the RFP process was limited.

144. The First Respondent told us that Mr Short was asked to participate because he was a long serving employee (18 years) who had been working on the BAML contract for many years and had been through a previous tender. Mr Patterson was invited to assist because he was the Print and Process specialist. He was also a long serving employee on the BAML contract with experience of a previous tender.

145. The Claimant was informed that the RFP process had begun on 1 February 2021 (732), but he was not asked to participate as a 'subject matter expert'. He was not told that Mr Short and Mr Patterson had been asked to be 'subject matter experts' but later became aware that they had attended some meetings to do with the RFP to which he was not invited.

Concerns in February 2021

146. In the meantime, on 2 February 2021, the Claimant had emailed Mr Biggs and asked for his assistance with unloading 15 crates of equipment on site. Mr Biggs did not reply and instead complained to Mr Short in an email sent just to him that the Claimant had first tried to get Mr Lawrence to do this work and then asked him despite having a team of engineers on site and despite it not being an urgent task. Mr Biggs said in his email to Mr Short:

"I'm not going to site just to move boxes, when he has a full team of engineers, I've not even replied….." (727)

147. Mr Short forwarded the email on to Ms Harding saying that the Claimant was continuing to harass people to come to site despite their fears and safety concerns. He added: "*It appears to me that [the Claimant] has still not had a conversation/meeting with the team to properly understand what his teams capability is. It reads to me that [the Claimant] will not be happy until he has everyone on site and has his own way*." (726 - 727)

148. Mr Biggs sent Ms Harding a lengthy complaint about the Claimant's management style shortly after this (739 – 743).

149. On 5 February 2021, Ms Tolhurst sent Ms Naylor a lengthy email raising eight separate concerns about the Claimant. These ranged from him being seen as not approachable and team morale being low to concerns about his lack of communication and not having the correct staffing levels in place to

deal with potential sickness, emergencies and workload increase. Ms Tolhurst asked that her email be treated as confidential (734). Ms Naylor shared the email with Ms Harding.

150. On 9 February 2021, Ms Naylor emailed Ms Harding to inform her that she had just done the revised forecast for income from the BAML contract for Q2. She said that the forecast had had to be reduced by over $300,000 because the Claimant had previously over-estimated the volume of Refresh work that would be required (746). They arranged to discuss the issue further. Ms Harding replied to say that she would "*also bring in HR as think we need immediate suspension from [the First Respondent] and BAML view now*" (745).

151. Ms Harding told the Tribunal that it was at this point that she began to think there was a need suspend the Claimant to enable a disciplinary investigation to take place. This was because she did not feel he was responding to the informal PIP. Before finalising her decision, however she wanted to take soundings from various people, including Ms Naylor. Ms Naylor's view was the situation with the Claimant seemed to be getting worse, but she was worried what BAML would think about a change in SDM (745).

152. Ms Harding decided to arrange a meeting with Mr Hill and his colleague Lesley Davies to talk through the issues with him and to get BAML's perspective. The meeting took place on 12 February 2021. Although no note was taken of the discussion at the meeting, Ms Harding sent two follow-up emails that same day which we consider to be an accurate summary of what was discussed.

153. In her first email, sent to Mr Hill and Ms Davies, Ms Harding thanked them for their time and honest and frank feedback. She then summarised in bullet points some issues that required her urgent attention and said she would build a plan to action/rectify them (759). It is relevant to note that the points raised included the following:

- A need for the First Respondent to follow the defined process of management for all aspects of the service at all times
- A requirement for better management of the stock sheet in order for it to be a reliable, accurate source for stock management, forecasting and refresh
- Executing cases at speed is not always the most effective way. The SLA defined delivery times are there to provide a framework of expectation for the customer
- a need for a Refresh Lead
- the SDM should not be working on Break / Fix incidents
- the London team need to be trusted to complete their work and an improved team morale should be encouraged to drive better teamwork on site
- the SDM should follow the governance of Mr Hill as the primary contact with escalations into [Mr Bayliss-Stranks] and [Ms Naylor] when necessary (758-759).

154. Ms Harding discussed the issues that had arisen with Ms Naylor and Mr Bayliss-Stranks. Following the discussion, she forwarded the email to Ms Vandenbroucke and updated her on the current position as she understood it follows:

"Good conversation with the bank today. They raised all the points below – but do not want to change the SDM was going through an RFP, so I agreed to try and rectify as much of the issues as possible. They were appreciative of my engagement as they said they had not had a point of escalation for the operational team before (outside of Corrie, CSM and Simon, ADM) and felt very reassured after our conversation.

My next steps will be to take [the Claimant] through these points next week. It was decided not to make it a formal PIP or disciplinary at this point by the business leads on the account as it is far too much of a risk to the RFP. If [the Claimant] reacts badly to such action.

This also does not cover the numerous allegations from the team and our suppliers, but is just the banks issues. This will have to go on the backburner whilst we run the RFP." (758).

155. Ms Vandenbroucke replied saying:

"Nicola, you tried, and lets keep monitoring under close scrutiny until you can get him out." (758)

156. On 15 February 2021, Ms Harding spoke to the Claimant about the feedback she had received from BAML.

157. She then emailed Ms Naylor and Mr Bayliss-Stranks saying that at first the Claimant had been very defensive in their meeting, but that she believed she had brought him round to the thinking that they had to act on these requests and show BAML how they were making moves to improve whilst in the middle of an RFP. She added that the Claimant had said that he did not agree with any of the points, but nevertheless agreed to help with a response.

158. She then sent the Claimant a follow-up email copying in Ms Naylor and Mr Bayliss-Stranks. In the email she set out the areas of improvement that she had captured from the meeting and noted that the Claimant had "*kindly agreed to think about steps*" he could take. She also asked Ms Naylor and Mr Bayliss-Stranks in the body of the email, if there was anything that could be done from their side to address the concerns. She said that she was required to update Mr Hill the following Friday and emphasised in bold in the email that "*We must remain 100% consistent in our communication with the Bank across the [First Respondent] team, particularly whilst in the RFP process*" (760).

159. As a personal follow-up to the email from Ms Harding, Mr Bayliss-Stranks emailed the Claimant saying, "*As always I'm keen to support you and the team on this as much as I can from afar."* (763) The Claimant invited the

tribunal to interpret this email as demonstrating that there was a culture of fear within the First Respondent. Our finding is that this email was sent by Mr Bayliss-Stranks to the Claimant to reinforce Ms Harding's message and to offer the Claimant help. The reference to helping from afar was made because Mr Bayliss-Stranks was working from home, and not because Mr Bayliss-Stranks was too scared to openly support the Claimant.

160. On 17 February 2021, the Claimant provided a detailed written reply to the points in Ms Harding's email. Rather than propose solutions to all the points, he defended him position in relation to many of them.

161. For example, he did not accept that there was an issue with him working on Break/Fix incidents saying that how resource is allocated should not be BAML's concern. He added that he had only been responsible for 20 out of 160 incidents in the recent month.

162. He also said that he thought it was as odd time for the bank to ask for a new Refresh lead. According to his witness evidence, and in direct contradiction to the instructions given to him by Ms Harding, the Claimant asked Mr Hill about this directly. This was because he thought that his managers wanted a different person to be in charge of Refresh to avoid him getting good feedback.

163. With regard to team morale, the Claimant commented:

"I have no idea where the Bank got this …. form, the low morale has been there from well before I joined. I assume this is directed to the four B/F engineers, two of whom had the best bonuses ever but that hasn't helped with their motivation. The two long term absentees shows that there is an issue. Vasi has made no secret of his desire to leave but hasn't found anything for the past two years to move on to. The team has to be managed, they are not at the level that can work autonomously."

164. He was also defensive about the points concerning governance. He defended the act that he had been communicating directly with Mr Van Rooyen rather than Mr Hill, blaming in part the fact that Mr Hill was working from home.

165. Ms Harding sought advice from HR as to how to respond. In her view, the list had been actions that the Claimant had been asked to pick-up, rather than debate and she considered he was failing to carry out her reasonable instructions. Ms Cooney shared Ms Harding's view (778).

Chromebooks and Print Tickets

166. A further issue arose on 17 February 2021. It involved how the First Respondent's team should respond in the case of problems with Chromebooks issued to BAML staff that were under warranty. Despite it being agreed that all that should happen is that faulty Chromebooks should be sent to HP for warranty repair and if beyond economical repair written off, the Claimant wanted to make good devices from damaged written off

devices. He repeatedly discussed this into early March 2021 with BAML staff despite being no-one else agreeing to this (898-899).

167. At around the same time, another issue came to light. BAML queried an increase in the volume of 'tickets' for printer repairs, particularly as so few of its staff were actually working on-site at the time. It transpired that a significant number of these were generated not by BAML staff reporting faults, but by a member of the Claimant's team. The reason for this was because the Claimant had asked the photocopying engineer to undertake proactive fixes, via monitoring, rather than wait for users to log faults. The Claimant had not informed Mr Bayliss-Stranks or Ms Naylor that he was doing this. This meant that BAML had been charged for these tickets even though they had not generated them.

168. The Claimant's defence to this accusation was that he had asked Mr Hill at BAML for permission to raise proactive tickets in his own name or that of his engineer. He acknowledged that the client should not have been charged for this work. however. He told the Tribunal he said that the *"root cause of the billing issue was allowing Russell Lawrence to work from home*."

169. The Claimant messaged Mr Hill to ask him if he recalled when he had asked him if it was acceptable for the First Respondent to raise incidents for protective printer faults like paper jams. Mr Hill recalled that he had confirmed that it was. His exact words were:

"go for it
But every effort should be made for users to raise themselves
But if one of the team spots a jam that is different" (804)

170. Several calls were held to get to the bottom of this issue towards the end of February. Mr Patterson was asked to be involved because he was the Print specialist. Mr Patterson was of the view that there was absolutely no justification for the proactive fixes via monitoring to have been undertaken. His view was that sending test prints to a device that has not printed for a year was bound to cause paper jams because the paper had been sitting in the trays for so long. In defending his actions, the Claimant questioned Mr Patterson's expertise. This led to Ms Harding organising a zoom call to discuss the issue on 24 February 2021.

171. The Claimant alleges that during the call Mr Patterson called him "*slopey shouldered*." Ms Harding told us that she did not hear this particular comment being said. We find that Mr Patterson did make the comment. We find it unlikely that the Claimant misremembered this. Our finding is that the context in which he said it was accusing the Claimant of not bearing responsibility for the issues that had arisen. We do not find that Ms Harding was lying to the Tribunal, however. We consider that she either did not hear the comment, or did hear it and did not appreciate its significance and so has forgotten she heard it.

172. Having established the source of the issue with the printer tickets, the First Respondent decided that it needed to be transparent with BAML about the

fact that it had been overcharged (840). Ms Harding also decided that she should suspended the Claimant. She had a conversation with Mr Elliott about this who confirmed that he agreed that if suspension was justified it should take place. In addition, both Ms Naylor and Mr Bayliss-Stranks were of the view that the Claimant should be suspended.

Purported Whistleblowing

173. On 26 February 2022, a team meeting of the HP staff working on the BAML contract was held at which the RFP process was briefly discussed. The Claimant understood Ms Harding to suggest that the First Respondent could seek to influence the Second Respondent's choice to submit a proposal because of its own commercial relationship with the Second Respondent. The Tribunal makes no finding as to whether this understanding was correct. On or around 5 March 2021, the Claimant anonymously reported Ms Harding's comments using the First Respondent's website for reporting ethical concerns as a potential breach of the First Respondent's Anti-Corruption Policy (851). No evidence was presented to the Tribunal that Ms Harding was ever made aware that the Claimant had done this.

