EMPLOYMENT TRIBUNALS

Claimants: Mr A Ali

Respondent: HM Revenue & Customs

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Southampton **On:** 9 to 12 May 2023

Before: Employment Judge Gray **And Member:** Mr J Evans

Appearances
For the Claimants: In person
For the Respondent: Mr A Bershadski (Counsel)

RESERVED JUDGMENT (LAIBILITY ONLY)

The unanimous judgment of the tribunal is that:

- **The Claimant's complaints of direct race discrimination, harassment related to race and victimisation, all fail and are dismissed.**

REASONS

1. The Claimant submitted a complaint of race discrimination and victimisation on the 29 July 2020 to London Central having completed ACAS conciliation from the 9 July 2020 to 17 July 2020.

2. Based on the date the claim was submitted and the ACAS certificate, complaints about matters before the 10 April 2020 are potentially out of time.

3. The Claimant remains employed by the Respondent but with extended sick leave.

4. The Respondent denies any discrimination and victimisation.

5. The claim had been listed for determination at a final hearing to take place in London Central by video, and the final hearing commenced on the 28 June 2021. It had been listed for 5 days. However, the panel in that hearing determined in their view it would need 10 days and should take place in person. Also, the Claimant had worked in Portsmouth so it should be within the South West Region.

6. The case was transferred to the South West in March 2022 and a case management hearing took place before Employment Judge A Matthews on the 13 September 2022.

7. The Claimant did not attend that hearing. However, it was directed as to the issues … "8. The claims and issues are listed in the Case Summary below. The Employment Judge understands that these were agreed prior to or at the hearing before the London Central Tribunal on 28 June 2021. Since then, the Employment Judge understands that the only amendment that has been to the list of issues is to include the "jungle drums" issue allowed in by that London Central Tribunal. If Mr Ali thinks the list is wrong or incomplete, he must write to the Tribunal and the other side on or before 28 October 2022. If he does not, the list will be treated as final unless the Tribunal decides otherwise.".

8. The Claimant did not raise that the list was wrong or incomplete.

9. At the commencement of this hearing copies of Employment Judge Matthews case management order were provided to the parties and the issues reviewed. These were confirmed and agreed by all, save that the Claimant wanted to refer to his racial origin as English Bangladeshi, rather than British Bangladeshi.

10. As to the timetable for this final hearing this had been revised by Employment Judge Matthews so as to be completed in five days. This final hearing was then

listed to commence on the 8 May 2023 for five days in Southampton before it was confirmed that the 8 May 2023 would become a public holiday. The parties were informed by the Tribunal in advance that the hearing could take place over the remaining four days.

11. It was also not possible to have a full panel for the final hearing, and this was explained to the parties at the start of the hearing. In circumstances where a tribunal must consist of an employment judge and lay members, it is possible for just one lay member to sit but only where the parties have given their consent (Section 4(1)(b) Employment Tribunals Act 1996).

12. The parties gave their consent to have the hearing conducted by a panel of two and confirmed the same in writing.

13. The Tribunal then confirmed the papers it had been presented, which were:

    a. An agreed Hearing Bundle with 615 pages not including the index.

    b. Witness statement bundle containing 15 witness statements and running to 85 pages.

14. A copy of Employment Judge Matthews case management order was not within the agreed hearing bundle. As that contained the agreed issues and the proposed timetable for this hearing, copies of the case management order were circulated to the parties and panel by the Tribunal. As already confirmed above, the issues were then considered and confirmed.

15. The hearing process and timetable was also discussed in detail. The timetable set by Employment Judge Matthews had evidence and closing submissions concluding at the end of day three, with days four and five then for deliberations, judgment, and remedy.

16. As we now had four days it was proposed that this hearing be used to determine liability first which was agreed by the parties.

17. Also, it was recognised that with 15 witnesses and 85 pages of witness statements, as well as a hearing bundle of 615 pages the time proposed for reading (one hour) seemed insufficient and evidence and submissions were more likely to conclude at the end of day four. A revised timetable was therefore agreed for the Claimant's evidence to start at midday on day one and being likely to finish in the AM of day two. This was on the basis that only the Claimant and one of his four supporting witnesses would attend to give evidence.

18. The Respondent then had 10 witnesses, all of which would be attending, and it was agreed that the Claimant would aim to average up to one hour of questions for each witness. That would mean evidence on liability should conclude around

lunch time on day four. Then the parties could present their closing submissions, with up to 30 minutes of oral submissions each, potentially supported by written submissions. The Tribunal would then reserve its decision on liability.

19. During the hearing, breaks and/or delayed starts/restarts for the Claimant were accommodated, where he needed to arrange for the attendance of his father, where he was distressed, or where he needed time to manage his IBS. The attendance of Ms Etheridge, a witness on behalf of the Respondent, to attend by video on day four was accommodated, at the request of the Respondent and with the consent of the Claimant.

20. The evidence completed shortly before 11:45 am on day four.

21. The parties had each submitted and exchanged written closing submissions.

22. The Claimant then requested if he could leave the hearing to attend prayer. It was confirmed he could and enquired as to when he would be available to return so that oral submissions (if any) could then be made. The Claimant confirmed that he did not want to make any further oral submissions as he intended to just read out his written submissions.

23. Respondent’s Counsel confirmed he only needed to submit orally, in addition to his written submissions, that the allegations raised by the Claimant in his written submissions, that were not part of this claim (and the issues we had to determine), were disputed.

24. With this confirmed the parties were then released and judgment reserved.

25. The agreed issues on liability for the Tribunal to determine were as follows:

1. Time limits

1.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

> 1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?
>
> 1.1.2 If not, was there conduct extending over a period?
>
> 1.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.4.1 Why were the complaints not made to the Tribunal in time?

1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

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

2.1 The Claimant describes himself as of Asian ethnic origin, specifically English Bangladeshi and of non-white colour.

2.2 Did the Respondent subject the Claimant to the following treatment:

2.2.1 In November 2017, Mr Jim Arkless, complaining to the Claimant that he could not leave his bag or box in various locations. The Claimant relies on a hypothetical comparator and maintenance staff as comparators.

2.2.2 In or around December 2018, Mr Jim Arkless stating in the open office “Where is the paki?” in reference to the Claimant. The Claimant relies upon Mr Lee Spragg and Ms Gemma Wright as comparators.

2.2.3 Ms Dawn Parker brushing off that remark, stating that it is a word the older generation use, following the Claimant’s complaint about the incident at 2.2.2 above. The Claimant relies on Mr Lee Spragg and Ms Gemma Wright as comparators.

2.2.4 In early December 2019 Ms Emma Hewitt arranging a pool car for the Claimant and requiring him to collect keys from security in the morning rather than allowing him to collect the car and take it home with him the evening before. The Claimant relies on Mr Dan Davis as a comparator.

2.2.5 An investigation by Mr Richard Dillon (carried out between January and March 2020) into a discrimination complaint made by the Claimant in January 2020, which was biased and unfair. The Claimant relies on a hypothetical comparator.

2.2.6 Ms Julie Etheridge deliberately delaying the internal investigation into the Claimant’s complaint and, on 29 July 2020, cancelling a meeting about his appeal. The Claimant relies on a hypothetical comparator.

2.3 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.

2.4 If so, was it because of race?

3. Harassment related to race (Equality Act 2010 s. 26)

3.1 Did the Respondent engage in the following conduct:

> 3.1.1 In October 2018, the Claimant's colleague, Mr Lee Spragg, punching him in the stomach, putting him in a headlock, tripping him up and invading his personal space. Did Mr Lee Spragg admit to these actions and state that he did it because of a complaint the Claimant's associate raised about Mr Spragg?
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> 3.1.2 Being given an email, by Ms Donna Boughey with a purported record of a meeting called on 6 February 2019, which was not a correct record of the discussion. The letter commenced "Abdur has been late since he joined HMRC" and the Claimant disputes that this was discussed in the meeting.
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> 3.1.3 On 13 December 2019, putting up a picture of a sticky pickle and written comments "don't get me started on the brown sauce" following a yammer posting of photos of BAME staff members who had attended a Google Digital Garage digital seminar which the Claimant and a colleague, who was also of an ethnic minority, had arranged.
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> 3.1.4 Being given a letter by his manager, Ms Deniese Jackson, on 13 March 2020, which attached a record of a meeting held at a McDonald's which was not a correct record of the meeting.
>
> 3.1.5 Ms Gemma Wright emailing a message on 24 April 2020 to the office, mentioning the phrase "jungle drums".

3.2 If so, was that unwanted conduct?

3.3 Did it relate to the Claimant's protected characteristic, namely his race?

3.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

3.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. Victimisation (Equality Act 2010 s. 27)

4.1 Did the Claimant do a protected act as follows:

4.1.1 In early February 2018, March 2018 and the middle of 2018, discussing and supporting Mr Osman Fadlalla with the possibility of Mr Fadlalla making a complaint of discrimination about the treatment he (Mr Fadlalla) believed he had suffered at the hands of the Respondent. Support involved collecting information on how to make a complaint and analysing guidance.

4.1.2 Bringing his grievance about the incident in January 2020.

4.2 Did the Respondent do the following things:

4.2.1 In the Spring of 2018, the Claimant's manager, Ms Donna Boughey, telling him not to get involved in Mr Fadlalla's business and that management would not view this kindly.

