



EMPLOYMENT TRIBUNALS

Claimant: Mr V Ruskin

Respondent: Thames Valley Housing Association Ltd and Metropolitan Housing Trust Ltd

Heard at: London Central (by CVP) **On:** 18, 19, 20 & 21 April 2023

Before: Employment Judge H Grewal
Mr F Benson and Ms J Griffiths

Representation

Claimant: In person

Respondent: Ms C Jennings, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

- 1 The complaints of direct race discrimination are not well-founded; and
- 2 The complaints of failure to make reasonable adjustments are not well-founded.

REASONS

1 In a claim form presented on 27 April 2022 the Claimant complained of unfair dismissal, race and disability discrimination. Early Conciliation ("EC") commenced on

6 April 2022 and the EC certificate was granted on 26 April 2022. The Claimant withdrew his unfair dismissal claim and it was dismissed on 24 October 2022.

The Issues

2 The issues to be determined were clarified and agreed at the preliminary hearing on 21 October 2022 and confirmed at the start of this hearing. They were as follows.

Direct race discrimination

2.1 The Claimant describes himself as being of Russian ethnic origin. Whether the Respondent discriminated against him by:

- (a) Dismissing him;
- (b) Not properly investigating his post-dismissal complaint of discrimination.

Failure to make reasonable adjustments

2.2 Whether the Claimant was disabled at the material time by reason of (i) HIV infection and/or (ii) Chronic depression. The Respondent conceded that he was disabled by reason of HIV infection.

2.3 If he was, whether the Respondent knew, or could reasonably, have been expected to know that he was disabled;

2.4 Whether the Respondent applied the following provision, criteria or practices ("PCPs"):

- (a) Required the Claimant to work in a stressful environment;
- (b) Required the Claimant to work in the office every day.

2.5 If it did, whether the PCPs put the Claimant at a substantial disadvantage compared with someone who did not have his disability;

2.6 If it did, whether the Respondent knew or could reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage;

2.7 if so, whether the Respondent took such steps as it was reasonable to have to take to avoid the disadvantage.

The Law

3 Section 13(1) of the Equality Act 2010 ("EA 2010") provides,

"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".

Race is a protected characteristics (section 4 EA 2010). On a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case (section 23(1) EA 2010).

4 Section 39(2) EA 2010 provides,

“An employer (A) must not discriminate against an employee of A’s (B) –

...

(c) by dismissing B;

(d) by subjecting B to any other detriment.”

5 Section 136 EA 2010 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 unless A shows that A did not contravene the provision.

6 The guidance given by the Court of Appeal in **Igen Ltd v Wong [2005] IRLR 258** as to the application of section 136 (which was approved by the Supreme Court in **Hewage v Grampian Health Board [2012] UKSC 37**) is as follows,

“(1) ... it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful... These are referred to below as “such facts.”

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has provided such facts that it is unusual to find direct evidence of sex discrimination. In some cases the discrimination will not be an intention but merely based on the assumption that ‘he or she would not have fitted in’.

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to bear in mind the word ‘could’ [in section 136] At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage the tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

...

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining such facts ... This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since “no discrimination whatsoever” is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has provided an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the

balance of probabilities that sex was not the ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of facts.”

7 In **Madarassy v Nomura International plc [2007] IRLR 247** Mummery LJ stated,

“The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant 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 unlawful act of discrimination.

“Could conclude” ... must mean that “a reasonable tribunal could properly conclude” from all the evidence before it.”

8 In **The Law Society v Bahl [2003] IRLR 640** Elias J restated the principles to be applied in establishing direct discrimination as follows,

“First, the onus lies on the claimant to establish discrimination in accordance with the normal standard of proof.

Second, the discrimination need not be conscious; sometimes a person may discriminate on these grounds as a result of inbuilt and unrecognised prejudice of which he or she is unaware.

Third, the discriminatory reason for the conduct need not be the sole or even the principal reason for the discrimination; it is enough that it is a contributing cause in the sense of a ‘significant influence’ ...

Fourth, in determining whether there has been direct discrimination, it is necessary in all save the most obvious cases for the tribunal to discover what was in the mind of the alleged discriminator. Since there will generally be no direct evidence on this point, the tribunal will have to make appropriate inferences from the primary facts which it finds ...