March 2021 – Suspension

174. Ms Harding informed Ms Vandenbroucke of her thinking in relation to the Claimant's suspension on 2 March 2021. In an email to Ms Vandenbroucke on that date, Ms Harding reported that "*the HP Business Leads of BAML*" had changed their position and were recommending that the Claimant be "*removed from his position at the earliest opportunity*". She explained that the decision was being driven by the further issue having come to light, which she summarised as "*Print tickets being raised by HP Engineers (as opposed to the user) under the direction of the Claimant despite being off process*". She said she would be liaising with HR the following day (872).

175. Ms Harding and Ms Cooney exchanged emails on 3 March 2021. Ms Harding sought Ms Cooney's advice as to whether the concerns about the Claimant would justify his suspension. Ms Cooney replied that there appeared to be more than enough areas of concern which required serious attention (873).

176. On the same day, 3 March 2021, entirely separately from the suspension process, the Claimant and Mr Short had an email exchange about the preparation of a rota for Chester staff. The Claimant had prepared one for him and sent him this. In his reply to the Claimant, Mr Short was critical of the Claimant and said, "*If you are stuck for jobs to do please get me the headcount and overtime report, this would have been a better use of your time*." (999)

177. Having decided to suspend the Claimant, Ms Naylor, Ms Harding and Mr Bayliss-Stranks met with Mr Hill to inform him. Ms Naylor also emailed Mr Dickens and Mr Van Rooyen on 8 March 2021 to inform them (912). BAML confirmed that they wished to shut off the Claimant's access to his BAML email account and system during his suspension.

178. The suspension was implemented on 10 March 2021. On 9 March 2021, Ms Harding had asked the Claimant not to go into work but to remain at home and attend a video call with her. Ms Harding and Ms Cooney met with him and informed him he was being suspended on full pay and that his BAML access had been removed, but not his access to the First Respondent's systems. Ms Harding read the Claimant a pre-prepared letter of suspension (933 - 936), that she subsequently sent him by email (932).

179. The letter said that the Claimant was being suspend from work until further notice while an investigation was carried out into several areas of serious concern. The letter contained further information about the areas of concerns. These were expressed to be:

- Accusations of bullying and harassment of many team members both HP and Contingent Workers – the letter stated that Ms Harding had received multiple complaints from HP employees in and outside the team and also from third parties related to CW staff that they have at times felt intimidated

- Refusal to adhere to defined BAML processes - the letter referred to five instances, which were said to be (1) issues with Refresh and the lack of a Refresh lead; (2) the Chromebook issue, (3) the Print Tickets issue, (4) Ad Hoc requests, giving as an example the work done on setting u the Covid 19 test centre and (5) the Claimant's failure to put in place a weekly Covid-19 situation on site rota

- Violation of safety – the letter referred to concerns about the Claimant's attitude to mask wearing and disregard to requiring staff to travel to work on site on public transport

- Misrepresentation of HP to BAML management – the letter accused the Claimant of informing BAML management that HP staff had demanded to work from home when this was never the case.

180. The letter included a paragraph saying:

"Your suspension does not mean that we have already decided that you have done or not done an action or behaviour that is misconduct or serious misconduct. We will not keep you suspended for longer than is necessary for us to carry out the investigation and decide on action to be taken, if appropriate. We can lift the suspension at any time." (934)

181. The cover email reminded the Claimant that as the matter was under investigation, he should keep it confidential and not discuss it with his colleagues. He was also told not to contact anyone in BAML or at the First Respondent other than Ms Harding or Ms Cooney. The Claimant was asked to set up an out of office status on his email account stating that he was on a personal leave of absence. This was the message that was circulated among his team.

182. Arrangements were put in place to cover the Claimant's work. These were led on the ground by Mr Biggs and overseen by Mr Short and Ms Harding.

183. On 11 March 2021, following an exchange of emails with Mr Biggs and Mr Short, Ms Harding reported back to NC, Mr Bayliss-Stranks and Mr Elliott that there was "*Early success with keeping the plane flying*." Ms Naylor responded saying:

"This is so good to read after everything over the past few weeks!!!

Thanks to you both, Simon and the new core team!" (945)

184. On 12 March 2021, Ms Tolhurst from IQUO Limited emailed Ms Naylor, Mr Biggs and Mr Short with the subject heading "Thank You." In her email she said:

"Following the change in management this week, I would like to take the opportunity to say thank you very much for your support personally and from an IQUO perspective. You have all been exceptionally understanding and trusting of the past few months with regards to the delicate situation concerning [the Claimant]." (954)

Claimant's Grievance – March 2022

185. Following the Claimant's suspension, Ms Harding began to collate the evidence that she had been collecting about the Claimant. She also drafted a letter which she intended to send the Claimant. She wrote the draft letter as if the investigation was completed in anticipation that it would be. She sent the draft letter to Ms Cooney on 15 March 2021 to get her assistance with it. In the draft letter, she said that the investigation had been concluded, with the outcome being that there were grounds for disciplinary action for gross misconduct and the Claimant would be invited to a disciplinary meeting where he would have the opportunity to respond to the allegations (956 – 959).

186. Ms Naylor was planning to finalise the investigation by 22 March 2021 and sent the Claimant a text on 19 March 2021 to confirm this to him (1362).

187. The Claimant took legal advice in connection with his suspension. On 19 March 2021, he submitted a grievance to Ms Cooney. It contained 21 complaints, including a complaint about his suspension and the ongoing investigation. The letter concluded saying "*Since [Ms Harding] took over from [Ms Shields] my position has become, more difficult day by day to the point emails from [Ms Harding] and [Ms Naylor] have become a source of stress. I feel I can longer report to [Ms Harding]*" The Claimant requested a written response to the grievance (965 – 976). He provided a number of documents as supporting evidence of his complaints (978 to 1031).

188. As a result of the grievance, Ms Harding ceased to have any involvement in the ongoing disciplinary process. Ms Cooney arranged for Peter Jolly, UK and Ireland Country Manager for Industrial Business to do two things: (1) investigate and consider the Claimant's grievance and separately; (2)

review whether it was right for the Claimant to have been suspended and say if he recommended the matter should proceed to a disciplinary hearing. Ms Cooney supported Mr Jolly with these steps.

189. Mr Jolly was from a completely different part of the first Respondent's business and did not know the Claimant at all. He knew of Ms Harding, but had never met her or worked with her.

190. In terms of the process he followed, Mr Jolly first met with Mr Shields to gain his insight into the issues (1761). He then invited the Claimant to a grievance meeting which took place by video call on 9 April 2021. The Claimant was accompanied by a colleague, James Jessop. The meeting lasted for an hour and ten minutes. Notes of the meeting were taken by a note taker and were contained in the bundle (1111-1119).

191. At the meeting, Mr Jolly asked the Claimant a number of questions about his concerns to ensure that he understood them. Mr Jolly invited the Claimant to send him any additional material he wanted him to consider.

192. It is relevant to note that during the meeting the Claimant said that he was very proud of his record of no sick days, and he was very proud of the fact that he had worked in the office throughout the pandemic. He said that he had not worked at home and that this showed the commitment that he had.

193. Following his meeting with the Claimant, Mr Jolly met with Ms Harding. This was on 12 April 2021 (1145 – 1153). After their meeting Ms Harding provided Mr Jolly with some additional emails and other material. The Claimant was not provided with the material at the time (1122 – 1139).

194. Mr Jolly provided the Claimant with a grievance outcome on 19 April 2021 (1159 – 1162). He categorised the Claimant's grievance as raising an overarching allegation of mismanagement by Ms Harding, broken down into the following bullet points:

- Micromanaging
- Being undermined
- Unsupportive
- Being ignored
- Knocking confidence
- Abrupt communication
- Exclusion and bias towards other peers
- Discrimination based on race and gender

195. He did not uphold any aspects of the Claimant's grievance. His view was that the overarching allegation about Ms Harding mismanaging him had insufficient substance to be upheld. He was satisfied that there was evidence that the Claimant had acted outside of his remit, had a difficult character and that he had reacted badly to the change in his line management. He therefore considered this warranted Ms Harding raising these issues with him and he believed that she had acted appropriately when doing so.

196. Having considered the grievance, Mr Jolly then turned to the question of whether the Claimant's suspension was justified and whether the matter should be pursued further under the disciplinary process. In order to consider this, he spoke to Mr Biggs and Mr Jessop. He believed that these two individuals would provide him with useful insight. He had become aware that Mr Biggs did not get on with the Claimant, whereas Mr Jessop had spoken very supportively of him at the grievance meeting. Mr Jolly felt that by speaking to both of them he would get a good balance.

197. Following these meetings, and after considering everything else he had seen and heard as part of the grievance process, Mr Jolly decided that the Claimant's suspension was justified. His view was that there was sufficient evidence to support the contention that the Claimant had been bullying and harassing staff, and that there was apparent non-compliance with policy and potential health and safety issues. He considered these issues were significant (both individually and collectively). He therefore recommended that the matter should be dealt with under the HP disciplinary policy. Mr Jolly wrote to the Claimant to confirm this decision on 30 April 2021 (1190).

198. In the meantime, the Claimant had, on 26 April 2021, submitted an appeal against Mr Jolly's grievance outcome (1194-1197). His appeal contained concerns about the process followed by Mr Jolly and the substantive conclusions that he had reached.

199. His concerns about the grievance process were:

- The investigation had not been thorough enough. He said he had expected a response to each of the separate points in his grievance, whereas Mr Jolly had lumped several of them together and ignored some. He said he could not identify which of his complaints had been considered.

- He complained that he had not been given an opportunity to comment on what Mr Shields and Ms Harding said in their investigation meetings.

- He said he had not realised that the meeting on 9 April was the grievance hearing, but had thought it was a grounds rules meeting.

- The minutes of the grievance hearing were not delivered to him until two weeks after the meeting following two requests by email.

200. With regard to the substance of the grievance outcome, the Claimant pointed out where he disagreed with Mr Jolly's conclusions and explained why. In large part, his complaint was that the particular points he had raised had not been addressed. In addition, it is relevant to note that he said Mr Jolly was incorrect to say that he had been on a performance improvement plan.

201. Separately, the Claimant emailed Ms Cooney about the minutes of the meeting. He complained that the minutes contained grammatical and factual

mistakes and misquotations and were delivered following the outcome letter so that any corrections to them were rendered irrelevant. He also questioned whether they had been created using a speech to text computer programme. The Claimant expressed concern that the meeting had been recorded without his knowledge. Despite Ms Cooney confirming to him several times that this was not the case, he continued to make this accusation (1191 - 1193). During the email exchange with Ms Cooney about the minutes, Ms Cooney offered to call the Claimant. The Claimant requested that all communications between them be in writing.

202. The grievance appeal was considered by Neil Duffy, UK Public Sector Print Sales Manager. Mr Duffy was also from a completely different part of the First Respondent's business and did not know the Claimant at all. He had also not worked closely with Ms Harding or Mr Jolly. Mr Duffy was supported by a different member of the HR team, Andrea White.