4.2.2 In early Winter 2018, Mr Jim Arkless, referring to the Claimant as "paki" in the open office. The Claimant alleges that this was in retaliation for the Claimant questioning the motives of Ms Donna Boughey in telling himself to distance himself from Mr Fadlalla.

4.2.3 Ms Donna Boughey giving the Claimant a letter about lateness on 6 February 2019.

4.3 By doing so, did the Respondent subject the Claimant to detriment?

4.4 If so, was it because the Claimant had done the protected acts?

THE FACTS

26. We heard evidence from the following witnesses:

a. The Claimant (it was confirmed that his statement when referring us to documents refers mainly to document numbers in the bundle index instead of page numbers)

b. Mr O Fadlalla (on behalf of the Claimant)

c. Then on behalf of the Respondent:

i. Ms D Boughey ("DB") (allegations 3.1.2, 4.2.1 and 4.2.3)

ii. Mr J Arkless ("JA") (allegations 2.2.1, 2.2.2 and 4.2.2)

iii. Mr L Spragg ("LS") (allegation 3.1.1)

iv. Ms D Jackson ("DJ") (allegation 3.1.4)

v. Mr M Kennedy ("MK") (allegation 3.1.3)

vi. Ms G Wright ("GW") (allegation 3.1.5)

vii. Ms E Hewitt ("EH") (allegation 2.2.4)

viii. Ms D Parker ("DP") (allegation 2.2.3)

ix. Mr R Dillon ("RD") (allegation 2.2.5)

x. Ms J Etheridge ("JE") (via video with the parties' consent) (allegation 2.2.6)

27. We were also presented witness statements on behalf of the Claimant from S Rahman, M Islam and V B Kanani. These witnesses did not attend, despite the Respondent confirming they would be released from work to do so. It was confirmed to the parties that witness statements for witnesses who do not attend are given less weight than those that do attend.

28. We found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after considering the factual and legal submissions made by and on behalf of the respective parties.

29. The Claimant describes himself as of Asian ethnic origin, specifically English Bangladeshi and of non-white colour.

30. He commenced his employment with the Respondent on the 26 June 2017 as a Tax Administrative Operative based at Portsmouth.

31. Chronologically the first allegation the Claimant makes is a complaint of direct race discrimination, that in November 2017, Mr Jim Arkless, complaining to the Claimant that he could not leave his bag or box in various locations (2.2.1). The Claimant relies on a hypothetical comparator and maintenance staff as comparators.

32. The Claimant addresses this issue in paragraph 30 of his witness statement … "I was also told multiple times not to leave my bag lying around whilst others would leave their bags, boxes and suitcases unattended around the office and it would appear that they were not, and still are not given the same treatment as me."

33. JA explained in his witness statement (paragraph 5) that it is part of his role as a Deputy Incident Command Officer to ensure the security of the Portsmouth site … "Security is very important and the dangers of leaving bags/ crates unattended are well known. I would ask people to keep things under their desk or in their lockers. Individuals should not be leaving their belongings lying around.".

34. Then at paragraph 6 … "All staff who left items in an inappropriate place or where items needed to be moved due to refurbishment etc were asked to move personal bags or boxes. I understand the Claimant is relying upon maintenance staff as a comparator and stating that I treated him differently to them because of his race. I deny this allegation. I assume by maintenance staff the Claimant is referring to engineers and cleaning staff. Engineers would have tools and equipment with them and would have cared for/stored them appropriately, I would not ask them to move items. They were stored away when not being used. If the Claimant is referring to cleaning staff, then I can confirm that they generally would only leave their trolleys / equipment out when they could not get them into the place they are working in and would always remove items when they had completed their work. I cannot be more specific with any individuals including the Claimant given the elapsed time.".

35. And at paragraph 9 … "The only reason I would say to anyone not to leave bags/ crates in various locations is because of security and health and safety, this would have had nothing to do with the Claimant's race. I would and do treat everyone the same, regardless of their race. An individual's race has nothing to do with why I would ask them to move their belongings.".

36. JA in his oral evidence denied any racial motive referring to him having to speak to potentially 20% of the staff about bags and boxes.

37. From the evidence presented to us the Claimant has not discharged the burden of proof here. The Claimant has not proven on the balance of probability that he was treated less favourably than anyone else (even if it is accepted that being told you cannot leave a bag or box in various locations is less favourable treatment). JA asked potentially 20% of staff and it is understood that most of them at that time were white British.

38. We would also note that the Claimant comparing himself to maintenance/cleaning staff is not comparing like with like as the Claimant's role was as a Tax Administrative Operative.

39. We have been presented no evidence to suggest that JA would not ask a hypothetical comparator the same thing either.

40. Chronologically then comes the Claimant's asserted protected act (4.1.1). The Claimant asserts that in early February 2018, March 2018, and the middle of 2018, he was discussing and supporting Mr Osman Fadlalla with the possibility of Mr Fadlalla making a complaint of discrimination about the treatment he (Mr Fadlalla) believed he had suffered at the hands of the Respondent. Support involved collecting information on how to make a complaint and analysing guidance.

41. The Claimant addresses this matter in paragraphs 16 and 29 of his witness statement.

42. In paragraph 16 the Claimant refers to him assisting OF with an appeal to return to the line management of DJ … "I supported Osman by proof reading his message to appeal managerial change before he sent his off also. When I was reinstated Denies smiled 'what did you do Abdur' smiling and said thank you for appealing the decision. I told her I helped Osman and Joy Cripps with their appeals too.". No reference is made to this being Equality Act related.

43. In paragraph 29 the Claimant describes how in … "Early 2018 I approached Sam Alibone to inform her Osman was a good man and highly intelligent, maybe we can find some common ground if we can all sit together for coffee or tea and clear the air, as I can see he is visibly stressed.". No reference is made to this being Equality Act related. The Claimant also describes that … "No support or other substantial input was offered to Osman until he highlighted this with a Union Representative, sometime several months later and OH was then reasonably implemented, it was a long journey for AO Osman to finally get a permanent contract. As Duty of care requirements were breached by management and local leadership at the time, the undertones of constructive dismissal are found in this matter, in which I am proactively supporting employee AO Osman.". Again, no reference is made to this being Equality Act related and also that it was the union that was supporting OF. The Claimant confirms that he … "advised Osman to sign up to the PCS union and continued to support/sign post him.". The Claimant asserts that … "… I was clearly rendering Osman sustained support when management were doing the opposite or others ignoring his plight altogether, rather than stepping in.".

44. OF refers to the matter at the end of his witness statement (page 33 of the witness bundle) ... "Abdur helped me join the Union when my problems started at work and would regularly inquire of me, offering his support.".

45. The Claimant in his oral evidence when asked questions by the Panel, confirmed that he considered that OF was being set up for constructive

dismissal, so he was assisting him, so he was not dismissed for poor performance, and then it got better when he moved to DJ's management. Also, he agreed that internally he was not supporting OF in connection with anything to do with the Equality Act, not supporting him with any claims he had against HMRC in relation to race, disability, or gender and there were no claims of that nature at the time.

46. Based on the witness statements and oral evidence of the Claimant and OF it is clear that the discussing and supporting they describe did not amount to a protected act within the meaning of the Equality Act. OF was not pursuing any Equality Act related complaints at that time.

47. It is also noted (as was raised when discussing the agreed list of issues at the start of the hearing) that the second alleged protected act, post-dates the complaints of victimisation so cannot be relevant.

48. Because of the asserted protected act in 2018, the Claimant asserts that in the Spring of 2018, the Claimant's manager, Ms Donna Boughey, told him not to get involved in Mr Fadlalla's business and that management would not view this kindly (4.2.1).

49. The Claimant refers to this in paragraphs 28 and 29 of his witness statement … "28) Around Spring 2018 TL Donna called me away from work stations and advised me to distance myself from AO Osman Fadlalah.". Also, in paragraph 29 … "Spring of 2018 DB requested me to distance myself from Osman as 'it's not good for my image'.".

50. DB in her witness statement says at paragraph 19 … "I deny that I told the Claimant not to get involved in Osman's business and that management would not view this kindly. I recall a conversation with the Claimant, when Osman was in training, where the Claimant informed me that Osman had been calling him in the evening to discuss work-related matters and was asking for the Claimant's help. Osman was having some difficulties understanding some of the aspects of the training. The Claimant was fairly new to HMRC and was therefore not the best placed person to be giving advice. I suggested to the Claimant that he tell Osman to raise his concerns in training and to ask for help from his Team Leader and that the Claimant shouldn't be working in his evenings. Once you finish work, it's not fair to be expected to go over work related matters outside of your working hours. I felt it was important for Osman to ask the right people with the right skills to obtain the help he needed. This is the same advice I would have given to any of my team, as they did not have the relevant experience themselves and it is important for the trainer and Team Leader to know if there are any concerns.".

51. DB confirmed in her oral evidence that she was unaware of the Claimant supporting OF in any Equality Act issues.

52. We accept the evidence of DB on this matter, as the Claimant has not proven he was assisting OF with Equality Act issues, nor that DB knew of any such thing, so that her recall of what she says she communicated is consistent with that, and we accept it.

53. Chronologically, it is then the first complaint of harassment (3.1.1) that in October 2018, the Claimant's colleague, Mr Lee Spragg, punching him in the stomach, putting him in a headlock, tripping him up and invading his personal space.