Fifth, in deciding whether there is discrimination, the tribunal must consider the totality of the facts ... Where there is a finding of less favourable treatment, a tribunal may infer that discrimination was on the proscribed grounds if there is no explanation for the treatment or if the explanation proffered is rejected ...

Sixth, it is clear from the structure of the statutory provisions that the need to identify a detriment is in addition to finding less favourable treatment on the prohibited ground ... The test for establishing detriment is in general easily met. It was defined by Lord Hope in the Shamoon case as follows ... Is the treatment of such a kind that a reasonable worker would or might take the view that in all the

circumstances it was to his detriment? An unjustified sense of grievance cannot amount to “detriment”.

9 Section 6(1) of the Equality Act 2010 (“EA 2010”) provides,

*“A person (P) has a disability if –
(a) P has a physical or mental impairment, and
(b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.”*

Schedule 1 para 2 EA 2010 provides,

*“(1) The effect of an impairment is long-term if –
(a) It has lasted at least for 12 months,
(b) It is likely to last for at least 12 months, or
(c) It is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur”*

10 Section 20(3) EA 2010 provides that there,

“is a requirement, where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with person who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.”

The duty to make reasonable adjustments does not arise if A does not know and could not reasonably be expected to know that the disabled person has a disability and is likely to be placed at the disadvantage referred to in section 20(3) – **EA 2010 Schedule 8 para 20**.

The Evidence

11 The Claimant gave evidence in support of his claim. The following witnesses gave evidence on behalf of the Respondent (their positions given in brackets are those that they held at the relevant time) – Emma Briggs (Director of Procurement), Ricky Betteridge (Supplier Relationship and Procurement Support Manager), Manjit Gupta (Head of Technology Business Systems), Damien Martin (Director of Financial Services), Joanne Cripp (Workspace Services Business Support Manager) and Dominic Bryant (Head of Funding and Impact). The bundle of documents in this case comprised almost 600 pages. Having considered all the oral and documentary evidence the Tribunal made the following findings of fact.

Findings of fact

12 Metropolitan Thames Valley Housing (“MTVH”) is the group trading name for Thames Valley Housing Association Ltd and Metropolitan Housing Trust Ltd. Both organisations are community benefit societies and are registered and regulated by the Financial Conduct Authority and the Regulator of Social Housing. MVTH provides affordable housing for people living in London, the South East, East Midlands and

East of England. It offers a range of care and support services. Its specialist areas include older people, mental health and transitional services which provide intensive support to marginalised or vulnerable people. MTVH's annual training, which is mandatory for all staff, included equality and diversity training and discrimination awareness.

13 The Respondent has a Procurement Team of about twelve employees and headed by Emma Briggs. It offers expertise, support and guidance to all of the Respondent's employees who are looking to procure goods and services from the external contractors/suppliers. It ensures that the Respondent complies with its regulatory and compliance obligations as set out in the Public Contracts Regulations 2015.

14 In the autumn of 2021 the Respondent started the process to recruit a Procurement Support Manager. The role profile stated that the overall responsibility of the role was to manage the day to day transactional operations of the Procurement Team. One of the key responsibilities for the role was *"to support the procurement and purchasing function in the implementation of procurement initiatives and new contractual arrangements and to develop and agree standard policies and procedures."*

15 The Claimant describes himself as being of Russian ethnic origin. He applied for the role of Procurement Support Manager in September 2021. Mr Betteridge conducted the initial interviews. He thought that the Claimant was a strong candidate as he had a lot of experience. The Respondent had recently had an audit and there were a lot of action points which needed to be driven forward, and he thought the Claimant was the right person to do that. Ms Briggs conducted the second stage interviews and she also thought that the Claimant was a strong candidate. According to the information provided by Claimant, he had worked for over 20 years at the London Borough of Lambeth in senior procurement roles, as a Commercial Manager in large multi-national companies in the private sector and was a professional procurement trainer, university lecturer and CIPS (Chartered Institute of Procurement and Supply) approved examiner. He was not in employment at that time. In his interview with Mr Betteridge the Claimant referred to the languages that he spoke and said that he was part Ukrainian and part Russian. Ms Briggs had no knowledge of the Claimant's nationality. They decided to offer him the role.