203. Mr Duffy invited the Claimant to a grievance appeal meeting which took place on 14 May 2021. Detailed notes were taken which were in the bundle (1212 -1220). The Claimant was again accompanied to the meeting by Mr Jessop. Mr Duffy explained to the Claimant at the start of the meeting that he had read the documents, but rather than question him, he wanted to give the Claimant an opportunity to use the time available to explain his position in his own words.

204. Following the meeting with the Claimant, Mr Duffy spoke to Mr Jolly and interviewed Ms Harding (1210). Mr Duffy provided a final outcome letter to the grievance appeal on 28 May 2021 (1283). He did not uphold the Claimant's appeal. In his letter, he explained that he was satisfied that a full and thorough process was followed and that a reasonable decision was taken by Mr Jolly in light of all the information available. In order to address the Claimant's concern that the individual points of his original grievance had not been given sufficient consideration, he explained that he had diligently taken time to consider every single point. He attached a document containing his views on each complaint (1276 – 1281).

205. Following the appeal outcome, the Claimant was still unhappy that the First Respondent was saying he had been subject to a performance improvement process. He followed this up in emails with Ms White and Ms Cooney between 8 and 17 June 2021. Ms Cooney provided a copy of the First Respondent's Capability Policy to him and told him that her understanding was that there had been an informal performance improvement plan process in place (1353 – 1360).

Re-Tender process

206. While the Claimant's grievance process was underway, the process of BAML retendering the contract also continued. It transpired that the First Respondent lost the BAML contract and the new contract was awarded to the Second Respondent. The decision was made towards the end of April 2021 (1173). The senior managers, including Mr Elliott, were aware of the decision very quickly, but neither HR nor the staff team were informed until

sometime later. The Claimant was informed at the same time as the staff team

207. BAML's decision gave rise to a TUPE transfer situation. The Second Respondent's HR team made initial contact with the First Respondent's HR about the TUPE transfer of First Respondent employees to the Second Respondent on 23 May 2021. The staff team were informed at some point after this.

James Bolton Complaint – May 2022

208. In the meantime, on 20 May 2022, the First Respondent received an email containing a grievance about the Claimant from James Bolton (1272). Mr Bolton was a member of the Claimant's team who had been on long term sick leave. He had returned to work shortly before sending the email.

209. In his email, Mr Bolton complained that he had learned that the Claimant, whom he described as his "*former manager*," had shared his private confidential medial information with his colleagues. The Claimant admitted when giving evidence to the Tribunal that he had done this. Ms Cooney provided Mr Bolton with a blank formal grievance form (1271 and 1272) which he completed and signed and dated on 2 June 2022 (1288). On the returned for, the top of the form erroneously referred to Debbie Irish, instead of Nicola Harding, in the box for Manager's Manager as shown below:

Human Resources

Grievance Form

Employee Name:	**James Bolton**	**Employee ID:**	35004903
Business:	**Customer Support**	**HR Contact:**	Caroline Cooney
Manager Name:	**Lee Biggs**	**Manager's Manager:**	Debbie Irish

210. The Claimant has invited the Tribunal to find that this grievance was manufactured and that this error on the grievance form demonstrates that Ms Cooney filled the form in rather than Mr Bolton. We do not make that finding. Our finding is that the grievance was genuine and that Mr Bolton made a simple mistake and named Ms Cooney's manager rather than Mr Bigg's manager on the form because the question was below Ms Cooney's name. In reaching this decision, we have also taken into account that the Claimant admitted that he had shared Mr Bolton's medical information inappropriately and that therefore Mr Bolton had a valid grievance against him.

Disciplinary Process

211. Having concluded the grievance process, the Respondent turned its attention to the disciplinary process. Mr Elliott was appointed to conduct the disciplinary hearing, with the support of Ms Cooney.

212. Ms Cooney was responsible for selecting Mr Elliott. She told the Tribunal that she chose him because the Claimant had expressed concerns that Mr Jolly was too far removed from the relevant part of the business and had not understood the operational challenges the Claimant had faced when considering his grievance. In contrast, Mr Elliott had a high level knowledge of the relationship between BAML and the First Respondent.

213. When the Claimant learned that Mr Elliott had been asked to conduct the disciplinary process, he objected to him on the basis that he was in the same team as Ms Naylor and was close to Ms Harding and that he would not be objective and impartial (1291). Ms Cooney did not consider it was necessary to appoint a different manager. Mr Elliott was not in the same team as Ms Naylor and was not close to Ms Harding, although she had had some communication with him about the Claimant as noted earlier. Ms Cooney had not appreciated this communication had taken place.

214. On 9 June 2021, the Claimant was sent an invite to a disciplinary meeting to take place on 15 June 2021 by Mr Elliott (1305). The letter attached the original suspension letter, but not the spreadsheet tracking the allegations, nor any of the evidence that had been collated by Ms Harding as part of her investigation. In advance of the meeting, the Claimant therefore emailed Mr Elliott asking for the disciplinary investigation material to be sent to him so that he could prepare for the hearing (1307). In response, Ms Cooney sent him the spreadsheet tracker, but not the underlying evidence (1318). The Claimant replied to say that this was insufficient and he needed to see the evidence.

215. Despite the Claimant's concerns, the meeting proceeded on 15 June 2021. The Claimant attended the meeting accompanied by Mr Jessop. He objected in strong terms to not having been provided with the evidence in advance. It was therefore agreed that he would be sent the evidence pack and given time to review it (1327-1333).

216. Over the course of the next few days, Ms Cooney and the Claimant exchanged emails about the evidence. The Claimant was frustrated that he was not being sent the evidence and expressed this. One of Ms Cooney's concerns about giving the Claimant the evidence was that he would learn the names of the people who had complained about him. And might "*seek some or of retaliation*". She wrote to her line managed, Ms Irish on 16 June 2021, to say that she felt that the Claimant's behaviour that week was "*unacceptable*" and he was "*becoming somewhat threatening in his language."* (1347)

217. The full evidence pack (1386 – 1440) was sent to the Claimant by Mr Elliott on the evening of 18 June 2021 (1441). He had obtained it from Ms Harding that same day (1385).

218. A further disciplinary hearing was held on 30 June 2021. Again, the Claimant was accompanied by Mr Jessop. Detailed notes of the disciplinary hearing were taken and were provided to the Tribunal in the bundle (1513 - 1551). On the Claimant's own evidence, the hearing was very thorough and Mr Elliott went through each of the 31 allegations in the excel spreadsheet with the Claimant. The Claimant was able to provide his version of events for each of them. He was also able subsequently to provide Mr Elliott with a number of documents to support his case including a number of positive character references from members of his team (1445 – 1448, 1450 – 1460, 1466 – 1467, 1473 – 1483).

219. During the course of the disciplinary hearing, Ms Cooney was assisting Mr Elliott with questions that he might wish to ask on a private chat channel (1471 – 1472). Ms Cooney was also in a private chat with the note taker. This was largely about the length of the meeting and the volume of notes (1468-1470).

220. Mr Elliott did not undertake any interviews or further investigations. He told the Tribunal that was because he felt the documents spoke for themselves.

Disciplinary Outcome and Resignation

221. Mr Elliott's outcome was sent to the Claimant on Friday 9 July 2021 (1500-1505). Mr Elliott found that the Claimant was guilty in all four areas of concern, namely:

- Accusations of bullying and harassment of many team members both HP and Contingent Workers
- Refusal to adhere to defined BAML processes
- Violation of safety – this essentially captured the issues around on-site working and mask wearing
- Misrepresentation of HP to BAML management and to CW team members

Mr Elliott 's conclusion was that the Claimant should be given a final written warning.

222. In his outcome letter, Mr Elliott dealt with all of the allegations contained in the spreadsheet. His decision was carefully balanced and took into account the Claimant's high level of work ethic, commitment to his role and desire to support the customer. He concluded, however, that the Claimant had stepped outside of the role and responsibilities of an SDM on several occasions. He acknowledged that this was mostly likely because of his drive to support BAML, but said that the impact was to the detriment of his team.

223. It is relevant to note that Mr Elliott's reference to harassment was not intended by him to be interpreted as a technical legal term. His use of the word was as it is understood in ordinary language. He did not make specific findings in relation to each allegation of harassment, but based his decision on the fact that there were nine complaints from six people who had felt

concerned enough about the Claimant's conduct to have been prompted to complain about him. He said that having reviewed the complaints and considered what the Claimant said about them, that there was enough evidence to support the claims. He went on to say that he felt this was because the HP values and styles of management were not represented in the Claimant's engagement with the individuals involved.

224. Mr Elliott was also careful to say in his outcome letter that he considered that the Claimant had "*behaved in an inappropriate manner with colleagues which has been experienced by them as bullying and harassment*" thus acknowledging that the Claimant's behaviour was not intentional.

225. At the time of reaching this decision, Mr Elliott was aware that the First Respondent had lost the BAML contract and it had been won by the Second Respondent. He told the Tribunal that this did not influence his decision making at all. He explained that the First and Second Respondents had a strong commercial relationship which he would not have wanted to put into jeopardy through transferring the Claimant to it to avoid the First Respondent dismissing him. He considered that a final written warning was the appropriate sanction for the Claimant in the circumstances.

226. Ms Cooney emailed the outcome to the Claimant at 14:42 on Friday 9 July 2021 (1505). Within 17 minutes the Claimant sent a lengthy email responding (1508).

227. The Claimant told the Tribunal that he had anticipated that he would be dismissed by Mr Elliott and had been preparing a response for when the dismissal letter arrived. When he received the letter telling him that he had been issued with a final warning, it did not take him very long to adapt his pre-prepared letter and send it.

228. The Claimant considered his position over the weekend. On Monday 12 July 2021, he sent three emails to the Respondent. The first, sent at 10:28 was his resignation letter, which he sent to Ms Vandenbroucke (1558). The second was sent at 13:45 to Mr Elliott and was an appeal against the decision to issue him with a final written warning (1552). The final email, sent at 19:25 to Ms Vandenbroucke, attached a second grievance (1560 – 1562).

229. In his letter of resignation, the Claimant gave four weeks' notice and said he was resigning due to:

- Bullying and harassment in the workplace
- Allegations of misconduct which are unfounded
- Being subjected to unreasonable and unfair treatment during the grievance and disciplinary processes
- Being excluded on occasions

230. Specifically, he said:

"*Due to your behaviour outlined above, I believe that the employment relationship has irrevocably broken down and I resign as a result of the fundamental breach of the employment contract. I consider this to be fundamental breach of the employment contract on your part, in particular, the duty of trust and confidence, therefore I consider myself constructively dismissed*."

231. The Claimant told the Tribunal that the letter was his own work and had not been drafted with the assistance of a lawyer. He said he picked up the phraseology from when he had taken legal advice earlier and his own on-line research.

232. When asked about what was in his mind when he resigned, the Claimant said that he could not face returning to work at BAML, even though this would be for the Second Respondent, with a record of having been found guilty of "sexual harassment". It was put to him that the letter referred only to harassment and not sexual harassment, but he maintained that the reference to harassment could not sensibly be interpreted to mean anything different.

233. At the point that he submitted his resignation, the Claimant had not been offered another job. He had interviewed for a role and felt optimistic about being offered it, but nothing had been confirmed to him either informally or formally. He was later offered and accepted that job.

234. The First Respondent acknowledged the Claimant's letter of resignation and confirmed that he would be placed on garden leave until his termination date.

TUPE Consultation

235. While the disciplinary process was taking place, the Claimant had been made aware that the BAML contract had been awarded to the Second Respondent and invited to participate in a TUPE consultation process.