54. The Claimant presents his evidence about this matter in paragraph 26 of his witness statement … "… Mid October 2018 LS put me in a head lock and he tried tripping me up in the main passage during a late shift when no one was around. Later that month he tried the same thing again but started with trying to trip me up. Two managers at the time saw the latter part of the incident and I saw them nodding to one another with approval when LS gestured a kicking motion in my direction which I saw in the clear reflection of the sliding doors on our way out the of the office (immigrants out is a running theme in my office). During that period I was moved away from my desk, as I required a raised desk. LS came up to me and threatened 'to beat me up' if I put a complaint in against him, this incident occurred early December 2018. At the time I was scared, and thought get out of the team and into a new one, and then this all will be a thing of the past, as I'll not need to interact with LS or DB any longer. However LS (now promoted to team leader) has continued to invade my personal space by walking by me and swinging his person and hands very close to my body and face which I found highly threatening due to previous headlock and kicking incidents (45). The abuse I have received over this prolonged period of time is heart breaking, and disgraceful that it happened here in the HMRC Portsmouth tax office, after all the equality diversity inclusion training and sign posting civil servants have as mandatory training. The BHD I've faced in my place of work has had a catastrophic impact on my health (51).".

55. LS addresses this matter in paragraphs 7 to 12 of his witness statement:

"7. In or around late 2018 / early 2019 when we were still good friends in work I was walking down the corridor with the Claimant and I put my arm around his shoulders as a one armed hug, this was intended to be friendly and playful. I did not at any time place the Claimant in a headlock. The Claimant became upset and said something like "leave it out" quite firmly. I immediately realised I had upset him and I apologised straight away and removed my arm from his shoulder. I only did this because I thought we were friends, this had absolutely nothing to do with the Claimant's race and was not intended to be upsetting to him, if anything it was a display of my friendship to him. Things seemed ok following this and there was no big change in our relationship, it seemed to me that he had accepted my apology.

8. On a separate occasion in or around late 2018 / early 2019 I tapped my foot onto the Claimant's ankle lightly to cause him to stumble. I do this with my friends at football, it is a joke that I understand a lot of footballers play on each other. The Claimant also played football so I thought he would find it funny. I tapped my foot onto his foot lightly to cause his foot to kick the back of his other heel and stumble over himself. This was not done to make him fall over, just to stumble. The Claimant did not fall over, he stumbled. It is, in my opinion, a funny prank that people play with their friends and I misjudged how this would be received. I thought he would find it jovial and funny but he didn't. When he became upset I immediately apologised. I felt terrible for doing it because he was upset and I really did not intend to upset him. I apologised straight away and we continued to walk down the corridor together. This was not carried out because of the Claimant's race, his race had nothing to do with it. Again, it was something I did because I thought we were friends.

9. I understand that the Claimant is alleging that I tried to trip him up again following this incident. This is not true and I wholly deny this allegation. The Claimant had made it clear that this was upsetting to him and I therefore did not do it again.

10. I also understand that the Claimant says that two managers witnessed this alleged incident and that I gestured a kicking motion in the Claimant's direction towards these managers. This is not true, I did not do this. I do not recall anyone else being around at the time of the stumbling incidence outlined at paragraph 8 above.

11. I have never punched the Claimant in the stomach and strongly deny this. The Claimant has not raised this as an issue before these Tribunal proceedings and this was not raised in mediation. This is a completely new allegation and I have only learnt about it in these proceedings.

12. I also understand that the Claimant says that I 'continued to invade [his] personal space by walking by [him] and swinging [my] person and hands very close to [his] body and face.' I do not know what the Claimant is referring to and have never engaged in behaviour like this."

56. In cross examination the Claimant was referred to page 145 of the hearing bundle which is an email from him to DJ dated 18 November 2019. In that the Claimant wrote … "Me and Lee joined at HMRC at the same time. We all got on well. I'd drop Lee home on many occasions and we'd go for lunch together many times too. I would class him at the time as a work place friend. Our working relationship grew frosty and difficult approximately one year ago, due to what exactly I do not know. However I would like for us to have an open mediated discussion and resolve my issues in relation to my personal space informally as I do not want to hinder a fellow colleagues progress or cause

undue stress by issuing a formal complaint. Lee is an intelligent, kind and charismatic man. I have learned immense amounts of knowledge whilst in his company. Helen from HR said it may be the case that Professional mediated discussion prevents further protracted issues down the line for the business (HMRC) as well.”.

57. At that time the Claimant is communicating he does not know why the working relationship grew frosty and difficult. The Claimant also then refused to confirm during his oral evidence to this hearing why he thought it had grown frosty and difficult. There is no mention in November 2019 therefore of race being a factor for why things grew frosty and difficult, nor did the Claimant confirm in his oral evidence to this hearing that it was related to race.

58. The Claimant also confirmed in his oral evidence that he had not raised a race concern at the subsequent mediation, and he did acknowledge that there was discussion around flexi sheet allegations being an issue. LS refers to this aspect in paragraphs 20 to 23 of his witness statement and in particular that looking back he thinks the incident with the flexi sheets (the Claimant thinking that LS had told on him) was perhaps the start of why their relationship deteriorated (paragraph 23).

59. We accept the evidence of LS about this matter as it is consistent with documents nearer the time and the content of the mediation. The Claimant has not proven on the balance of probability for what did happen, that it is related to race.

60. Chronologically, next comes the allegations of direct race discrimination and victimisation in respect of the alleged conduct of JA (2.2.2 and 4.2.2). The direct race complaint is that in or around December 2018, Mr Jim Arkless stating in the open office “Where is the paki?” in reference to the Claimant. The Claimant relies upon Mr Lee Spragg and Ms Gemma Wright as comparators. It is also relied upon as an act of victimisation, that in early Winter 2018, Mr Jim Arkless, referring to the Claimant as “paki” in the open office. The Claimant alleges that this was in retaliation for the Claimant questioning the motives of Ms Donna Boughey in telling himself to distance himself from Mr Fadlalla.

61. The Claimant refers to this matter in paragraph 27 of his witness statement … “27) Early Winter 2018 during the start of a team meeting the head of I.T technology and equipment all things digital in our office Jim Arkless said out loud ‘where is that Paki’ at the time due to fear of repercussion and things I’d been witnessing I stayed quite to his comments so I could keep my head down and attract no further negative attention. It is later on that, I realised that he too had Equality and Diversity training as all civil servants must do, so that is no excuse. Lee Spragg came by me straight after the meeting ended that day and said “Abdur go on and complain that was racist” I wish I had the courage at the time to follow his advice that day ….”.

62. The Claimant acknowledges in his witness statement that he did not complain about this matter at the time. Our attention was drawn to a reference about it in an email from the Claimant to Jashoda Pindoria dated 20 May 2019, but that does not name JA making the alleged comment.

63. In his oral evidence the Claimant confirmed that he heard the comment at the time.

64. JA denied saying this. In cross examination he confirmed that he never will, and never used that word at all, and never directed anything like that towards the Claimant at all.

65. There are no other witnesses to support it being said, despite the Claimant confirming in his oral evidence that it would have been audible to his team of a least seven people.

66. LS in his oral evidence in chief wanted to explain about a matter he now recalled being a comment he thought he had heard said by someone, but not JA, when the Claimant was not present which he thought referenced brown skin. He raised that with his team and discussed it with the Claimant.

67. From this evidence we conclude that the Claimant has not proven on the balance of probability that JA said what the Claimant alleges, and that instead the Claimant may have either misheard what he says JA said or misremembered the matter. We accept the evidence of JA.

68. As the Claimant has not proven what he alleges, there is no need to consider why JA did do it (for example to victimise the Claimant as alleged), it not having been found to have happened.

69. It is next alleged as an act of direct race discrimination that Ms Dawn Parker brushed off that remark, stating that it is a word the older generation use, following the Claimant's complaint about the incident (2.2.3). The Claimant relies on Mr Lee Spragg and Ms Gemma Wright as comparators.

70. The Claimant does not refer to this being done or said by DP in his witness statement. The only reference to his contact with DP being in paragraph 18 of his witness statement ... "… I raised my concerns of the above issues (27) July 2019 with DD Jashoda (29.35.), which lead to further follow up meetings with Regional Manager Dawn Parker (36.37.34- Dawn is RM Matthew Kennedys predecessor) and again locally with SDM Gareth Dawe.".

71. This was raised with the Claimant when he was cross examining DB and he confirmed that he relies on the documents he refers to. These were considered and the notes he prepared for DD Jashoda (at page 122) do record the Claimant

writing that … "… I was called 'Paki' by a manager during work hours". DB confirmed though that she had not seen these before or during the meeting and she stood by her recall.

72. DP does address the notes in paragraph 8 of her witness statement … "… I had not seen this note until I reviewed the evidence bundle, in preparation for this tribunal hearing. I had arranged to meet with the Claimant at 2:30pm. Given the nature and pressures of my role and that my main purpose for visiting Portsmouth was to undertake engagement type of activities and increase my visibility across the site, I would not have looked at the email prior to the meeting. Had I have seen this note I can give my absolute assurance that I would have had a very different conversation with the Claimant. I would have dealt with the matter formally by instigating a Harassment & Bullying Management Investigation.".