16 Prior to him being offered the role the Claimant had to fill in some questionnaires. In one he was asked to list his previous three years' employment history. The only entry that he put in was that he had been employed by Danang University from February 2019 to August 2020 and the reason for leaving had been Covid lockdown. The Claimant's evidence was that at that time he was working online as a trainer/consultant for private clients. He was informed on one of the forms that if he had any condition that required additional support, *"as a confident disability employer"* the Respondent would like to ensure that any additional support was available from his first day of employment. He was asked whether he would like to discuss any support that he needed and the Claimant responded "no". The Claimant also had to produce his passport to show that he had the right to work. His passport showed that he was a British national who had been born in Moscow. There was no evidence that the passport had been shown to his managers.

17 The Claimant was offered the role on 26 October 2021. After the Claimant had

been offered the role, the recruitment agency informed the Respondent that he was not available to start immediately as he was taking a three month sabbatical. As the Respondent was keen to engage him, it agreed that he could start work on 17 January 2022.

18 The Claimant commenced employment with the Respondent on 17 January 2022. Clause 3.2 of his contract of employment stated,

“Confirmation of your employment is subject to satisfactory completion of a probationary which is normally reviewed at 3 months and 6 months from your commencement of employment. Although the Probationary period is generally 6 months, this may be extended in certain circumstances.”

Clause 13 stated that during his probationary period his employment could be terminated with one week’s notice.

19 The start of the Claimant’s employment coincided with the end of the Government’s work from home guidance which had been put in place because of the Coronavirus pandemic. The Respondent initially asked all employees to work from the office at least two days a week but from the end of January the expectation was that that employees would spend more of their working week in the office than at home. The Claimant came into the office most days because he preferred to work in the office.

20 At the start of his employment, Mr Betteridge told the Claimant that the actions that the Respondent needed to address the audit were his key tasks and he should focus on them in the next few months. The Claimant was asked to produce a workplan setting out what he intended to do and by when. Mr Betteridge and the Claimant worked in the same office. They had regular one-to-one meetings and many ad hoc meetings. Some of the meetings were on Teams, other were face-to-face. At the time there were twelve persons working in the Procurement Team and they had regular meetings. The team held monthly Category Performance Reviews (“CPRs”) and Team Meetings and weekly Toolbox Talks (“TBTs”) for short training sessions. In the meetings the team discussed different ideas, questioned each other and expressed their views on what others said.

21 On 7 February the Claimant asked to have a meeting with Mr Betteridge and Ms Briggs to discuss his workplan. He said that he wanted *“a long and comfortable online discussion about the current needs, issues and items that need work.”* The meeting took place that afternoon. At the meeting Ms Briggs and Mr Betteridge went through an exhaustive list of what they needed the Claimant to focus on over the next few months, and highlighted as a priority the urgent things that needed to be addressed as a result of the audit. At the end of the meeting they agreed that the Claimant would present his overall action plan to the wider team at the upcoming “Category/Strategy/Planning Presentations” on 23 February and that he would present a “taster” of what was to come to the CPR meeting on 18 February to help the team understand what was coming and what would be required of them. It is important to emphasise that the Claimant was not expected to deal with all the issues by those dates, but simply to present a plan as to when and how he was going to deal with the various issues (timescales for actions that he would take). Following the meeting Ms Briggs sent the Claimant an email setting out very clearly the tasks on which he had to focus and which had to be included in the work plan.

22 Despite having been told clearly the tasks on which he needed to focus over the next few weeks, three days later the Claimant sent Ms Briggs an email about matters that were unrelated to those tasks and suggested various changes to the way the Respondent did things. Ms Briggs explained to him why they did it the way they did. She said,

“My view is always about the risk our decisions pose...”

So I’m happy for you to take a different approach. If you are making changes though, the reasons and benefits need to be clear and then [understood] by those the changes affect.

So if you can guarantee that, then crack on!!

23 The Claimant was supposed to send a Gantt chart setting out his work plan (spreadsheet setting out the tasks which would be done and the timescales in which it was envisaged they would be done) to Mr Betteridge on 15 February 2022 but failed to do so.