236. The affected employees (around 16 in total) including the Claimant were invited to attend a first formal consultation meeting by zoom hosted by the Second Respondent on 23 June 2022.

237. When Mr Biggs and Mr Bolton learned that the Claimant had been invited to attend the call, they objected on the basis that the Claimant's presence would cause them to feel additional anxiety (1449 and 1458). The First Respondent nevertheless insisted that the Claimant had to be present and he was.

238. Following the meeting, the affected employees elected employee representatives for the purposes of the consultation process (1498). One of the elected representatives was Mr Short. In addition, the Second Respondent held one-to-one meetings with each member of the affected staff individually. The Claimant's meeting took place on 7 July 2022. This was at around the same time as the other affected employees.

239. The elected representatives held a meeting with the affected staff on 13 July 2021, but did not invite the Claimant. When they realised their mistake, Mr Short emailed the Claimant to apologise on 19 July 2021 and forwarded the Claimant the relevant information. He said that he would ensure that the Claimant was included in all future communications (1579).

240. A final pre-transfer meeting was conducted by the Second Respondent on 23 July 2022 which the Claimant attended. On 1 August 2021, the Claimant's employment transferred from the First Respondent to the Second Respondent. It then ended in accordance with his agreed notice period on 6 August 2021.

Post Resignation Events

241. The Claimant's appeal and second grievance were considered by Ms Vandenbroucke. At his request she did this without meeting him, basing it on his written submissions. She wrote to him on 21 July 201 with the outcome of his grievance, confirming it was not upheld. He appealed against this on 28 July 2021 (1649-1654).

242. Ms Vandenbroucke confirmed that she upheld Mr Elliott's decision to issue the Claimant with a final written warning on 29 July 2021 (1679-1684).

243. The Claimant's appeal against Ms Vandenbroucke's grievance decision was considered by Sharon Ellerker. She did not uphold it and confirmed this to him on 30 July 2021 (1736-1739).

Presentation of Claim

244. The Claimant initiated the Acas early conciliation process against the First Respondent on 25 September 2021. The process was concluded on 27 September 2021 (1). The relevant dates for the Second Respondent were 21 to 25 October 2021(2). His claim was presented to the Employment Tribunal on 25 October 2021.

245. In support of his claim, the Claimant asked one of his former colleagues, Vasi Raj to write a reference for him. He did not ask Mr Raj to appear as a witness for him. The reference, which is dated 25 May 2022, says:

"I am honoured and delighted that you are asking for a reference from me as you were my manager and SDM on the Bank of America account where we worked together, not so long ago.

You were very friendly and an approachable manager to work with, full of energy and positivity always with everyone. I have no doubt in recommending you and did not have any issues with you at anytime during the two years, that I had known you.

You have no doubt put in your heart and effort towards the work specially during the covid time and I am sure you will be missed by many of us.

I was not aware others had issues with you, until I had learnt that you had left the account, initially all those who worked on the BAML account were told that you are on absent leave for a few weeks and there was speculation of you not returning.

This is what was communicated from HP inc regional management to us at the time in meetings and was not given any explanations.

I have also noted at the time some senior team members were talking inappropriately towards you and that was concerning. This also goes back to the time when you joined HP inc, some senior personnel were talking down on you at times, what appears to be ill treatment due to your background and ethnicity. I could clearly see it wasn't right.

In-fact I had worked on the bank of America account for 10 Years via HP and had employment with the company HP Inc for over 15 Years. I had learnt over these years that other ethnic minority were treated indifferently to others.

There was no room for change or voice your opinion. Anyone who spoke out of place or different would find them self-short lived. There are certain individuals who would be working in the background against you from my understanding.

I don't want to put anything more on paper, as you can work it out for your self Aqeel." (1757)

246. The Claimant also requested a reference from Alberto Estevez Tato. He did not ask him to appear as a witness for him. The reference Mr Estevez Tato provided was dated 21 October 2021 and said:

"I worked with [the Claimant [for over 2 years while employed by [the First Respondent] at the client Bank of America. During that time he always behaved professionally. I saw no behaviour at all that could be called bullying.

We were advised by [the First Respondent's] management not to communicate with [the Claimant] at any time to discuss work or his situation. My understanding was that if this was to happen, we would be reprimanded" (1749)

THE LAW

Discrimination Claims

247. The Claimant's discrimination claims include indirect disability discrimination and that the Respondent failed to comply with a duty to make reasonable adjustments, direct race discrimination and race-related harassment and. In this section, we set out the legal tests that have to be applied to such claims.

248. The same incidents are argued to be harassment or direct discrimination, but cannot be both because of the definition of detriment found in 212(1) of the Equality Act.

Indirect Discrimination

249. Subsection 19(1) of the Equality Act 2010 provides that:

"A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's."

250. Subsection 19(2) provides that for the purposes of subsection 19(1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,
(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
(c) it puts, or would put, B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

251. In establishing whether a PCP places persons of a protected characteristic at a particular disadvantage, the starting point is to look at the impact on people within a defined "pool for comparison". The pool will depend on the nature of the PCP being tested and should be one which suitably tests the particular discrimination complained of (*Grundy v British Airways plc* [2008] IRLR 74. The EHRC Employment Code provides useful guidance on this question. A strict statistical analysis of the relative proportions of advantaged and disadvantaged people in the pool is not always required. Tribunals are permitted to take a more flexible approach.

252. The Claimant must also establish that he is actually put to the disadvantage.

253. Indirect discrimination is not unlawful where it can be objectively justified. The burden is on the Respondent to prove justification. This involves two questions:

- Can the Respondent establish that the measures it took was in pursuit of a legitimate aim that corresponded to a real business need on the part of the employer?

- If so, can the Respondent establish that the measures taken to achieve that aim were appropriate and proportionate i.e. did it avoid discriminating more than necessary to achieve the legitimate aim?

(*Bilka-Kaufhaus GmbH v Weber von Hartz* [1986] IRLR 317, *Enderby v Frenchay Health Authority and another* [1994] IRLR 591, *Homer v Chief Constable of West Yorkshire Police* [2012] IRLR 6001)

Reasonable Adjustments

254. Section 39(5) of the Equality Act 2010 imposes a duty to make reasonable adjustments on an employer.

255. Section 20(3) provides that where a provision, criterion or practice (a PCP) applied by or on behalf of an employer, places a disabled person at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable to have to take in order to avoid the disadvantage.

256. Section 21 of the Equality Act provides that an employer discriminates against a disabled person if it fails to comply with a duty to make reasonable adjustments. This duty necessarily involves the disabled person being more favourably treated than in recognition of their special needs.

257. The duty to make reasonable adjustments only arises where the employer has knowledge (actual or constructive) that its employee is disabled and likely to be placed at a substantial disadvantage (Paragraph 20 (1)(b) Schedule 8 of the Equality Act 2010).

258. In *Environment Agency v Rowan* 2008 ICR 218 and *General Dynamics Information Technology Ltd v Carranza 2015 IRLR 4* the EAT gave general guidance on the approach to be taken in reasonable adjustment claims.

259. A tribunal must first identify:

- the PCP applied by or on behalf of the employer;
- the identity of non-disabled comparators; and
- the nature and extent of the substantial disadvantage suffered by the Claimant in comparison with the comparators.

260. Once these matters have been identified we must assess the likelihood of adjustments alleviating the disadvantages identified and decide whether it was reasonable for the employer to put them in place.

Harassment

261. Section 40(1)(a) of the Act provides that an employer must not, in relation to employment by it, harass a person who is one of its employees. The definition of harassment is contained in section 26 of the Act

262. Section 26(1) of the Equality Act 2010 provides:

“A person (A) harasses another (B) if

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

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B."

263. it is not sufficient that the unwanted conduct occurs, it must be shown "to be related" to the relevant protected characteristic.

264. Harassment does not have to be deliberate to be unlawful. If A's unwanted conduct (related to the relevant protected characteristic) was deliberate and is shown to have had the *purpose* of violating B's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, the definition of harassment is made out. There is no need to consider the effect of the unwanted conduct.

265. If the conduct was not deliberate, it may still constitute unlawful harassment. In deciding whether conduct has *the effect* of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, we must consider the factors set out in section 26 (4), namely:

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

Direct Race Discrimination

266. Section 13 of the Equality Act 2010 provides that 'A person (A) discriminates against another (B) if, *because of* a protected characteristic, A treats B less favourably than A treats or would treat others'.

267. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

268. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.

269. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

270. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the Claimant was treated as she was.

Burden of Proof in Discrimination Cases

271. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.

272. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's race. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

273. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd* v *Wong [2005] EWCA Civ 142; [2005] IRLR 258* and we have followed those as well as the direction of the court of appeal in the *Madarassy* case. The decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the Equality Act 2010.

274. The Court of Appeal in *Madarassy*, states:

'*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination*.' (56)

275. It may be appropriate, on occasion, for the tribunal to take into account the respondents' explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (*Laing v Manchester City Council and others* [2006] IRLR 748; *Madarassy v Nomura International plc* [2007] IRLR 246, CA.) It may also be appropriate for the tribunal to go straight to the second stage, where for example the Respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (*Efobi v Royal Mail Group Ltd* [2019] ICR 750, para 13).

276. In some cases, as observed in *Hewage v GHB* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, the burden of proof provisions will require careful attention. However, they may have little to offer where we in a position to make positive findings on the evidence one way or the other. Where such an approach is adopted, however, it is important that the Tribunal does not fall into the error of looking only for the principal reason for the treatment but properly analyses whether discrimination was to any extent an effective cause of the reason for the treatment.

277. It is important to remember that at all times, our focus "*must at all times be the question whether or not they can properly and fairly infer… discrimination*." (*Laing v Manchester City Council*, EAT at paragraph 75) In addition, allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach (*Qureshi v London Borough of Newham* [1991] IRLR 264, EAT). We must "*see both the wood and the trees*" (*Fraser v University of Leicester* UKEAT/0155/13 at paragraph 79.)

Time limits – discrimination claims

278. The relevant time-limit is at section 123 Equality Act 2010. According to section 123(1)(a) the tribunal has jurisdiction where a claim is presented within three months of the act to which the complaint relates.

279. The normal three-month time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.

280. By subsection 123(3)(b), a failure to do something is treated as occurring when the person in question decided on it. In the absence of evidence to the contrary. A person is taken to decide on a failure to do something when that person does an act which is inconsistent with doing it or, in the absence of such an inconsistent act, on the expiry of the period on which that person might reasonably have been expected to do it.

281. In claims for reasonable adjustments, this means time will start to run when an employer decides not to make the reasonable adjustment relied upon *(Humphries v Chevler Packaging Ltd* [2006] EAT0224/06). Alternatively, in a claim when an adjustment has not been actively refused time runs from the date on which an employer might reasonably have been expected to do the omitted act (*Kingston upon Hull City Council v Matuszowicz* [2009] ICR 1170 CA). This should be determined having regard to the facts as they would reasonably have appeared to the employee, including what the employee was told by his or her employer (*Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194, CA).

282. By subsection 123(3)(a), conduct extending over a period is to be treated as done at the end of the period.

283. In *Hendricks v Metropolitan Police Commissioner* [2002] EWCA Civ 1686, the Court of Appeal stated that the test to determine whether a complaint

was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the Claimant was treated less favourably. An example is found in the case of *Hale v Brighton and Sussex University Hospitals NHS Trust* UKEAT/0342/17 where it was determined that the Respondent's decision to instigate disciplinary proceedings against the Claimant created a state of affairs that continued until the conclusion of the disciplinary process.

284. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable as provided for in section 123(1)(b).

285. The tribunal has a wide discretion to extend time on a just and equitable basis. As confirmed by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, the best approach is for the tribunal to *assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. This will include the length of and reasons for the delay, but might, depending on the circumstances, include some or all of the suggested list from the case of British Coal Corporation v Keeble* [1997] IRLR 36.

286. It is for the Claimant to show that it would be just and equitable to extend time. The exercise of discretion should be the exception, not the rule **(***Bexley Community Centre (t/a Leisure Link) v Robertson* [2003] EWCA Civ 576).

287. Where the reason for the delay is because a Claimant has waited for the outcome of his or her employer's internal procedures before making a claim, the tribunal may take this into account (*Apelogun-Gabriels v London Borough of Lambeth and anor* 2002 ICR 713, CA). Each case should be determined on its own facts, however, including considering the length of time the Claimant waits to present a claim after receiving the outcome.

Constructive Unfair Dismissal

288. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is taken to be dismissed by his employer if "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct".

289. It is established law that (i) conduct giving rise to a constructive dismissal must involve a fundamental breach of contract by the employer; (ii) the breach must be an effective cause of the employee's resignation; and (ii) the employee must not, by his or her conduct, have affirmed the contract before resigning (*Western Excavating v Sharp* [1978] Q.B. 761)

290. The burden of proof lies with the Claimant to establish that, on the balance of probabilities, there has been a fundamental breach of contract.

291. In this case the Claimant claims there was a breach of what is known as the implied term of trust and confidence. A breach of this implied term is

necessarily a repudiatory breach of contract (*Morrow v Safeway Stores* 2002 IRLR 9 and *Ahmed v Amnesty International* 2009 ICR 1450)

292. The implied term of trust and confidence in full, as owed by the employer to an employer, is articulated as follows:

"The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee"

293. It is relevant to note that there are two limbs to it. When deciding whether or not it has been breached, we need to consider not simply whether there was conduct by the employer which destroyed trust and confidence, but also employer had reasonable and proper cause to act as it did.

294. It is the impact of the employer's behaviour, assessed objectively, on the employee that is significant - not the intention of the employer *(Malik v BCCI* [1997] IRLR 462). It is irrelevant that the employer does not intend to damage the relationship, if effect of the employer's conduct, judged sensibly and reasonably, is such that the employee cannot be expected to put up with it (*Woods – v- Car Services (Peterborough) Limited)* [1981] ICR 666.

295. As captured above, the tribunal must make an objective and context specific assessment of the employer's behaviour. The subjective view of the Claimant, while relevant, is not determinative.

296. Usually, in order to succeed in a claim of constructive unfair dismissal, an employee must act promptly in response to the employer's conduct said to amount to a breach and resign within a reasonable period. If this is not done, the employee is treated as having waived the breach and affirmed the contact of employment.

297. The breach of the implied obligation of trust and confidence can consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In such circumstances, known as "*last straw*" cases, the position in relation to affirmation of the contract is modified.

298. In *Kaur v Leeds Teaching Hospitals NHS Trust 2018 EWCA Civ 978* the Court of Appeal listed 5 questions that should be asked in order to determine whether an employee has been constructively dismissed in a "*last straw*" case:

(a) What was the most recent act (or omission) on the part of the employer which the employee says cause, or triggered, his or her resignation? We note that in *Omilaju v Waltham Forest LBC [2005] ICR* the Court of Appeal said that the last act may be relatively insignificant, but must not be utterly trivial.
(b) Has he or she affirmed the contract since that act?
(c) If not, was that act (or omission) by itself a repudiatory breach of contract?

(d) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation)>

(e) Did the employee resign in response (or partly in response) to that breach? (*Nottinghamshire County Council v Meikle* [2004] EWCA Civ 859).

299. Where a tribunal finds that there is a dismissal within the terms of section 95(1)(c) we must consider whether that dismissal was fair or unfair within the terms of section 98 of the ERA. In these circumstances it is for the employer to show what was the reason for the dismissal and whether that reason was a potentially fair reason for dismissal falling within section 98(1).

300. It is, somewhat artificial to require an employer who denies having dismissed an employee to show a reason for the dismissal. The Court of Appeal addressed this problem in *Berriman –v- Delabole Slate Limited 1985 ICR 546* where the Court said that, in the case of a constructive dismissal, the reason for the dismissal is the reason for the employer's breach of contract that caused the employee to resign. This is determined by analysis of the employer's reasons for so acting, not the employee's perception (*Wyeth v Salisbury NHS Foundation Trust UK EAT/061/15*).

301. However, even where there is a potentially fair reason for dismissal, the question is whether in the circumstances the employer acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the employee. In practice, what this means in a constructive dismissal case is that we should ask ourselves whether the employer's reason for committing the fundamental breach of contract was, in the circumstances, sufficient to justify that breach.

ANALYSIS AND CONCLUSIONS

Direct Race Discrimination and Race-Related Harassment Claims

302. We decided that we should first consider the Claimant's discrimination claims before the constructive unfair dismissal claim. This was because of the overlap between the discrimination claims and the matters argued to constitute breaches of contract in the constructive unfair dismissal claim.

Disability Discrimination Claims

303. The Claimant has made two claims of disability discrimination, one of indirect discrimination and one for a failure to make reasonable adjustments, essentially relating to the same issue.

304. It was not disputed that the Claimant was disabled by reason of his colitis.

305. The Claimant told Ms Harding that he had a long term condition that resulted in him having to take medication. We considered this was sufficient to have

given her constructive knowledge that he was disabled. We say this because she was on notice that his condition was long term and he was taking medication for it. Where someone has to take medication to deal with a long term condition, it follows that their condition is serious and, without the medication, would impact on that person's daily life. In our judgment, someone of Ms Harding's intelligence and experience of people management issues should have worked out that what the Claimant told her meant that he met the definition of a disabled person under the Equality Act 2010. Our decision was that the Respondent had knowledge that the Claimant was disabled from around January 2021.

306. The Claimant relied on the same PCP for his indirect disability discrimination claim and reasonable adjustments claim, namely that the First Respondent required him to work from the office during the Covid pandemic. As pointed out by the First Respondent, a PCP which is said to apply solely to the Claimant is problematic. We decided that a fairer approach was to consider whether the Respondent had a more general requirement applied to members of the BAML team to work from the BAML sites during the Covid pandemic.

307. Our decision was that the First Respondent did have such a requirement, but that it was heavily qualified.

308. The requirement was not that all of the BAML team had, at all times, to be on-site. Our finding was that the requirement was that on-site working was only required to the extent needed to ensure that the team were able to meet the service level requirements under the BAML contract, as adapted for the Covid pandemic. In addition, where any employee had a good reason for not attending on-site, they were not forced to do so.

309. What this meant in practice was that where work could be undertaken remotely, homeworking was permitted. Employees who were able to attend the BAML site safely and legally were required to do so to perform work that could only be undertaken on-site, unless they had a good reason for not being able to attend.

310. As noted in our factual findings, the Claimant told the tribunal that taking immunosuppressant drugs made him particularly vulnerable to catching COVID-19. He did not, however, adduce any corroborating evidence to support his contention. The Respondents questioned whether he had established this evidentially. We have not found it necessary, in order to decide the Claimant's claims, to make a finding in this respect. This is because in our judgment both claims of disability discrimination fail whatever out finding.

311. In the case of the Claimant's reasonable adjustments claim, for the claim to succeed, he must show that the First Respondent had actual or constructive knowledge that its PCP was putting him at substantial disadvantage in comparison with non-disabled persons. We do not consider he achieved this.

312. Even though the Claimant told Ms Harding that he had a long term condition and was taking medication, his behaviour at the time and what he said about his medical condition was not sufficient to impute knowledge to the First Respondent of any such disadvantage. Far from suggesting he considered himself to be at risk, he took pride in the fact that he was attending the BAML site every day. Therefore, if it was proven that he was more vulnerable to COVID-19, his claim nevertheless fails because of the First Respondent's lack of knowledge.

313. No such knowledge of disadvantage is required for the Claimant's indirect discrimination claim. However, our finding was that if the Claimant had told Ms Harding that he was being put at risk when attending the BAML site by reason of his medical condition, she would not have required him to be there. We have also found that the PCP operated by the Respondent took medical conditions into account, such that where an employee had a medical condition that put them at greater risk of catching COVID-19, there was no requirement to work on site.

314. It follows from these two conclusions that:

(a) if the Respondents are correct and the Claimant's medical condition was not such that he would have suffered the disadvantage of being at greater risk of catching COVID-19, his claim for indirect discrimination cannot succeed. This is because he cannot show he suffered disadvantage as a result of the application of the Respondent's PCP to him.

(b) If, however, the Claimant is correct and his medical condition meant he was at greater risk of catching COVID-19, he along with others with the same disability would not have been required to work at the BAML site. The application of the PCP would not have caused them to suffer any disadvantage when compared to a non-disabled person.

Direct Race Discrimination and Race-Related Harassment Claims

315. The Claimant has made three specific allegations of race-related harassment, two of which were argued to be direct race discrimination in the alternative. These allegations overlap with some of the allegations of breach of contract, namely:

- *"There is evidence of victimisation and inherent racism at the core of the First Respondent*." (Allegation 3(j)). The Claimant confirmed at the hearing that the reference to victimisation in this allegation was intended to be a reference to racial bias.
- *The Claimant was called a 'virus' but nothing was done. In fact, this was used as evidence against the Claimant.* (Allegation 3(m))

316. Our factual findings were that the Claimant was called '*slopey shouldered*" and compared to a virus, albeit he was not actually called a "virus". The allegation that positive feedback from BAML was withheld from him was not

proved, however. The relevant feedback was for the Refresh project work rather than for the Claimant personally and he was informed of it.

317. Dealing first with the claims of race-related harassment, calling the Claimant '*slopey shouldered*' and comparing him to a virus was unwanted conduct that was insulting to the Claimant. We have therefore focussed our analysis on whether this conduct was related to the Claimant's race.

318. We are not aware of the phrase '*slopey shouldered'* being associated with any particular race and this argument was not put forwarded by the Claimant. Taking into account the context in which this phrase was said, we consider it was intended to be critical of the Claimant for seeking to avoid blame for the Print Ticket issue. This was something that the Claimant was trying to do, as can be seen in the email exchanges he had dealing with it at the time and what he said about the Print Ticket Issue at the disciplinary hearing. Our finding therefore is that calling the Claimant '*slopey shouldered'* was not conduct related to race.

319. We also consider that the insult contained in Mr Bigg's email of 10 January 2021 was not related to race. Our view was that comparing someone to a virus could be a racial insult, but not inherently so. The meaning would depend on the context. In this case, Mr Biggs sets out clearly in his email what his criticisms of the Claimant are and why he is making them. He describes the Claimant as having shocking people skills, lacking compassion and being robotic. None of the complaints have any link to race in our judgment.

320. The Claimant's race-related harassment claims therefore failed.

321. We then considered whether the insults constituted detriments to the Claimant because of his race. The question we asked was whether the Claimant was treated less favourably than others because of his race.