73. Then at paragraph 10 of her statement … "I categorically deny that racial slurs and harassment was discussed at the meeting and I refute the allegations that the Claimant informed me that he had been subjected to abusive language and that I simply shrugged my shoulders in response. The Claimant did not make a complaint to me within this meeting and has never complained to me that Mr Arkless or anyone for that matter, said the words "where is the paki?" I would not have tolerated the use of such humiliating and insulting language from anyone in my team.".

74. As DP has addressed this matter in her witness evidence under oath and maintained this position in cross examination, whereas the Claimant did not address it in his witness statement, we accept what DP says.

75. Chronologically, next comes the allegations of racial harassment and victimisation in respect of the alleged conduct of DB (3.1.2 and 4.2.3). The Claimant alleges that he was given an email, by Ms Donna Boughey with a purported record of a meeting called on 6 February 2019, which was not a correct record of the discussion. The letter commenced "Abdur has been late since he joined HMRC" and the Claimant disputes that this was discussed in the meeting. It is also relied upon as an act of victimisation where the Claimant alleges that he was victimised by Ms Donna Boughey giving the Claimant a letter about lateness on 6 February 2019.

76. The Claimant refers to this matter in paragraph 22 of his witness statement … "22) 6th Feb 2019- I received an email as a routine to meet with my then manager Donna Boughey, she had copied in her manager HO Lloyd TREADWELL which was a new development (21.19). I was therefore shocked when I was with her, she wanted to discuss something to do with my lateness coming to work (19). This was not mentioned in the initial email as it is a customary (11) thing that staff 'Union up' for meetings of a disputable nature. During the meeting DB showed me a log of the times I took my first call at my

desk for about a month prior. The normal operations of our work/business are that we have to log onto and start several programmes to be able to take the first call; usually this would take 10-15 minutes. Most of the staff come to desk after they have clocked-in and go to their lockers, started their computer and had some chat time, made tea/coffee. I would go straight to my locker then computer to start work as I felt like I was being constantly monitored and watched by management. Work time start was considered for me, at least, when I took my first call while for others; it was when they swiped their card at the front of the building. Security cameras can verify, she did not refer to any HMRC building security footage at any point. I feel I had more obstacles, in comparison to support. DB also failed to mention my positive contribution to the workforce, where I support the business by working extra hours when we have less staff in the office. It was TL Alex Morgan who started my OH referral process on seeing me struggle at work whilst DB was on leave. Flexi (9.10.22) proves that I have not been late every day, since the first day of employment, she knew this. So what was the purpose of the meeting notes (20.13.14). Interpreting the data incorrectly and incorrect application of processes and procedures is something I along with others have been subjected to by management."

77. The Claimant's own witness evidence acknowledges the meeting with DB addressed lateness.

78. About this matter DB says in her witness statement at paragraph 2 that … "I was promoted in October 2017 to a team leader and I became the Claimant's line manager until he moved to another team at some point in 2019.".

79. Then at paragraph 9 … "During my time as the Claimant's manager, I had several meetings with him over his punctuality. I do not remember specific meeting dates but I do remember that in most, if not all of the conversations we had, I would discuss his lateness with him. It is likely that I did inform the Claimant that he was often late in the meeting on 6 February 2019, because he often was, however I am not sure of the exact wording I would have used. This may have been in the meeting where I provided him with a printout of his start times for the previous month that showed that he was on time approx. only 2 or 4 times that month and late on the all of the other days. I do not have a copy of this printout as it was put in his folder and moved with him to his new team. We have since digitised our folders and only relevant information was scanned – this print out was not scanned by his team leader, Deniese Jackson.".

80. Paragraph 10 … "I managed the Claimant for about 2 years. In the first year he was frequently late, however this was only around 5 to 10 minutes each day, he would provide excuses such as his car wouldn't start etc. He did then get a new car but his lateness got worse. The Claimant was often between half an hour to an hour late. On some days he would be up to two hours late and one of the problems was that he would not call in to inform us that he was running

late, which caused problems for the business. I asked him on numerous occasions to always inform me if he was running late but he said he did not want to make excuses, I told him that I did need to know if he was running late.".

81. At paragraphs 15, 16 and 17… "15. I understand that the Claimant is alleging that he was given an email by me, with a record of a meeting called on 6 February 2019, which was not a correct record of the discussion. I understand that he says lateness was not discussed. I cannot remember this exact meeting, however I do know that almost every time I had a meeting with him I discussed his lateness, he was always late every week, so every time we spoke this was discussed, including the impact it had and the fact that he was required to inform me if he was running late. … 16. I did issue the Claimant with a letter about lateness in February 2019 not because of any alleged protected disclosure but because he was often late. … 17. I deny that I held any discussions around the Claimant's lateness because of his race, I sought to manage his lateness in line with internal policy and because he was arriving late to work, and not for any other reason. I took into account his IBS and sought to follow OH recommendations.".

82. Also, at paragraph 11 … "At the time I managed the Claimant, there were a few members of my team that were often late. I spoke to them all informally and most of these individuals started to arrive on time, however one individual (ethnicity White British) was dismissed for being consistently absent without leave. I treated all members of my team in a fair way and did not treat anyone less favourably for any reason, including their race.".

83. In cross examination the Claimant accepted that he was late but had reasons for it.

84. DB in cross examination maintained her position that the Claimant had been late since he joined HMRC. The Claimant did not raise any other inaccuracies with DB as to the content of the note (at page 90).

85. We accept the evidence of DB on this matter. It is not in dispute that the Claimant was late, and this was being managed and that it was discussed at the meeting between him and DB.

86. The Claimant has not proven he was assisting OF with Equality Act issues, nor that DB knew of any such thing, so that her recall of what she says she communicated about lateness and then recorded in her note, is consistent with that and we accept it.

87. On the meeting note the only bit challenged by the Claimant in cross examination was the reference to him being late since he started. DB stood by it, and it is consistent with knowledge she would have had about the Claimant, having taken over his management in October 2017.

88. The note clearly records a discussion about lateness and the Claimant has not evidenced any inference that it was race related. We do not find that the Claimant has proven what he alleges on the balance of probability.

89. It is then alleged as an act of direct discrimination that in early December 2019 Ms Emma Hewitt arranging a pool car for the Claimant and requiring him to collect keys from security in the morning rather than allowing him to collect the car and take it home with him the evening before. The Claimant relies on Mr Dan Davis as a comparator (2.2.4).

90. The Claimant refers to this matter in paragraph 15 of his witness statement … "15) Early December 2019 an incident in relation to regulation application of pool car utilisation (121.120.119). Mohammed Islam and I were on our way to a HMRC BAME networking event in Wales, Our then Senior Delivery Manager Gareth Dawe had suggested (142). The first pool car was cancelled suddenly (30. pool car was with driver Muhammad Islam night before Civil service live event mid 2019), and then a special process was made for us by Emma Hewitt and those advising/instructing the Personal assistant of the senior leadership team. I had to wake up and be ready before 4AM, pick up Mohammed and come to the office to pick car keys from security guards with Mohammed Islam. Mohammed and I raised this issue with the Senior Management Team present at the feedback meeting, however no one knew the processes and procedure in relation to EH's actions during that meeting, Senior Officer Tony Horrell and Higher Officer Shelly (Tony along with his Wife Shelly have moved to different departments of the HMRC) were not in attendance. Dan, Mohamed and I had attended the annual Civil Service Live Event in London mid 2019 there were no issues nor did we have to pick keys up in the morning from security guard, who is technically not HMRC staff but a third party employee. It seems as though BAME civil servants have lost the faith of management and not trusted, but a third party security guard is? Or was it something else entirely. Personal assistant Emma Hewitt's words and actions as well as a lack of clarifications of her actions are highly undermining and discriminatory. When a white Colleague is with me no car related restrictions came into place, For the BAME networking event only 2 BAME civil servants and many new restrictions come into place and conscious hardship and confusion is created (108.), Emma Hewitt has successfully been promoted within the HMRC (52).".

91. EH address this allegation it in paragraph 5 ... "The Claimant wanted to take the car home with him the night before as he had an early start. I was not sure if that was permitted and so I checked with the previous PA Carol Reed (now with FIS) who told me that cars could not be taken home overnight. The reasons for this related to insurance and the car therefore had to be collected from a HMRC site."

92. Also, at paragraph 7 … "I was informed by Ms Reed, that if the car was to be collected early in the morning, the procedure was to leave the keys with security and let them know someone would be collecting early. I therefore arranged for this to take place for the Claimant. This was the correct process."

93. Further, at paragraph 9 … "Every time I have arranged a pool car, I have always arranged for the individual to collect the car from the office. I have never allowed an individual to take the car home with them, regardless of how early they have to collect the car. As way of example one individual from the SLT, Tony Horrell has informed me that he had to come into the office at 4.45am on one occasion to collect the pool car because he was not permitted to take this home with him.".

94. JA in his witness statement at paragraphs 16 and 17 refers to his experience of using a pool car … "16. To book a pool car, you can do so through a booking system or by emailing the people who look after pool cars. You then pick the car and keys up from the office (either from the security guard (24 hour) or from the pool car team located in the office) on the day you are using the car. … 17. Employees are not allowed to take pool cars home with them. I have always been told that this is not allowed because of insurance reasons. I live on the Isle of Wight and it would have been much more convenient if I was allowed to take a car with me when I need it for an early start as I could have parked it at the port car park and driven straight from the ferry in the morning. I was not allowed to do this and as such I would have to stay in a hotel in Portsmouth the night before an early start in order to collect the car early and set off. It is my understanding that no one ever took pool cars home with them.".