24 On 18 February the team had its monthly CPR meeting. The Claimant had not prepared and was not able to present to the meeting his work plan. The meeting was being led by Steve Canzian, Category Specialist (Reporting and Utilities). Prior to the meeting Ms Briggs had sent Mr Canzian a statement from the Respondent’s Head of Sustainability about fluctuating utility prices and the Respondent’s approach to it. The procurement team needed to be aware of the Respondent’s approach to it. At the meeting Mr Canzian read out the statement. It was headed “Utilities – our current plan based on world events” and said,

“The markets have been yo-yoing up and down based on the Russia/Ukraine standoff. Longer range sentiment is that prices should be calming down to more realistic prices (albeit higher than we purchased for historically), but they are buoyed by standoff.

While MHTV could get better prices on a 24-36 month contract. The business seems to be risk averse and not happy to ignore S20 requirements. Which only leaves us with the 12 month option. Once upon a time I would have said this was the wrong decision, but as the Russian/Ukraine situation hopefully de-escalates and the Nord Stream 2 pipeline opens, we should see prices fall back within 12 months, barring any other catastrophe obviously. The board has also previously signed off a 12 month contract.

Hopefully the Russians will continue to withdraw troops, the Germans will sign off the new pipeline and we’ll be in a better place next year to really come at the markets with a S20 dispensation as planned.”

25 After the meeting the Claimant sent Mr Canzian an email with the subject “Russia” in which he said,

“Can I please ask you to refrain from political messaging in the professional setting?”

Did you consider how this would have made me feel today.”

He forwarded that to Ms Briggs and said in an email to her,

“I think it’s only right to point out that I found Steven’s political commentary very upsetting. I feel it was rather tactless, considering my nationality. My relationship with Russia is messy and I don’t support a lot of things happening there but in this instance, both myself, all my Russian and Ukrainian friends (I am half-Ukrainian, by the way) find the American stance unbearable. It upsets and scares a lot of people. Americans are lying, not the first time, and the BBC are yupping in support. The situation is clear to the extreme: it’s outrageous to tell a sovereign country what they can and cannot do in their home. Imagine if Russia or China starts dictating to the US that they should not have their military bases near Mexican border, never mind around the world!

I’d like to ask you if it would be appropriate to ask the team members to be more tactful in such circumstances.”

26 Although Ms Briggs considered that it had been proper for the Respondent to refer to the situation in Ukraine and its effect on utility prices, she recognised that it had upset the Claimant. She responded within minutes that she was “*extremely sorry*” that he had been upset by the commentary. She that the comments were not Mr Canzian’s comments and continued,

“The content came from a series of emails that I summarised, then copied and pasted and I did so without regard to how they might come across and for that I ask you to accept my apologies. It was ill-thought through and the political sensitivity was massively over-looked on my part.

I will however ensure the wider Finance team (including Procurement) is made aware of how this needs to handled – with more humility, sensitivity an awareness of others political views to ours.

I hope that’s OK Victor and goes some way to making amends.”

The Claimant responded,

“I appreciate your comments. We are good.”

27 On 21 February the Claimant sent Ms Briggs an email that he was hoping to initiate a process of them setting up a referencing system on the contract register that would provide a better analysis of contract and reporting. Ms Briggs was concerned that he was again proposing changes without showing an analysis of the benefits of the change weighed against the risk or cost (in terms of time and resources) of implementing them and that he was not focusing on the tasks on which he had been asked to focus. She conveyed those concerns to him an email that she sent him. She said,

“I certainly like the sound of this... what would you perceive the benefits to be (measurable where possible)?

Would there be an impact to anyone outside the procurement team (positive

or negative) and would it require training/guidance docs for anyone too?

I'm asking questions to understand how big a job this would be to implement versus the potential benefits.

It might help if I could see from you a plan of activities that you are currently working on (including those with deadlines) with your view on what you will plan to work on and how you will prioritise in the new financial year ... the stuff we've already discussed and that I've copied below for reference, but that can absolutely be fine tweaked and amended to accommodate better/newer ideas".

She then copied what she had set out in her email of 7 February and added to that the Contract Register Reference system.

28 At the "Category/Strategy Planning Presentations" meeting on 23 February all the Category Managers presented overviews of their Category plans for the following year. They used power point presentations and other documents to present their plans. When it came to the Claimant's turn to present his plan, he had not prepared anything and simply said that there was a plan in his head which he would discuss with the team. He did not have any power point presentations or any documents that set out his plans. Ms Briggs and Mr Betteridge agreed with the Claimant that they would set another date for his presentation.