322. The fact that the Claimant was insulted by two of his colleagues did appear to be less favourable treatment of him when compared to others, We were not presented with any evidence of similar insults being made toward any of the Claimant's colleagues. The only other evidence of others using insulating language towards a colleague we saw were further insults directed at the Claimant. we are thinking of the language used by Ms Naylor and Ms Bayliss-Stranks in their private message exchange on 6 January 2021. The key question for us therefore was what the reason for the insults was, and was it "*because of*" the Claimant's race, even if the insults were not in inherently racist language.

323. In considering this, we took into account the broader evidence the Claimant said existed of inherent racism within the First Respondent. In support of this contention, the Claimant relied on four examples which he said demonstrated inherent racism existed. These were:

- The difference in the way Ms Harding responded to the emails from the Claimant and Mr Short, who was white, attaching their suggested objectives for 2021.

- The fact that the Respondent had selected Mr Short and Mr Patterson, two white men as the subject experts for the RFP process rather than him.

- The objections expressed by Mr Biggs and Mr Bolton to the Claimant attending the TUPE consultation meeting.

- The reference by Mr Raj.

324. Of these examples, we considered it to be clearly of concern that Mr Raj expressed a view about a possible difference in treatment of the Claimant and others because of their ethnicity. We could not, however, treat his letter as reliable as Mr Raj did not attend the tribunal hearing and give evidence that could be tested by way of cross examination.

325. Turning to the other examples, the Respondent provided a plausible alternative explanation for the selection of Mr Short and Mr Patterson as subject matter experts for the RFP process which was not connected to the Claimant's race. In addition, there was a plausible alternative explanation as to why Mr Biggs and Mr Bolton did not want to be on the TUPE consultation call with the Claimant. This was because they had made complaints about him.

326. In relation to the difference in tone in Ms Harding's emails to he Claimant and to Mr Short about their objectives to be very slight. In both cases, she tells her direct reports that their objectives will be discussed. The Claimant did not ask Ms Harding about this in cross examination and it was not covered in her witness statements, but we think there are two likely explanations for the slight difference in tone. One explanation is because Mr Short's cover email invited a reassuring response, which Ms Harding gave him gave him, whereas the Claimant's did not. Alternatively, the existing performance management process with the Claimant had an impact on how she chose to respond to him. We do not consider there is any evidence to support race being a factor explaining her difference in tone.

327. In relation to the insults themselves, Mr Patterson and Mr Biggs had reasons for wanting to levy insults at the Claimant that were not related to his race. Mr Patterson considered the Claimant had questioned his expertise and was trying to avoid taking responsibility for the print ticket issue. Mr Biggs considered the Claimant was managing his team extremely poorly without any empathy.

328. Overall, we considered that the evidence the Claimant presented did not show inherent racism at work within the Respondent or that his race had anything whatsoever to do with why Mr Biggs and Mr Patterson insulted him.

Time Limits – Discrimination Allegations

329. Based on the date the Claimant first contacted Acas in relation to the Second Respondent, any allegation that predates 22 July 2021 is potentially out of time. This applies to all of the discrimination allegations. Although we have not upheld these allegations, we have, for the sake of completeness, considered the time issue in relation to them.

330. Having not upheld the allegations, we cannot find that they form part of a continuing act. However, we have decided to grant the Claimant an extension of time on just and equitable grounds such that the allegations were presented in time. The reason we have allowed the extension is because the Claimant waited until the outcome of the Respondent's internal processes before presenting a claim. Although this will not always justify a claim being presented late, we are satisfied that it does in this case. The delay was not a long one and did not have an adverse impact on the cogency of the evidence presented.

Constructive Unfair Dismissal

331. We next considered whether the alleged breaches of contract relied upon by the Claimant occurred or not, and if so, whether they amounted to breaches and could have influenced the Claimant's resignation. We considered each of the alleged breaches individually first before taking an overview. In this section we refer to "trust and confidence" as a shorthand for the fuller implied term relied upon by the Claimant.

(a) The Respondent excluded the Claimant from meetings about the renewal of the contract and tender however, the Claimant's peer, Paul Short and his report were invited to such meetings.

332. The Claimant was made aware of the RFP process and timelines at the earliest stages by Ms Harding.

333. The First Respondent did not dispute that Mr Short and Mr Patterson were invited to three meetings in February 2021 to obtain their input, as subject matter experts, into the proposal being prepared by the Pursuit Team to send to BAML as part of the RFP process. The Claimant's input was not sought.

334. We consider that the reasons given by the First Respondent for not including the Claimant were not only plausible, but genuine. Mr Short and Mr Patterson had longer service than the Claimant and both had experience of a re-tender process. Mr Patterson, in particular, was an expert in print and processes and therefore was best placed to assist with the development of any innovative proposals that the First Respondent might wish to put forward to BAML. The involvement of Mr Short and Mr Patterson was limited in any event.

335. We do not consider this to be evidence of poor treatment of the Claimant and therefore do not find that the First Respondent's actions contributed to any breach of trust and confidence.

(b) The Claimant was excluded from the TUPE process and was informed of the situation weeks after others were told, even those that were outside of the Respondent's employ.

336. No evidence was presented to us to support the Claimant's contention that he was informed of the TUPE transfer weeks after others who were also transferring were told. He was invited to the first formal consultation meeting held on 23 June 2021 along with his colleagues. This meeting took place a month after HR were told about the TUPE transfer, but we would expect there to be a difference between the timing of HR's knowledge and that of the affected employees. The timing of the Claimant's one-to-one meeting with the Second Respondent on 7 July 2021 was consistent with the timings of the other one-to-one meetings.

337. The only meeting the Claimant missed was the meeting held by the staff representatives on 13 July 2021. This occurred after his resignation and cannot therefore have contributed to it.

338. As there was no evidence of excluding the Claimant, this allegation cannot contribute to any breach of trust and confidence.

(c) The Respondent retaliated against him due his whistleblowing and for the informal grievance the Claimant raised to HR outlining his concerns about his manager Nicola Harding and Corrie Naylor.

339. The Claimant raised concerns about Ms Harding and Ms Naylor to HR on 11 January 2021. He believed that, around two hours later, he was invited to a meeting with Ms Harding in response to this email and it is this he says was done in retaliation.

340. It is understandable that the Claimant believed this because of the timing of when he received the email inviting him to the meeting with Ms Harding on 13 January 2021. The evidence presented to the tribunal, however, confirmed that Ms Harding sent the meeting invite on 8 January 2021, meaning that the email the Claimant had written could not have been the trigger for the meeting.

341. In addition, our finding in fact was that Ms Harding was never made aware of the Claimant's email of 11 January 2021. This means that it also cannot have been the trigger for any of her actions taken towards the Claimant.

342. We further note that Ms Harding ceased to have any responsibility for making any decisions about the processes through which the Claimant was taken with effect from 19 March 2021, when he submitted his formal grievance.

343. Finally, there was also no evidence presented to us that Ms Harding was aware of the anonymous report the Claimant made on the First Respondent's website on 5 March 2021. Again, even if she was, this cannot have been the reason why she decided to suspend the Claimant. That decision was made on 3 March 2020 with Ms Cooney's advice.

344. Taking all of the above into account, we do not find this allegation is proven. It cannot therefore contribute to any breach of trust and confidence.

(d) The Respondent lied about the Claimant being placed on a performance improvement plan when he was not.

345. Our factual finding is that the Claimant was on an informal PIP. This was the purpose of the meeting between him, Ms Harding and Ms Cooney that was held on 13 January 2021. No express reference was made to him being on an informal PIP, however, although in our judgment, he ought probably to have realised this.

346. Given that the Claimant was subject to an informal PIP, it cannot be true that anyone at the Respondent lied about this. We note that Mr Jolly did not make it expressly clear in his grievance outcome that the PIP was informal, but we do not think this is evidence that either he lied, or that Ms Harding or Ms Cooney lied to him about the Claimant's position.

347. We do not find this allegation is proven. It cannot therefore contribute to any breach of trust and confidence.

(e) The Respondent deliberately chose hearing managers who were not impartial. They were either known to Ms Harding or were compromised due to grievance claims made against them previously. Other hearings held by the Respondent should be investigated for their impartiality.

348. The Claimant presented no evidence that Peter Jolly or Neil Duffy were not impartial.

349. With regard to Mr Elliott, the Claimant alleged that he was in the same team as Ms Naylor and close to Ms Harding. Neither of these things was correct. However, he did have some prior knowledge of the Claimant prior to the disciplinary process. This was because Ms Harding had spoken to him, albeit briefly, about some of the Claimant's behaviour and because he was one of several people that was consulted about whether the Claimant should be suspended.

350. We consider that Mr Elliott's prior involvement was very limited and that no breach of trust and confidence arose through him having conduct of the disciplinary hearing because his prior involvement was so limited.

351. We consider that is borne out by the conclusions that Mr Elliott reached and his decision to give the Claimant a final written warning rather than dismiss him. His decision demonstrated that he listened carefully to the Claimant's version of events and reached his own decision on the matter.

352. We note that the Claimant raised the concern about Mr Elliott's impartiality prior to attending the first disciplinary hearing with him. He did not refuse to participate in the disciplinary hearing because of Mr Elliott's involvement and did not resign in response to him being appointed.

353. The impartiality or otherwise of Mr Vandenbroucke is not a relevant consideration because the Claimant resigned prior to her involvement.

(f) There is a culture of fear at the Respondent. An email from a colleague of the Claimant states "As always I'm keen to support you and the team on this as much as I can form afar. Feel free to give me a call in you want a chat."

354. The email referred to in this alleged breach of contract is the email from Mr Bayliss-Stranks to the Claimant on 16 Feb 2020. Our factual finding was that the email was not written through fear and does not support the Claimant's contention that there was a culture of fear at the First Respondent. This was the only example that the Claimant directed us to in support of this allegation. It therefore fails on the facts.

(g) The Respondent breached ACAS policy on process and evidence and all those that were involved with this matter contributed to the breach of contract and the implied term of trust and confidence.

355. This alleged breach of contract was broken down by the Claimant into a number of sub-allegations.

(i) Issues were never discussed with the Claimant

356. The first complaint the Claimant had was that the issues that later became disciplinary issues against him were 'never' discussed with him in advance. This is not correct as a number of issues were discussed with the Claimant at the time they occurred, as set out in our findings of fact. However, it is true that some keys issues were not discussed with him at the time. In particular, he was not initially informed of the written complaints made by Ms Tolhurst or Mr Biggs.

357. The First Respondent's reason for not initially sharing the details of the first complaint made by Ms Tolhurst about Mr Henry with the Claimant was in part because Ms Tolhurst had asked that her complaint be kept confidential because of concerns that the Claimant would take retaliatory action. We do not consider that this was a risk. However, we do not consider it was unreasonable of the First Respondent, in the circumstances, to decide not to share the complaint with the Claimant and to try and address the concerns more generally via an informal performance management process instead.

358. This does, however, call into question the fairness of the First Respondent's decision to resurrect the complaint, and other earlier complaints, as a disciplinary allegations, but this is not a complaint that the Claimant made. Ordinarily we would have concerns about an employer resurrecting allegations that it had decided not to pursue as disciplinary matters at a later date. In this case, however, the time period was very short and many of the issues were ongoing.