95. As does DB at paragraph 21 … "21. My experience of hiring a pool car is that you are not allowed to take cars home with you. I have never taken a car home with me as it was just not allowed. I think this was for insurance reasons. I always had to collect the keys and car from the office. I have been to lots of places using a pool car and the process is to turn up at the office and a security guard provides you with the keys. I have never known anyone to be able take a car home.".

96. The Claimant's supporting BAME witness M Islam refers to how he had been able to take a pool car home on a previous occasion where he says … "I found this change to the pool car protocol very strange as I had arranged for a pool car before to attend an event in London back in July 2019 and had no trouble taking the vehicle home the night before.".

97. From this evidence it has not been proven on the balance of probability that any particular race is treated more or less favourably to any other.

98. It is next alleged chronologically that the Claimant was subjected to an act of harassment that on 13 December 2019, putting up a picture of a sticky pickle

and written comments “don’t get me started on the brown sauce” following a yammer posting of photos of BAME staff members who had attended a Google Digital Garage digital seminar which the Claimant and a colleague, who was also of an ethnic minority, had arranged (3.1.3).

99. The Claimant refers to this allegation on paragraphs 11, 12 and 13 of his witness statement … “11) On PT Operations Portsmouth Group network (54) I share the office’s achievement of successfully liaising Google Digital Garage (53). In response to this post, Matthew Kennedy (PT Operations) posted on 13th December 2020 at 01:53pm a picture of brown sticky pickle with the text: “I’m just going to leave this here [tagging @ Christine Jennings (PT Operations Wales, Midlands and Southern England)] truly inspired [tagged: Colleen Finnemore (PT Operations), Steve (PT Operations North East England)]” Geoff Greensmith (86.Appendix10 page240) and Paul Chohan (62.64) are not tagged in (86.Appendix9 page 239). …. 12) Directly underneath this post, Matthew Kennedy (PT Operations) also commented at 01:53pm on 13th December 2019: “and the brown sauce – don’t get me started”. In response to the post and the additional comment from Matthew Kennedy, Steve Dyson commented: “See you are diversifying the product range. Might even try to track down the nearest Waitrose!!” …. 13) This picture was posted directly after my post so it appeared above the pictures I had posted of 3 BAME individuals including myself. I believe that the post by Matthew Kennedy was clearly in reference to the fact that the employees in the picture were brown i.e. brown sticky pickle and brown sauce. I believe that the comment “truly inspired” was intended to be both sarcastic and derogatory. By posting the picture, Matthew Kennedy was referencing the colour of my skin, as well as his colleagues in a derogatory way. My belief is compounded by the comment made by Steve Dyson and the reference to “diversifying the product range” which was not literal in that the organisation does not have a product range. I raised a grievance in relation to this incident on 9th January 2020.”.

100. MK addresses this matter at paragraphs 6 to 13 of his witness evidence:

“6. Yammer is a communication tool used across HMRC to distribute high level communications but is also an engagement tool. I use Yammer to engage the circa 900 colleagues I lead posting pictures, liking pictures and engaging to build visibility. I use Yammer as a tool to engage with colleagues. I scan through the posts that are associated with the sites I am responsible for and comment and like posts where appropriate. A big part of my role is to engage with my colleagues and the staff that work across the three sites I am responsible for.

7. I liked the Claimant’s post about the Google Garage event as it looked like a positive digital initiative at one of my sites and it was a positive message about this event.

8. I posted a picture of a jar of Stokes Sticky Pickle with the comment "I am just going to leave this here" and "and the brown sauce – don't get me started" on 13 December 2019. I did not explicitly state, "this is a picture of a present I have been brought based on a conversation about brown sauce" as this would not build the engagement I aim to create with my people.

9. I like the Stokes brand and in particular the Brown Sauce, and have previously commented to colleagues and friends about its uniqueness. The comments I made simply related to how much I liked the sticky pickle and brown sauce. Previously I was in the Portsmouth site with a group of Technicians on the floor plate where the discussion moved organically onto Bacon and Brown Sauce, and into the Stokes brand. Subsequently I brought a bottle of Stokes Brown Sauce for Chris Jennings for her birthday. On the day of the post Chris Jennings had bought me a Christmas present of Stokes Sticky Pickle. I took a picture of the jar in Portsmouth and posted it on Yammer as a positive engagement message.

10. This post was made without reference or relation to any of the other posts on the Yammer group and in no way was it intended to be connected or related to the Claimant's post about the Google Garage event.

11. I cannot see how my post about sticky pickle and brown sauce has anything to do with the Claimant's post about his event or can reasonably be interpreted as racist.

12. I understand that the Claimant 'liked' my post and commented to say "Stokes do a lemon mustard/mayo in Asda!! Spices are what makes us alive and Christopher Columbus went searching for them as it was vital for Europe." I am not sure of the purpose behind this comment but I liked it because I thought he was engaging positively with my post.

13. When I created the Yammer post, I did not review the posts currently on view in the Portsmouth page and I did not actively attempt to manage the proximity of the post to any other posts. I had no idea that my post would land anywhere near the Claimant's post.".

101. OF in his oral evidence told us that he was not good at English so did not understand the message. He acknowledged that his English was limited. He confirmed that he had understood the comment (when it was shown to him by the Claimant) … "and the brown sauce – don't get me started", as a negative comment about brown sauce, rather than positive as it was written and intended by MK.

102. It is not in dispute that the postings happened, nor what they say, nor that they followed the Claimant's google digital garage post.

103. The Claimant has presented us evidence as to why he perceived the posts as unwanted conduct.

104. MK has presented evidence as to why he did what he did when he did, which we accept.

105. It was not put to MK that he had manufactured the gift giving between him and the Portsmouth colleague to enable him to then be able to post a photo of pickle and then make a comment about brown sauce after a post with BAME colleagues so that he could relate it to race.

106. MK's explanation as to why he did what he did when he did relates to facilitating staff engagement and using his liking of Stokes sauces and a gift he has been given as a vehicle for that. It does not relate to race.

107. Having considered all the other circumstances of this matter we do not find that it is reasonable for the conduct to have the effect as asserted by the Claimant.

108. It is then alleged as an act of direct discrimination that an investigation by Mr Richard Dillon (carried out between January and March 2020) into a discrimination complaint made by the Claimant in January 2020, which was biased and unfair. The Claimant relies on a hypothetical comparator (2.2.5).

109. The Claimant refers to this in paragraph 8 of his witness statement … "8) Investigating Officer Richard Dillion successfully spoke to many of the Regional Managers close work colleges and those under his chain of command. I was dumb struck with the lack of balance in the investigation as HMRC Administrative Officer Osman and the GDG trainer were left out. No independent experts where sourced in the investigation, nor Independent Occupational health recommendations referred to in the investigation report from February 2020, which clearly state this is a management issue and I am not expected back in the office till management resolve issue (63). HMRC's Lyndsey Cecil the internal communications expert (152.124.123) and Richard Dillon failed to mention the names of 183 people who saw Sticky Pickle etc posts and the 250+ people who saw GDG posts; it would be interesting to hear their thoughts in relation to my complaint. I spoke to Nicky Lavender the equality champion in our office and she was disgusted and shocked that this even took place, as were others. Investigating Officer Richard Dillon smoothly mentions that I have issues with management in my office in the investigative report of my complaint, when interviewing SDM Gareth (86. Appendix 10 page 240). He fails to briefly touch on what those issues are within the report (36.108.144.). The ordeals and stress I have borne would have all been worth it, but the straw that broke the camel's back was placed in such a humiliating way, I just can't keep silent anymore. It's too much to hold inside. I have now witnessed HMRC's inability to address the BHD issues at so many levels, it begs the question,

when will HMRC clamp down on BHD collusion. I now seek the powers of our justice system to force my employers hand in moving away from lip service and sign posting, and actually bring about security and harmony at my place of work (HMRC Race Disparity Audit).".

110. Referring to paragraphs 4, and 13 to 20 of RD:

"4. With no prior knowledge of the case. I volunteered to support the grievance investigator role. A request for support was sent out by Paul Chohan to all Heads of Customer Service in PT Operations [174] from which I volunteered on 24 February 2020.

13. I deny that the investigation was biased, unfair or not transparent. I carried out my role in a fair and unbiased manner, I had no involvement with the grievance and am not associated with anyone involved other than as work colleagues. I am not a friend of Mr Kennedy, as is being alleged, we are work colleagues only.

14. I deny that I treated the Claimant less favourably because of his race, in investigating his grievance, or at all.

15. I deny that I chose to interview Mr Kennedy's work colleagues for any reason other than those individuals had evidence that was potentially relevant to the grievance complaints that I was investigating. The colleagues I interviewed, or did not interview was solely based on their relevance to the investigation / case. I was aware of the working relationship of those involved, however it had no bearing on the path of my investigation.

16. I also deny that I interviewed individuals under my chain of command.

17. I did not interview the Google Digital Garage trainer or Osman Fadlalla as they did not comment on Mr Kennedy's Yammer post, other than liking subsequent posts the chain, as did others such as Kathryn Walker, neither of which I chose to interview I did not see how they could have any further relevant evidence in relation to why Mr Kennedy uploaded a photograph of sticky pickle sauce. It would not have been appropriate to have interviewed these individuals.

18. I did not interview the Yammer group administrators but I did obtain evidence from the Communications Team regarding the workings of Yammer as set out above.