29 In an email on 24 February Ms Briggs explained in very clear terms to the Claimant what they expected of him in terms of the plan. She said,

"So while you were not quite ready for yesterday, we are now booked back in for you, Cormac and Adam so I am looking forward to seeing your plan. It will show Ricky and I where you think you can take the team, what impact you and the team will have and what improvements you will make. Going through all the information we've already shared, and all the ideas you've come up with, will help you prioritise and decide on the areas that will have the biggest impact.

Just to be really clear, I'm expecting you to present using Power Point. I'd like to see the overarching goal for procurement support, and then the projects that will deliver against that goal and how you will measure progress and benefits.

I've sent you some guidance already in terms of where I think you should focus, so it's over to you to deliver. Ricky and I are really looking for you to own this once it's signed off and deliver progress updates each month at CPR."

30 On 24 February 2022 Russia invaded Ukraine. That was an escalation of a conflict that had been brewing for some time. For months before that Russian troops had been concentrating around its borders with Ukraine.

31 On 25 February Mr Betteridge had a one-to-one meeting with the Claimant where they discussed the plan that he was to produce. Following the meeting Mr Betteridge sent the Claimant an email that he and Ms Briggs would meet with him on Monday to

review the objectives that would form the basis of the rest of his probation period.

32 On 28 February the Claimant asked Ms Briggs whether she could send him her notes from meeting on 23 February as that would assist him to draft his work plan. Ms Briggs responded that the notes that she had sent to the others would not necessarily help him as they were very specific to what they had presented. She suggested, however, that he use the same format and the list of areas that she had summarised for him on 7 February 2022. The format she suggested was vision, focus areas, objective, projects and KPIs. Under “vision” she said that he should set out his purpose, aspirations and intentions. She suggested that the focus areas should be the one she had set out in her email of 7 February. Under “objectives” she said that he would need to explore in more detail the specific things he would need to do to deliver against the focus areas and he should set them out starting with a verb. He should then start to create projects which would be more specific and in more details to help him deliver the objectives (two per objective) and the KPIs would be the measurable benefits. She concluded by saying,

“Quite simply, we’re asking you to pull together a plan of the activities you and your team will undertake from 1st April onwards ... the initial ideas I sent you were just my view of the world, and you and your team will be able to add so much more colour and vision to the workload and the opportunities it presents, so feel free to be creative and dream big!”

33 On 9 March the procurement team held a Tool Box Talk. The Claimant had invited someone from the Governance team to attend the meeting. The Claimant said that Tanaka Mombe and Louise Akinola would do the presentation and facilitate the meeting. They had barely started when the Claimant jumped in and took over and spoke over them. He had not prepared well for the meeting and it was not well structured and those attending the meeting were confused. When they asked him questions or disagreed with what he said, he was defensive, rude and aggressive. – He said that he had done what he was suggesting at other large companies, implying that he knew better than the rest of the team. After the meeting Mr Betteridge asked to speak to the Claimant to try to understand what had happened and to check whether he was alright. Mr Betteridge was aware that the escalating conflict in Ukraine was weighing on his mind as the Claimant had discussed it with him. Mr Betteridge had offered him his support including time off work if he wanted, which the Claimant had declined. The Claimant declined his offer to talk to him after the meeting and said that he needed to gather his thoughts.

34 Ms Briggs only attended the meeting for a few minutes. After the meeting various people who had attended the meeting sent Ms Briggs emails about it. One of them said that she had called the external person attending to apologise after the meeting. She said that the Claimant had been “rude” and had not “read the room at all.” She also said that Mr Betteridge had not reined in the Claimant and she did not know whether that had been deliberate or if the Claimant was wearing him down a bit. Others who had attended the meeting approached Ms Briggs personally to give her feedback. They said that the Claimant had been rude, had spoken over other people and would not let others speak. They said that they had been shocked by his behaviour which had been unacceptable. One person said that she had tried to talk to the Claimant after the meeting because she had felt that “he was not in a good place.”

35 Ms Briggs sent an email to the Claimant that afternoon. She said,

"It has been brought to my attention that this morning's Tool Box Talk didn't go down very well and this was caused by your approach to the meeting and its facilitation.