359. At the point in time when Ms Tolhurst put her second complaint in writing and Mr Biggs put his complaint in writing, Ms Harding was contemplating suspending the Claimant so that the complaints could be investigated. The only reason she decided not to do so was because of the perceived risk to

the RFP process that was underway at that time. We do not consider this was a breach of any obligation owed to the Claimant. If there was a breach, it was of the obligations owed to Mr Biggs. As it transpired, the Claimant was suspended shortly after this and so the complaints were taken forward as disciplinary allegations quite promptly.

(ii) Mediation was not used considering the size of the Respondent

360. It is accurate that the First Respondent did not consider mediation. However, not to do so cannot amount to a breach of trust and confidence in our judgment, particularly as the Claimant did not suggest or ask for it.

(iii) There was no investigation into the reason for suspending the Claimant

361. This alleged breach of trust and confidence is not supported on the facts. As requested by the Claimant when he raised his grievance, the reason for suspending the Claimant was retrospectively reviewed by an impartial manager, Mr Jolly. He undertook investigations as part of his review. In our judgment the level of investigation he undertook was reasonable in all the circumstances.

(iv) No witness statements were produced and no one was interviewed

362. It is accurate that no witness statements were produced, but not strictly accurate that no-one was interviewed. Mr Jolly, Mr Duffy and Mr Elliott interviewed Mr Shields, Ms Harding and Mr Biggs and of course, the Claimant himself. They did not interview anyone else, however.

363. The Respondent's reason for not undertaking more interviews was to manage the investigation and keep it proportionate. Mr Jolly and Mr Elliott told us that a good deal of the evidence was documented and they did not consider it was necessary to investigate further.

364. We consider this was the case when it came to the Claimant's allegations that he was being undermined by Ms Harding. It was reasonable to reach a conclusion through a review of the relevant documentation and through speaking to the Claimant, Ms Harding and Ms Shields. The nature of the allegations lent themselves to this.

365. It was also true, in our judgment for the disciplinary allegations that the Claimant was not following the correct processes, in relation to the ongoing difficulties concerning on-site working and mask wearing and the allegation about the Claimant misrepresenting the First Respondent to BAML. Again, the contemporaneous documentation spoke for itself in relation to these matters, providing the Claimant was given an opportunity to comment, which he was. Many of his comments confirmed that the facts as Mr Hill understood them were correct, albeit that he did not accept that he had done anything wrong.

366. Adopting a similar approach in relation to the allegations of harassment was less robust. However, rather than make findings that the Claimant was responsible for each allegation of harassing everyone that complained about him, Mr Elliott took a broad brush approach. His conclusion, based on the documents he saw and, in particular, what the Claimant had to say about the incidents described in them, was that the Claimant was not demonstrating HP values or its style of management. He concluded that the Claimant did not mean to intentionally bully or harass anyone, but that this was the way his behaviour had been perceived. In light of this conclusion and the fact the final disciplinary decision was a final written warning rather than dismissal, our conclusion is that the approach to the investigation was reasonable and did not amount to a breach of trust and confidence.

(v) Hearing managers were not impartial

367. This is a repeat of an earlier alleged breach and is dealt with above.

(vi) Meeting notes were not sent in a timely manner

368. Some of the meeting notes were not provided very quickly. However, we do not consider that this amounted to a breach of trust and confidence, particularly when the First Respondent's policies gave not time frame for providing meeting notes.

(vii) The Respondent's Human Resources department was not impartial and contributed to the investigation and was working with the Claimant's manager in creating a case.

369. The Claimant's evidence in support of this allegation was that Ms Cooney was responsible for creating the tracker that was used by Ms Harding and had fed Mr Elliott questions during the disciplinary hearing. Although both of these things were true, we do not consider it suggests that she contributed to the investigation or was working to create a case against the Claimant. Ms Cooney's role was to advise Ms Harding and Mr Elliott regarding the First Respondent's policy requirements and ensuring the process was fair for the Claimant. We consider that Ms Cooney achieved this and this alleged breach of trust and confidence is not proved.

(viii) Evidence was not presented to the Claimant prior to the disciplinary hearing so that the Claimant could prepare.

370. The Claimant was not presented with evidence prior to the first disciplinary hearing held on 15 June 2021. This was because the First Respondent's processes became muddled at this point. The Claimant was not required to answer any of the allegations on 15 June 2021, and the problem was resolved, however, prior to the reconvened disciplinary meeting held on 30 June 2021. There was no breach of trust and confidence.

(ix) Timings as set out in the Respondent's policies were not adhered to.

371. The timings set out in the Respondent's policies are for guidance only. Overall, the Claimant was suspended awaiting the outcome of the disciplinary process for a total of four months. This was not an unreasonable time frame bearing in mind he raised a grievance and then appealed the grievance outcome, both of which processes needed to be concluded before the disciplinary process could proceed. We do not consider there was any breach of trust and confidence by the First Respondent.

(x) There was no evidence produced of the alleged accusations.

372. This is not accurate. We consider that the decision to give the Claimant a final written warning based on the evidence that was available, including the evidence he presented in his defence was a balanced and reasonable one. We do not consider that the disciplinary outcome amounted to a breach of trust and confidence.

(h) The Claimant's ex-colleagues were prevented from communicating with him because of the Respondent's veiled threats.

373. The Claimant clarified during the hearing that this allegation was intended to refer to the period where he was under suspension, prior to his resignation.

374. It was not in dispute that when the Claimant was suspended, he was told that he should keep it confidential and not discuss it or the disciplinary investigation with his colleagues. He was also told not to contact anyone in BAML or at the First Respondent other than herself or Ms Cooney. This was not put in threatening language, however.

375. According to the Respondent, the Claimant's team was informed that he was on a leave of absence and no threats of any kind were made to anyone, whether express or implied.

376. The only evidence the Claimant presented in support of this allegation was the email from Mr Estevez Tato. As Mr Estevez Tato did not attend the tribunal to give evidence, we consider the email to be unreliable by way of evidence. We note, however, that even in this email, Mr Estevez does not confirm that he was actually threatened. In addition, his evidence is contradicted by the contents of Mr Raj's reference. Although also considered by us to be unreliable, we note that Mr Raj's reference supports the Respondent's contention as to the messaging. He says that the team were told the Claimant was on a leave of absence.

377. We do not consider this alleged breach of trust and confidence was proven on the facts.

(i) The Claimant's entire grievance points were dismissed even though there was evidence to the contrary held by the Respondent.

378. It is accurate that all of the Claimant's grievance points were dismissed even though the Claimant had presented some evidence to support some of his points. We are satisfied that both Mr Jolly and Mr Duffy gave proper

consideration to that evidence in good faith. They did not uphold the Claimant's grievance because they reached a different view as to how the evidence should be interpreted. This was not unreasonable behaviour by either of them and did not constitute a breach trust and confidence.

379. In any event, we consider it is significant that the Claimant did not resign in response to the grievance outcome. He remained in employment pending the outcome of the disciplinary process. In doing, so we consider he waived any breach arising from the grievance outcome.

(j) There is evidence of victimisation and inherent racism at the core of the first Respondent.

380. We have dealt with this allegation already in the section on race discrimination. We have found that this allegation was not proven on the facts.

(k) The Claimant's reputation has been destroyed, he has lost contact with most of his ex-colleagues who do not respond to emails and texts and the sudden suspension could only be for a very serious matter bordering on criminal behaviour.

381. We have treated this allegation as a complaint about the Claimant's suspension. In our judgment, the Claimant's suspension was justified in the circumstances and therefore it cannot amount to a breach of trust and confidence.

382. In employment, lawful suspension is not limited to very serious matters bordering on criminal behaviour. In this case, Ms Harding did not suspend the Claimant as a knee jerk reaction to a particular incident. Instead, his suspension arose because of the cumulative impact of a series of concerns that were raised about the Claimant's behaviour over the period of two to three months. The decision to suspended was given careful consideration before it was implemented. When it decided to proceed, the First Respondent was careful to try and limit any reputational damage to the Claimant through keeping the suspension confidential.

(l) The Claimant was belittled and humiliated in emails and meetings and the Respondent failed to act

383. In support of this allegation, the Claimant cited three emails sent to him by Mr Short as well as the "*slopey shoulder*" comment made by Mr Patterson.

384. We have given some consideration to the "*slopey shoulder*" comment in the section above dealing with the race claims. Although we found that it was not linked to race, we did consider it to have been an insult to the Claimant, although a relatively mild one. Our finding was Ms Harding did not intervene when it was said because she either did not hear it or did not appreciate its significance.

385. The Claimant did not make any complaint about the comment until he submitted his grievance. Mr Duffy's finding was that had the Claimant said

something at the time or shortly afterwards, this would have enabled the First Respondent to take action. He recommended that if a similar situation arose in the future, the Claimant did that. We consider this was a reasonable and proportionate response to the Claimant's concern about the comment.

386. The dates of the three emails were 24 November 2020, 6 January 2021 and 3 March 2021. We have provided details in our findings of facts section. The emails were relied on by the Claimant as part of his grievance. He had not complained about them prior to this. Mr Duffy's view was that none of them were belittling or humiliating, hence he did not recommend any action.

387. The only person copied in to the first email on 24 November 2020 was Mr Bayliss-Stranks, who was not sufficiently senior to be expected to take any action. Our view of the email is the Claimant and Mr Short are both critical of each other in the exchange. The Claimant suggests that Mr Short's team member is not capable of completing the London billing correctly and Mr Short accuses the Claimant of wanting to take control. We interpret the email as a robust exchange of views between two peers. We do not consider it was belittling or humiliating for the Claimant.

388. Ms Harding was copied into the email of 6 January 2021. Mr Short's tone in this email was not, in our view, belittling of the Claimant or designed to humiliate him. It was, however, unduly critical of him and in our judgment inappropriate. The Claimant's behaviour that prompted the email, and the tone he had used in some of his emails in this exchange was also inappropriate.

389. It is not correct that the First Respondent failed to act in connection with this email exchange. Ms Harding intervened in the email exchange to insist on a handover meeting. She did not comment in relation to the tone of the emails, but ensured that the matter was moved forward. We consider this was an appropriate course of action for her to take in the circumstances, particularly as neither of the protagonists complained to her that they were offended by the tone the other was using.

390. This email exchange, and the position taken by Ms Harding, prompted the Claimant to send his informal grievance to HR on 11 January 2021. The First Respondent addressed the informal grievance by recommending that the Claimant discuss his concerns with Ms Harding in the first instance. He was informed, however, that he could take matters further if he wished. He did not do so at the time. It was not until after his suspension that he raised his formal grievance.

391. Finally, Ms Harding was copied into the email of 3 March 2021 from Mr Short to the Claimant. We do not consider that anything that Mr Short says in the email was belittling or humiliating. Mr Short expresses his clear frustration with something that the Claimant has done. He suggests the Claimant's time could have been better spent doing something else, but does not say this in a belittling manner. We do not consider the email warranted intervention by the Respondent.

392. Taking into account the above, we do not consider this alleged breach of trust and confidence is proved on the facts.

(m) The Claimant was called a 'virus' but nothing was done. In fact, this was used as evidence against the Claimant.

393. Although we have decided that comparing the Claimant to the COVID-19 virus was not linked to the Claimant's race, we nevertheless consider it to be an insult. The Respondent admitted it did not do anything about the comment at the time. This was despite the fact Mr Biggs sent his email making the comment to Mr Short, Ms Naylor and Ms Harding, all of whom were managers.

394. The Claimant, however, did not learn about the email while he was employed. He saw it for the first time as a result of the litigation process in June 2022. It cannot therefore have contributed to his resignation.