19. I deny that I chose to interview certain individuals and not interview others deliberately to find in favour of Mr Kennedy and dismiss the Claimant's grievance.

20. I deny that I did not allow the Claimant an opportunity to respond to the questions I asked him in my email of 20 March [225-226]. I had also offered him other opportunities to communicate in a Teams meeting which he declined. My rationale for proceeding without the Claimant answering my questions was that he did not ask for additional time or indicate that he wanted an opportunity to provide further information, in fact he had previously stated in an email on 19 March; "I've put my formal complaint in writing with evidence cited and waiting for the decision to be made." The Claimant appeared to not see the need to discuss this with me further, and I did not want to be insistent considering the Claimant went on to write; "As I am recovering from stress going over the events cause sadness and pain which I'm sure you understand undermines my recovery at this moment in time." [229] I spoke with Ms Hilton verbally and we decided that I should proceed with sending her my report so that the Claimant could be provided with an outcome to his grievance as soon as possible."

111. From this evidence we find that RD was not involved in this matter until 24 February 2020.

112. The Claimant's main issue with RD, that he explored in cross examination, was that OF was not interviewed about the sauce post. RD explained that he did not do so because his investigation had concluded that there was a reasonable explanation for why MK did what he did when he did it and it did not relate to race. We have also found this to be the position as set out above. We also note that this was the view that JE reached in her appeal outcome which records … "Abdur also had concerns about the number of BAME colleagues interviewed as part of the fact find. Having looked at the investigation I am satisfied that those who were interviewed were relevant and I could not find anything in the grievance that would require further interviews in the BAME community. It was also clear that other BAME colleagues engaged in the Yammer post positively. I find that this point in the appeal is not upheld" (page 325). This was not challenged at this hearing by the Claimant.

113. We also note that OF acknowledged at this hearing that he struggled with English, and he had understood the comment (when it was shown to him by the Claimant) … "and the brown sauce – don't get me started", as a negative comment about brown sauce, rather than positive as it was written and intended by MK.

114. The Claimant has not proven on the balance of probability that RD was biased or unfair in the actions he took investigating the matter, nor in the conclusions he reached.

115. We accept that what RD found was a reasonable and sustainable result from the evidence that has been presented to us.

116. Chronologically the Claimant then asserts that he was racially harassed by being given a letter by his manager, Ms Deniese Jackson, on 13 March 2020, which attached a record of a meeting held at a McDonald's which was not a correct record of the meeting (3.1.4).

117. The Claimant addresses this in paragraph 9 of his witness statement … "TL Deneise Jackson was not her usual comfortable, protective, happy and bubbly self, up to that point (135) she had been one of the few colleagues I could rely upon for support and council (49). TL Deniese hand written notes were a maximum of 5-7 lines, during the meeting, 'I inquired is that all your writing Deniese? 'It's just a quick catch up, nothing to worry about Abdur ' was the reply (also omitted from notes); The notes I received many days later were in depth and detailed, only missing out important bits of the conversation from my side. Recording without permission is a big no no in HMRC, if I am not allowed to do it without consent are management? Why did a catch-up/conversation have such detailed notes but missed out time, location and details of conversation?".

118. DJ addresses this matter in paragraph 22 of her witness statement … "22. The meeting notes are an accurate reflection of the meeting that took place **[191-192]**. I provided a copy to the Claimant and he replied to say that some valuable information had been omitted **[197]**. I then wrote back to him asking for his amendments and details of the information he felt had been omitted **[196]**. The Claimant replied to say that the notes were missing the duration of meeting (33 minutes) and the venue (McDonalds). The Claimant did not inform me that there was anything else that was inaccurate about the meeting notes. I then emailed the Claimant again on 20 March 2020 **[575-577]** to provide an amended version of the notes and informing him that if he needed any support to contact me.".

119. The Claimant acknowledged in cross examination that he did only raise two amendments that he says the note required, being location and duration (page 196), and these were accommodated. It is difficult to see therefore how this amounts to unwanted conduct as the notes are amended as the Claimant wants. There is also no evidence to suggest that the subsequent amendment to the notes related to race.

120. Chronologically, there is then a further complaint of racial harassment that would be in time based on the ACAS certificate and when the claim was submitted. It is that Ms Gemma Wright emailing a message on 24 April 2020 to the office, mentioning the phrase "jungle drums" (3.1.5).

121. The Claimant addresses this at paragraph 7 of his witness statement … "7) 24/04/2020 senior officer Gemma Wright of Portsmouth (54) who works under the guidance and stewardship of Matthew Kennedy wrote a message in late April 2020 and sent it out office wide, mentioning the phrase 'Jungle drums' (88.) I found this highly disturbing and offensive as it's a continuation of

behaviours coming top down within my department. I raised my concerns with TL Deniese Jackson and then customer consultant Wahida Rahim at the time. AO Wahida (now promoted to team leader position permanently) discussed the matter with SO Gemma Wright and other senior management in Portsmouth branch, a few weeks later. HMRC directors Julie, Claire, and Deputy Director Jashoda were notified of the incident by me also, I received an inadequate apology from GW the following day (105.151). SO Gemma Wright indicated that she had been spoken to. She did not apologise office wide (146), however managed to request me to apologise to anyone else she may have offended. Freedoms end when another's rights begin, setting the right impartial senior leadership example as supposed to fanning the flames of race hate via the use of coded or suggestive language to garner support from a particular group/clique adds to the hostile work environment."

122. GW addresses it at paragraphs 5 to 9 of her witness statement:

"5. I understand that the Claimant has raised an allegation of harassment and victimisation in relation to a comment I made in an email on 24 April 2020 **[246]**. I sent this email to the whole of the Portsmouth Personal Tax Operations Team.

6. I used the phrase 'jungle drums' in order to express that the news I was delivering may have already reached the recipients of the email as I understood the phrase to mean a fast and efficient way of conveying messages.

7. I understand that the Claimant emailed Julie Etheridge, Claire McGuckin, Jashoda Pindoria and Jenny Bass on 28 September 2020 **[247]** regarding my email to ask what the term 'jungle drums' meant. I had not seen that email before these proceedings, however I was told that the Claimant had taken issue with the reference to 'jungle'.

8. I was informed by Wendy Cutting on 28 September 2020 that an email had been received where the Claimant had questioned what I had meant by 'jungle' and it was assumed that the term had caused offence. I was mortified that I had caused him to feel this way. I absolutely did not intend to cause offence by using this term, did not know it was offensive and would not have used it if I had known that it was.

9. I emailed the Claimant on 28 September 2020 **[318]** to apologise for causing offence and explain that I understood the term to be referring to messages that were relayed quickly across large spaces using a drum. I believed it to be a positive term, i.e. the efficient spread of messages. I explained that I genuinely did not appreciate that it could be offensive in any way. I received no reply from the Claimant."

123. We note that the email from the Claimant dated 28 September 2020 (page 247) does ask "What does jungle drum mean?". The email itself does not say that the Claimant found the phrase offensive, nor that he thought it related to race.

124. GW maintained her position in cross examination and confirmed in her oral evidence that the team that was sent the email in April 2020 was about 500 people and although it was potentially less than 7% of those that would be ethnic minorities, no one raised any concerns about her email at the time or subsequently, save for the Claimant's query in September 2020 as to what was meant by the use of the term.

125. It is not in dispute that the phrase was used.

126. The Claimant has presented us evidence as to why he perceived the phrase as unwanted conduct.

127. GW has presented evidence as to why she did what she did which we accept. GW's explanation as to why she did what she did was to communicate that the news she was relaying was probably already out. It does not relate to race.

128. Having considered all the other circumstances of this matter we do not find that it is reasonable for the conduct to have the effect as asserted by the Claimant.

129. The most recent allegation is one of direct race discrimination being Ms Julie Etheridge deliberately delaying the internal investigation into the Claimant's complaint and, on 29 July 2020, cancelling a meeting about his appeal. The Claimant relies on a hypothetical comparator (2.2.6).

130. The Claimant addresses this allegation in paragraph 3 of his witness statement … "3) 29/07/2020-The first appeal meeting was cancelled on the day of meeting, later rescheduled for 20/08/2020." … "HMRC Director Julie Etheridge was new to the organisation, it was apparent to my untrained eye she required time to familiarise, acclimatise and adopt (94.100.95.102 page 267) the HMRC management standards. HMRC director Julie Etheridge's supervising officer/ manager or panel that handed her the appeal could of stepped in early on or (148.) handed the appeal to a seasoned HMRC Director who has a track record in the resolution of such matters, would have been the consciously appropriate candidate in line with organisational targets, commitment and data (147.148.150). I believe the delay tactics was an attempt to pressurise me to desist in pursuing the matter further.".

131. The Claimant in his own evidence does not attribute what he says JE did to being because of his race.

132. JE addresses this allegation in paragraphs 13 to 15 of her witness statement:

"13. I deny that I deliberately delayed the appeal investigation because of the Claimant's race as alleged or at all. The reason for the delay between the

Claimant raising his appeal on 29 May and me addressing this on 20 August 2020 was because the Claimant did not copy in the Expert Advice Service Mailbox as required and set out in the decision letter sent to him by Ms Hilton. As a result of this, HR did not have sight of his appeal to ensure that this was progressed. I was new to the Department at the time and as such, assumed that this was being dealt with by my private office. My private office thought that I was dealing with this and as such also did not seek to progress this. If the Claimant had copied in HR as required in the decision letter, this would have been managed by HR and progressed as appropriate. The reason for any delay is therefore due to miscommunication of both the Claimant and myself and not because of the Claimant's race."