I'd like to hear your thoughts on what caused several team members to feedback to me on your poor management of the meeting and seemingly confrontational manner. It was mentioned too, that you did this in front of an external colleague and this is not acceptable.

I must say this isn't the first time that concerns have been raised about your comportment, but I have given you the doubt given the current external situation that I realise is impacting on you."

The last sentence was a reference to the conflict in Ukraine.

36 The Claimant responded a few minutes later.

"It's not my day today and I apologise for this. I was asking Louise and Tanaka to take the lead but then jumped in to explain my background thoughts.

I think there's a lesson for me to be learnt but I also found some strong resistance and negative comments coming my way which was difficult to deal with. I am genuinely trying to do my best under a very difficult set of circumstances. I was trying to arrange a session when everyone would be able to contribute, but this hasn't worked well. I will take your advice on how to conduct these sessions in the future.

Can we go through the specific concerns, especially that you have referred to the previous times. It's only fair for me to have robust feedback so that I can amend my behaviour as appropriate. As for the external factors, they are there. It does feel at the moment that the whole world is my enemy, there is too much aggression and it's extremely difficult to deal with. I can only try my best."

37 Ms Briggs and Mr Betteridge held a meeting with the Claimant on 10 March 2022. Mr Betteridge led the meeting and asked the Claimant to explain why he had taken over the meeting and been rude and aggressive to his colleagues. The Claimant said that he had taken over because Tanaka and Louise were slow in setting up and starting. He said that the team had been aggressive to him and that it was only human to respond in the same way and that he had been defensive because he had felt that he was under attack. When he was how others had been aggressive and why he had felt that he was under attack, he said that everyone had been abrupt and said "no" to his ideas, that one person had put her hand up saying "no" to him and someone else had "annoyed" him by not agreeing with him and accepting a suggestion that he had made. Ms Briggs asked the Claimant whether he thought that if someone was being rude to him, responding in same way was a good idea. The Claimant said he did. She said that she thought that it would be better to take a softer approach, provide feedback later and avoid escalating the matter. She also said that he needed to think less about himself and more about the perceptions of others. The Claimant did not take any responsibility for his behaviour or accept that he could or

should have behaved differently. Ms Briggs said that the purpose of a probationary period was to give both parties an opportunity to explore whether the role was the right fit for them. She reminded him that he had still not presented his work plan to the team. The Claimant said he felt overwhelmed and did not know quite where to start with all the information coming his way. Mr Betteridge and Ms Briggs said that if he had presented his plan to the team there would have been clarity about what the priorities were. The Claimant said that he felt that they were being unfair and that he was “flabbergasted” by the feedback they were giving him. Mr Betteridge asked whether there was anything else they could do to support him. The Claimant said that he thought that working from home and being away from the team would help. They asked the Claimant to put together a plan about how he would improve his behaviour and said that working from home could be included in that. He was asked to put together the plan because they wanted him to take responsibility for his behaviour and acknowledge that he needed to change it. He was asked to do that by 18 March. During the meeting the Claimant looked at his telephone and said that he had had a missed call from his “medical consultant” and that he had contacted him to get antidepressants. Ms Briggs and Mr Betteridge did not ask him any more about that.

38 Later on 10 March, in an exchange about work matters with the person from Governance who had attended the meeting, the Claimant said,

“And sorry about the meeting. I was under a lot of mental pressure because of the war in Ukraine and feeling strongly affected by it. I should have prepared the meeting better. This is not how we normally conduct business in procurement and I apologise that you had to witness it.”

Her response was that there was no need to apologise.

39 Between 10 and 21 March the Claimant worked from home on eight days.

40 Ms Briggs sent the Claimant an invitation to a meeting on 18 March 2022 to discuss the behaviour action plan. She set out clearly what was expected to be included in the plan. She said,

“We need for you to bring specific examples of things you will change or improve to integrate into our team and facilitate driving for high performance in a commercial environment.

As I mentioned nothing is off the table and we will consider any suggestions you may have. We do want to support you, however you must recognise this is entirely down to changes you must make.”

41 The Claimant produced something on 18 March but it was not what he had been asked to produce. Mr Betteridge told him what he needed to do and asked him to redo it and to bring it to a monthly one-to-one meeting that they were due to have on 21 March.