(n) The Claimant was accused of putting his team's safety at risk by asking them to come into the office, but it was the Respondent who failed to check if anyone was considered to be in a vulnerable group, the Claimant is at higher risk due to his disability. The Respondent allowed others to work from home but the Claimant was not given the choice.

395. We consider this alleged breach of contract is not proved on the facts. The First Respondent provided all members of the BAML teams with an opportunity to say if there was a reason they could not work on-site. Where individuals had a good reason, they were allowed to work remotely. Although the Claimant told Ms Harding that he had a long term medical condition, as noted above in the section on his disability claims, he did not tell her that this put him at risk and led her to believe that he did not consider himself to be at risk. In addition, it is inaccurate that he was not offered the opportunity to work from home. He was invited to prepare a rota that incorporated an opportunity for him to undertake home working. He decided not to put this in place himself.

396. We do not consider there to have been any breach of trust and confidence.

(o) The Respondent told staff that the Claimant was the 'former' manager before the disciplinary process was completed

397. The Claimant relies on three pieces of in support of this alleged breach of contract. Had the First Respondent done this, it would have, in our judgment constituted a breach of trust and confidence. The First Respondent denied this saying that staff were told only that the Claimant was absent on leave.

398. In our judgment, this alleged breach of trust and confidence was proven.

399. The first piece of evidence is the email from Ms Naylor dated 11 March 2021, in which she refers to the "*new core team*". We do not consider this demonstrates that the Respondent said anything to the Claimant's team to suggest he was not coming back. The email was sent to a select group of

managers who knew about the Claimant's suspension and did not have a wider distribution than this.

400. The second piece of evidence is the reference to the Claimant as his former manager, made by Mr Bolton in his grievance form. In our judgment, this use of language was Mr Bolton's own interpretation of the fact that on return form his period of sickness absence the Claimant was not manager. We do not consider anything more can be read into.

401. Finally, the third piece of evidence is the comment in Mr Raj's reference to there being speculation among the team members that the Claimant would not be returning. We have previously said that we do not consider the contents of the reference to be reliable, but in any event, we consider what Mr Raj says supports the Respondent's version of events. If there was speculation among the team that the Claimant might not be returning, this points to them not having been told anything concrete one way or the other.

(p) The Claimant was told that the Respondent lost the account with the Bank of America due to the Claimant's actions, this was not the case but rather it was the Respondent's arrogance that led the Bank of America to choose another supplier.

402. The Claimant presented no evidence in support of this alleged breach of contract.

(q) The Claimant was bullied in emails but this was summarily dismissed.

403. This is a repetition of the earlier alleged breaches and had been considered above.

(r) The Respondent manufactured a malicious grievance against the Claimant. James Bolton grievance

404. Our finding was that this was a genuine grievance and not manufactured. This alleged breach of contract is therefore not proved on the facts.

(s) There was irrefutable evidence of the Claimant being undermined but it was dismissed. An email to Ms Harding from a direct report, "I'm not going to site just to move boxes, when he has a full team of engineers, I've not even replied"

405. The email that is referenced in this alleged breach of contract is the email sent by Mr Biggs on 2 February 2021 to Mr Short. It is correct that the email shows that Mr Biggs was refusing to respond to instruction from his manager, the Claimant. However, there was a context to this email. Mr Short forwarded it to Ms Harding to address it. Shortly after Mr Biggs wrote the email, he sent Ms Harding a detailed written complaint. That complaint was considered as part of the disciplinary process. Mr Elliott's conclusion was that the Claimant had made unfair demands on members of his team, which they perceived as bullying and harassment.

406. We therefore consider that this alleged breach of trust and confidence is unproven. There was not irrefutable evidence of the Claimant was being undermined. The Claimant's claim that he was being undermined was dismissed, but not until it had been investigated and explored and the First Respondent had concluded that it was not justified. The Respondent did not act in breach of the implied term of trust and confidence in reaching this decision.

Conclusion on Constructive Unfair Dismissal Claim

407. Having analysed each of the alleged breaches of contract individually, we concluded that none of them amounted to a breach of trust and confidence, such that the Claimant's resignation should be deemed to be a dismissal. We also stood back from the detail and reviewed the position as a whole. That perspective did not change our decision.

408. Our conclusion was that the Claimant's resignation should stand as a resignation. He decided to resign in response to the First Respondent suspending him, subjecting him to a disciplinary investigation and giving him a final written warning. That course of action was in our judgment fully justified by the concerns that the Respondent had about the Claimant's conduct and performance in his role, taking into account all of the circumstances. The Respondent adopted fair processes that ensured that the Claimant was given every opportunity to make his own counter allegations and to defend the allegations against him. The disciplinary outcome was fair, but the Claimant did not like it and resigned in response.

409. The Claimant's claim for constructive unfair dismissal therefore fails.

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Employment Judge E Burns
23 March 2023

Sent to the parties on:

24/03/2023

For the Tribunals Office

APPENDIX 1 - THE ISSUES

Who is the correct employer?

1) It is agreed that there was a transfer of the Claimant's employment from the first Respondent to the second Respondent.

Constructive Unfair Dismissal

2) The Claimant relies on a breach of the implied term of trust and confidence.

3) Did the Respondent do the following things:

   (a) The Respondent excluded the Claimant from meetings about the renewal of the contract and tender however, the Claimant's peer, Paul Short and his report were invited to such meetings.

   (b) The Claimant was excluded from the TUPE process and was informed of the situation weeks after others were told, even those that were outside of the Respondent's employ.

   (c) The Respondent retaliated against him due his whistleblowing and for the informal grievance the Claimant raised to HR outlining his concerns about his manager Nicola Harding and Corrie Naylor.

   (d) The Respondent lied about the Claimant being placed on a performance improvement plan when he was not.

   (e) The Respondent deliberately chose hearing managers who were not impartial. They were either known to Ms Harding or were compromised due to grievance claims made against them previously. Other hearings held by the Respondent should be investigated for their impartiality.

   (f) There is a culture of fear at the Respondent. An email from a colleague of the Claimant states "*As always I'm keen to support you and the team on this as much as I can form afar. Feel free to give me a call in you want a chat."*

   (g) The Respondent breached ACAS policy on process and evidence and all those that were involved with this matter contributed to the breach of contract and the implied term of trust and confidence.

      i. Issues were never discussed with the Claimant.
      ii. Mediation was not used considering the size of the Respondent.
      iii. There was no investigation into the reason for suspending the Claimant.
      iv. No witness statements were produced and no one was interviewed.
      v. Hearing managers were not impartial.
      vi. Meeting notes were not sent in a timely manner
      vii. The Respondent's Human Resources department was not impartial and contributed to the investigation and was working with the

Claimant's manager in creating a case.

viii. Evidence was not presented to the Claimant prior to the disciplinary hearing so that the Claimant could prepare.

ix. Timings as set out in the Respondent's policies were not adhered to.

x. There was no evidence produced of the alleged accusations.

(h) The Claimant's ex-colleagues were prevented from communicating with him because of the Respondent's veiled threats.

(i) The Claimant's entire grievance points were dismissed even though there was evidence to the contrary held by the Respondent.

(j) There is evidence of victimisation and inherent racism at the core of the first Respondent.

(k) The Claimant's reputation has been destroyed, he has lost contact with most of his ex-colleagues who do not respond to emails and texts and the sudden suspension could only be for a very serious matter bordering on criminal behaviour.

(l) The Claimant was belittled and humiliated in emails and meetings and the Respondent failed to act.

(m) The Claimant was called a 'virus' but nothing was done. In fact, this was used as evidence against the Claimant.

(n) The Claimant was accused of putting his team's safety at risk by asking them to come into the office, but it was the Respondent who failed to check if anyone was considered to be in a vulnerable group, the Claimant is at higher risk due to his disability. The Respondent allowed others to work from home but the Claimant was not given the choice.

(o) The Respondent told staff that the Claimant was the 'former' manager before the disciplinary process was completed.

(p) The Claimant was told that the Respondent lost the account with the Bank of America due to the Claimant's actions, this was not the case but rather it was the Respondent's arrogance that led the Bank of America to choose another supplier.

(q) The Claimant was bullied in emails but this was summarily dismissed.

(r) The Respondent manufactured a malicious grievance against the Claimant.

(s) There was irrefutable evidence of the Claimant being undermined but it was dismissed. An email to Ms Harding from a direct report, "*I'm not going to site just to move boxes, when he has a full team of engineers, I've not even replied*"

4) Did the above actions breach the implied term of trust and confidence?

5) Did the Respondent behave in such a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent?

6) Did the Respondent have reasonable and proper cause for acting as it did?

7) Did the Claimant resign in response to the breach?

8) Did the Claimant affirm the breach?

9) If the Claimant was dismissed, was the dismissal for a fair reason under section 98 ERA 1996 and was it procedurally fair?

Disability status

10) It was not in dispute that the Claimant was a disabled person by reason of the condition of colitis.

Indirect Disability Discrimination Section 19 Equality Act 2010

11) The PCP is put as 'requiring the Claimant to work from the office during the Covid pandemic'.

The First Respondent denies that it had this PCP.

12) Did the Respondent apply that PCP to persons with whom the Claimant does not share his disability?

13) Did it put persons who share the Claimant's disability at a particular disadvantage?

14) Did it put the Claimant at that particular disadvantage? The Claimant relies on the fact that as a result of the medication he takes for his disability, his immune system is suppressed and he is a vulnerable person for the purpose of the Covid pandemic.

15) Can the Respondent show that this was a proportionate means of achieving a legitimate aim, in requiring the Claimant to come into the office?

The First Respondent relies on the following legitimate aims:

(a) fulfilment of contractual obligations; and
(b) maintenance of a managerial presence in an important customer relationship

Failure to make Reasonable Adjustments sections 20 and 21 Equality Act 2010

16) The Claimant relies upon the same PCP as for his claim for indirect disability discrimination.

17) Did the Respondent apply the PCP?

18) If so, did the application of the PCP put the Claimant at a substantial disadvantage in comparison with persons who do not share his disability?

19) If so, did the Respondent take such steps as it was reasonable to have to take to avoid the disadvantage. The Claimant contends that a reasonable adjustment was to allow him to work from home.

20) Did the Respondent fail to take those steps by requiring the Claimant to come into the office?

21) Did the Respondent know or could it reasonably be expected to know that the Claimant's disability would place him at the substantial disadvantage?

Direct race Discrimination Section 13 Equality Act 2010

22) The Claimant describes his racial group as British Pakistani.

23) Did the Respondent treat the Claimant less favourably as follows:

(a) Calling the Claimant '*slopey shouldered'*
(b) Referring to the Claimant as a virus?

24) If so was this less favourable treatment because of race? The Claimant relies upon a hypothetical comparator.

Harassment related to race Section 26 Equality Act

25) Did the Respondent engage in the following conduct:

(a) Calling the Claimant '*slopey shouldered'*
(b) Referring to the Claimant as a virus?
(c) Withholding from the Claimant positive feedback given by their client?

26) If so, was this related to the Claimant's race?

27) Was this unwanted conduct and if so did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

28) If not did the conduct have that effect? If so, the tribunal will take account of the Claimant's perception, the other circumstances of the case and whether it was reasonable for any such proven conduct to have that effect.

Remedy

29) There is no financial loss as the Claimant obtained another job so the only matter is the award for injury to feelings.