"14. I deny that I cancelled the meeting on 29 July 2020 because of the Claimant's race as alleged, or at all. As set out above there was confusion around the process, however I still made myself available for the meeting and offered to proceed as planned, however the Claimant did not attend the meeting, despite me being logged into the Teams meeting as arranged.

"15. I deny that I have discriminated against the Claimant because of his race, as alleged or at all. The Claimant's race had nothing to do with the decisions I made within the appeal process or how the process was conducted. I would have treated anyone with a different race to the Claimant in the exact same way."

133. From the evidence presented it is clear that JE did not cancel a meeting about the Claimant's appeal, the formal appeal hearing was postponed, and the informal meeting did continue on the day, but the Claimant did not attend.

134. The Claimant did not challenge the explanation JE gave as to the delay in the process.

135. The Claimant himself in his evidence does not allege what JE did was because of race, we accept the evidence of JE as to what she did and why.

THE LAW

136. The Claimant is alleging discrimination on the grounds of a protected characteristic under the provisions of the Equality Act 2010 ("the EqA").

137. The Claimant complains that the Respondent has contravened a provision of part 5 (work) of the EqA. The Claimant alleges direct discrimination and harassment related to race. He also claims victimisation.

138. The protected characteristic relied upon is race as set out in sections 4 and 9 of the EqA.

Direct discrimination – section 13 Equality Act 2010

139. For a claim for direct discrimination, under section 13(1) of the EqA 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.

140. Direct discrimination claims require a comparison as between the treatment of different individuals i.e., individuals who do not share the protected characteristic in issue. In doing so there must be no material difference between the circumstances relating to each individual (section 23 EqA). The Tribunal therefore must compare 'like with like'.

141. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However, this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.

142. In respect of the burden of proof, there is a two-stage process for analysing the complaint. At the first stage, the Claimant must prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent had committed an unlawful act of discrimination against the Claimant. At the second stage, if the Claimant is able to raise a prima facie case of discrimination following an assessment of all the evidence, the burden shifts to the Respondent to show the reasons for the alleged discriminatory treatment and to satisfy the tribunal that the protected characteristic played no part in those reasons (***Igen -v- Wong [2005] EWCA Civ 142*** as affirmed in ***Ayodele -v- CityLink Ltd [2018] ICR 748***).

143. We also note the recent decision of ***Efobi v Royal Mail Group Ltd (2021) ICR 1263*** which confirmed that the reverse burden of proof remains good law under the EqA.

144. Also, considering ***Madarassy v Nomura International Plc [2007] ICR 867***, Mummery LJ stated: "The Court in Igen v Wong expressly rejected the argument that it was sufficient for the claimant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. 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 act of discrimination".

145. The burden of proof does not shift to the Respondent simply on the Claimant establishing a difference in status and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that the Respondent had committed an unlawful act of discrimination (***Madarassy***). "Could conclude" must mean that "a reasonable Tribunal could properly

conclude" from all the evidence before it. This would include evidence adduced by the Claimant in support of the allegations of discrimination. It would also include evidence adduced by the Respondent contesting the complaint.

146. In ***Igen*** the Court of Appeal cautioned tribunals 'against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground' but made it clear that a finding of 'unexplained unreasonable conduct' is a primary fact from which an inference can properly be drawn to shift the burden.

Harassment related to race – section 26 Equality Act 2010

147. Section 26 provides:

(1) A person (A) harasses another (B) if—

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

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

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

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

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

148. As Respondent's Counsel submits, the Claimant needs to establish, under section 26 EqA, unwanted conduct relating to his race ((1)(a)), which had the effect of violating his dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him ((1)(b)).

149. In deciding whether the conduct had the effect set out in (1)(b), the Tribunal must take into account the Claimant's perception, other circumstances, and whether it was reasonable for the conduct to have that effect ((4)). The Tribunal must find that a remark, even if offensive or unwanted, for some clear and identifiable reason, related to race: ***Tees Esk and Wear***

<u>Valleys NHS Foundation Trust (appellant) v Aslam and another (respondents) [2020] IRLR 495</u>, [25]:

"some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be."

150. The section (1)(b) test, as a result of section (4), has an *objective element*, i.e., if the Tribunal finds that it was not *reasonable* for the conduct to be regarded as having a derogatory effect, the claim must fail: ***<u>Pemberton v Inwood [2018] ICR 1291</u>***, [88]:

"In order to decide whether any conduct falling within subparagraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of subsection (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances—subsection (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

Victimisation – section 27 Equality Act 2010

151. Section 27 provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

Time Limits

152. Section 120 of the EqA confers jurisdiction on claims to employment tribunals, and section 123(1) of the EqA provides that the proceedings on a complaint within section 120 may not be brought after the end of – (a) the period of three months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable.

153. Under section 123(3)(a) of the EqA conduct extending over a period is to be treated as done at the end of that period.

154. Section 123(3)(b) of the EqA, failure to do something, is to be treated as occurring when the person in question decided upon it. Where there is no evidence to the contrary, s.123(4) of the EqA 2010 provides a default means by which the date of the 'decision' can be identified, either when there is an inconsistent act or alternatively the expiry of the period in which the employer might reasonably have been expected to do it.

155. An ongoing situation or continuing state of affairs amounting to discrimination was considered in ***Hendricks v Metropolitan Police Commissioner [2003] IRLR 96***. It is not sufficient to rely on an alleged overarching or floating discriminatory state of affairs without that state of affairs being anchored by discrete acts of discrimination.

156. We note the principals from the cases of ***British Coal v Keeble [1997] IRLR 336 EAT***; ***Robertson v Bexley Community Service [2003] IRLR 434 CA***; and ***London Borough of Southwark v Afolabi [2003] IRLR 220 CA***;

157. We note the factors from section 33 of the Limitation Act 1980 which are referred to in the ***Keeble*** decision:

   a. The length of and the reasons for the delay.

b. The extent to which the cogency of the evidence is likely to be affected by the delay.
c. The extent to which the parties co-operated with any request for information.
d. The promptness with which the claimant acted once he knew the facts giving rise to the cause of action.
e. The steps taken by the claimant to obtain appropriate professional advice.

158. We note that the Court of Appeal in the ***Afolabi*** decision confirmed that, while the checklist in section 33 of the Limitation Act provides a useful guide for tribunals, it need not be adhered to slavishly. The checklist in section 33 should not be elevated into a legal requirement but should be used as a guide. The Court suggested that there are two factors which are almost always relevant when considering the exercise of any discretion whether to extend time and they are: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).

159. It is also clear from the comments of Auld LJ in ***Robertson*** that there is no presumption that a tribunal should exercise its discretion to extend time, and the onus is on the claimant in this regard … "It is also important to note that time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of discretion is the exception rather than the rule".

THE DECISION

160. In respect of each allegation made by the Claimant we find as follows:

161. Direct race discrimination (Equality Act 2010 section 13):

a. In November 2017, Mr Jim Arkless, complaining to the Claimant that he could not leave his bag or box in various locations (2.2.1). We have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The Claimant says that he was treated worse than a hypothetical comparator or maintenance staff:

    i. It is not in dispute that the Claimant was told he could not leave his bag or box in various locations by JA.

ii. The Claimant has not set out in his evidence why it was to his detriment, save that he felt he was treated differently.

iii. The Claimant has not proven on the balance of probability that he was treated less favourably than anyone else (even if it is accepted that being told you cannot leave a bag or box in various locations is less favourable treatment). JA asked potentially 20% of staff and it is understood that most of them at that time were white British.

iv. We would also note that the Claimant comparing himself to maintenance staff is not comparing like with like as the Claimant's role was as a Tax Administrative Operative.

v. We have been presented no evidence to suggest that JA would not ask a hypothetical comparator the same thing either.

vi. The Claimant has not demonstrated a difference in status or treatment on the basis of race. The Claimant has not raised a prima facie case of discrimination following an assessment of all the evidence, so the burden does not shift to the Respondent to show the reasons for the alleged discriminatory treatment and to satisfy the Tribunal that the protected characteristic played no part in those reasons. We also accept the evidence of JA about his reasons for doing what he did to the Claimant.

b. In or around December 2018, Mr Jim Arkless stating in the open office "Where is the paki?" in reference to the Claimant (2.2.2). The Claimant relies upon Mr Lee Spragg and Ms Gemma Wright as comparators:

i. From the facts we have found we conclude that the Claimant has not proven on the balance of probability that JA said what the Claimant alleges, and that instead the Claimant may have either misheard what he says JA said or misremembered the matter.

ii. As the Claimant has not proven what he alleges, there is no need for us to go on and consider why JA did do it (for example to treat the Claimant less favourably on the basis of race as alleged), it not having been found to have happened.

c. Ms Dawn Parker brushing off that remark, stating that it is a word the older generation use, following the Claimant's complaint about the incident at 2.2.2 above (2.2.3). The Claimant relies on Mr Lee Spragg and Ms Gemma Wright as comparators:

i. From the facts we have found we conclude that the Claimant has not proven on the balance of probability that DP did or said what the Claimant alleges.

d. In early December 2019 Ms Emma Hewitt arranging a pool car for the Claimant and requiring him to collect keys from security in the morning rather than allowing him to collect the car and take it home with him the evening before (2.2.4). We have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The Claimant says that he was treated worse than Mr Dan Davis:

    i. It is not in dispute that the Claimant was required to collect the keys from security in the morning rather than collect the car and take it home with him the evening before.

    ii. The Claimant has explained how this was to his detriment, having to wake up and be ready before 4AM.

    iii. From the facts found (for example how EH treated others, and MI, JA and DB's own experience of using pool cars) it has not been proven on the balance of probability that any particular race is treated more or less favourably to any other.

    iv. The Claimant has not demonstrated a difference in status or treatment on the basis of race. The Claimant has not raised a prima facie case of discrimination following an assessment of all the evidence, so the burden does not shift to the Respondent to show the reasons for the alleged discriminatory treatment and to satisfy the Tribunal that the protected characteristic played no part in those reasons. We also accept the evidence of EH about her reasons for doing what she did to the Claimant.

e. An investigation by Mr Richard Dillon (carried out between January and March 2020) into a discrimination complaint made by the Claimant in January 2020, which was biased and unfair (2.2.5). The Claimant relies on a hypothetical comparator:

    i. We have found as fact that RD was not involved in this matter until 24 February 2020.

    ii. The Claimant's main issue with RD, that he explored in cross examination, was that OF was not interviewed about the sauce

post. RD explained that he did not do so because his investigation had concluded that there was a reasonable explanation for why MK did what he did when he did it and it did not relate to race. We have also found this to be the position. We also note that this was the view that JE reached in her appeal outcome (page 325) which was not challenged at this hearing by the Claimant.

iii. The Claimant has not proven on the balance of probability that RD was biased or unfair in the actions he took investigating the matter, nor in the conclusions he reached.

iv. We accept that what RD found was a reasonable and sustainable result from the evidence that has been presented to us.

f. Ms Julie Etheridge deliberately delaying the internal investigation into the Claimant's complaint and, on 29 July 2020, cancelling a meeting about his appeal (2.2.6). The Claimant relies on a hypothetical comparator.

i. From the evidence presented it is clear that JE did not cancel a meeting about the Claimant's appeal. The formal appeal hearing was postponed and the informal meeting did continue on the day, but the Claimant did not attend.

ii. The Claimant did not challenge the explanation JE gave as to the delay in the process.

iii. The Claimant himself in his evidence does not allege what JE did was because of race. We accept the evidence of JE as to what she did and why.

162. For the treatment the Claimant has proven he has not demonstrated a difference in status or treatment on the basis of race. The Claimant has not raised a prima facie case of discrimination following an assessment of all the evidence, so the burden does not shift to the Respondent to show the reasons for the alleged discriminatory treatment and to satisfy the Tribunal that the protected characteristic played no part in those reasons.

163. Harassment related to race (Equality Act 2010 s. 26)

a. In October 2018, the Claimant's colleague, Mr Lee Spragg, punching him in the stomach, putting him in a headlock, tripping him up and invading his personal space (3.1.1):

i. We accept the evidence of LS about this matter as it is consistent with documents nearer the time and the content of the mediation.

ii. What LS admits he did we accept is unwanted conduct towards the Claimant.

iii. However, the Claimant has not proven on the balance of probability for what did happen, that it is related to race.

b. Being given an email, by Ms Donna Boughey with a purported record of a meeting called on 6 February 2019, which was not a correct record of the discussion. The letter commenced "Abdur has been late since he joined HMRC" and the Claimant disputes that this was discussed in the meeting (3.1.2):

i. We accept the evidence of DB on this matter. It is not in dispute that the Claimant was late, and this was being managed and that it was discussed at the meeting between him and DB.

ii. On the meeting note the only bit challenged by the Claimant in cross examination was the reference to him being late since he started. DB stood by it, and it is consistent with knowledge she would have had about the Claimant, having taken over his management in October 2017.

iii. The note clearly records a discussion about lateness and the Claimant has not evidenced any inference that it was race related. We do not find that the Claimant has proven what he alleges on the balance of probability.

c. On 13 December 2019, putting up a picture of a sticky pickle and written comments "don't get me started on the brown sauce" following a yammer posting of photos of BAME staff members who had attended a Google Digital Garage digital seminar which the Claimant and a colleague, who was also of an ethnic minority, had arranged (3.1.3):

i. It is not in dispute that the postings happened, nor what they say, nor that they followed the Claimant's google digital garage post.

ii. The Claimant has presented us evidence as to why he perceived the posts as unwanted conduct.

iii. MK has presented evidence as to why he did what he did when he did.

iv. It was not put to MK that he had manufactured the gift giving between him and the Portsmouth colleague to enable him to then be able to post a photo of pickle and then make a comment about

brown sauce after a post with BAME colleagues so that he could relate it to race.

v. MK's explanation as to why he did what he did when he did relates to facilitating staff engagement and using his liking of Stokes sauces and a gift he has been given as a vehicle for that. It does not relate to race.

vi. Having considered all the other circumstances of this matter we also do not find that it is reasonable for the conduct to have the effect as asserted by the Claimant.

d. Being given a letter by his manager, Ms Deniese Jackson, on 13 March 2020, which attached a record of a meeting held at a McDonald's which was not a correct record of the meeting (3.1.4):

i. The Claimant acknowledged in cross examination that he did only raise two amendments that he says the note required, being location and duration (page 196), and these were accommodated. It is difficult to see how this amounts to unwanted conduct as the notes are amended as the Claimant wants. There is also no evidence to suggest that the subsequent amendment to the notes, or the need for it, related to race.

e. Ms Gemma Wright emailing a message on 24 April 2020 to the office, mentioning the phrase "jungle drums" (3.1.5):

i. We note that the email from the Claimant dated 28 September 2020 (page 247) does ask "What does jungle drum mean?". The email itself does not say that the Claimant found the phrase offensive, nor that he thought it related to race.

ii. GW maintained her position in cross examination and confirmed in her oral evidence that the team that was sent the email in April 2020 was about 500 people and although it was potentially less than 7% of those that would be ethnic minorities, no one raised any concerns about her email at the time or subsequently, save for the Claimant's query in September 2020 as to what was meant by the use of the term.

iii. It is not in dispute that the phrase was used.

iv. The Claimant has presented us evidence as to why he perceived the phrase as unwanted conduct.

v. GW has presented evidence as to why she did what she did. GW's explanation as to why she did what she did was to reference

the communication of news that was probably already out. It does not relate to race.

vi. Having considered all the other circumstances of this matter we also do not find that it is reasonable for the conduct to have the effect as asserted by the Claimant.

164. 4. Victimisation (Equality Act 2010 s. 27)

165. The relevant asserted protected act to the allegations of victimisation is that in early February 2018, March 2018 and the middle of 2018, discussing and supporting Mr Osman Fadlalla with the possibility of Mr Fadlalla making a complaint of discrimination about the treatment he (Mr Fadlalla) believed he had suffered at the hands of the Respondent. Support involved collecting information on how to make a complaint and analysing guidance.

166. The other asserted protected act, of bringing his grievance about the incident in January 2020, cannot be relevant as it post-dates the alleged victimisation.

167. Based on the witness statements and oral evidence of the Claimant and OF it is clear that the discussing and supporting they describe did not amount to a protected act within the meaning of the Equality Act.

168. OF was not pursuing any Equality Act related complaints at that time.

169. With this finding it is not necessary for us to go on and consider if the alleged acts of victimisation happened and if so for what reason. However, we would observe in respect of each of the alleged things:

a. In the Spring of 2018, the Claimant's manager, Ms Donna Boughey, telling him not to get involved in Mr Fadlalla's business and that management would not view this kindly (4.2.1):

   i. We accept the evidence of DB on this matter, as the Claimant has not proven he was assisting OF with Equality Act issues, nor that DB knew of any such thing, so that her recall of what she says she communicated is consistent with that, and we accept it.

b. In early Winter 2018, Mr Jim Arkless, referring to the Claimant as "paki" in the open office. The Claimant alleges that this was in retaliation for the Claimant questioning the motives of Ms Donna Boughey in telling himself to distance himself from Mr Fadlalla (4.2.2):

   i. From the facts we have found we conclude that the Claimant has not proven on the balance of probability that JA said what the

Claimant alleges, and that instead the Claimant may have either misheard what he says JA said or misremembered the matter.

ii. As the Claimant has not proven what he alleges, there is no need to consider why JA did do it (for example to victimise the Claimant as alleged), it not having been found to have happened.

c. Ms Donna Boughey giving the Claimant a letter about lateness on 6 February 2019 (4.2.3):

i. We accept the evidence of DB on this matter. It is not in dispute that the Claimant was late, and this was being managed and that it was discussed at the meeting between him and DB.

ii. The Claimant has not proven he was assisting OF with Equality Act issues, nor that DB knew of any such thing, so that her recall of what she says she communicated about lateness and then recorded in her note, is consistent with that and we accept it.

170. With the findings we have made there is no need for us to go on to consider the time limit jurisdictional matters.

171. For all these reasons the unanimous judgment of the tribunal is that the Claimant's complaints of direct race discrimination, harassment related to race and victimisation, all fail and are dismissed.

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Employment Judge Gray
Date 19 May 2023

Judgment sent to the Parties on 02 June 2023

For the Tribunal Office