42 Prior to the meeting on 21 March the Claimant sent Mr Betteridge an action plan. On the left hand side of the document he set out certain actions that he would take, such as, “engage positively with the team on different projects”, “build trust and confidence, improve my tone and body language”, “better understand how to handle challenging situations, focus on positive collaborative statements”. On the right hand

side he set out “measurements”, but they were not ways of measuring what his actions had achieved. One of the actions that he set out was,

“Take time to heal (working from home in April unless required to be in the office) focusing on the area of work that requires document creation. Utilise my strengths to create document suites.”

In a proforma document for the monthly one-to-one meeting, the Claimant was asked to list any concerns that he had. He listed the following,

“Issues were raised about my behaviour during a toolbox talks meeting. I’ve learnt a lesson and have now created an action plan to address this.

Experience a high level of stress and anxiety due to multiple internal and external factors.

A number of repetitive tasks take time and effort that can be spent elsewhere. I feel managed by a number of people simultaneously.”

The Claimant had still not produced the work plan that he had been asked to produce. In respect of the matters that it was expected to address he indicated the limited work that he had done in respect of a few of them.

43 At the meeting on 21 March the Claimant was angry and, to use Mr Betteridge’s words, “*ranted at him.*” He said that he could not understand why they were even having the discussion about his behaviour as he could not see that he had done anything wrong. He said that it had been an extraordinary position and as a human he had displayed a natural and human response. It was childish and humiliating to ask him to prepare a behaviour action plan. He felt that he was being treated like a child and had never experienced anything like that before. He felt that he had been attacked by Ms Briggs, she had been rude and offensive, it had felt like “a punch in the face”. He said that he was thinking about taking a grievance. Mr Betteridge, who had struggled to get a word in during the Claimant’s rant, told him where he could find the grievance policy if he wanted to go down that route. The Claimant said that he was stressed and he had not been allowed to take time off. Mr Betteridge reminded him that he had offered him time off he wanted and he had declined it. The Claimant said that he could not afford to take time off without pay. Mr Betteridge asked the Claimant whether he was happy at MHTV. The Claimant gave a non-committal answer. Mr Betteridge asked him whether he still wanted to work at MHTV. The Claimant said that he had given up his own company. He said that he would give it a few months to see how it went.

44 After the meeting Mr Betteridge sent Ms Briggs an email in which he set out how the meeting had gone. He also raised with Ms Briggs and Natalia Augustin in HR his concerns about the Claimant’s continued employment. The purpose of the probationary period was to assess the Claimant’s performance. He thought that the Claimant was capable and intelligent and had good experience. However, he was concerned about the Claimant’s attitude and manner towards his managers and colleagues and about that impacting the team and the objectives which had to be met as a result of the audit. Some members of the team had complained about the Claimant’s manner and behaviour and despite him trying to talk to the Claimant to try to help him to improve, the Claimant was not open to any constructive feedback. He

was not assured that the Claimant was willing to try to change or that giving him more time would lead to any improvement. His view was that the Claimant's employment should be terminated. Ms Bridge agreed with his view and HR instructed him to prepare a probation review report with his recommendations.

45 Mr Betteridge prepared a report on 22 March 2022. The following is a summary of his report. During the Claimant's probationary period his attitude and behaviour had been called into question by the team and himself. He often gave the impression that he was superior to others and that their ideas were not as good and as valid as his. He was often reluctant to listen to the comments, suggestions or opinions of others. The Claimant had decided to amend many existing processes without appropriate consultation with the team or the originator of the document and, hence without understanding the history or reasoning of why they had been implemented. He had failed on two occasions to attend important meetings with him and had failed to provide a specific presentation which he had agreed to do and which had been his chance to present his initial plan and priorities to the procurement team. He had been told which three items were a priority for him to complete during the probation period. He had part completed one and was in the process of doing the others but had not been able to provide a clear and concise plan of where he was in the process of each activity. More recently there had been an incident where the Claimant had been very abrupt and dismissive of team members during a meeting. Some members of the team had given negative feedback about his conduct at the meeting. When questioned about it, the Claimant had said that his behaviours had been a direct response to the way the team had been treating him, i.e. they had been rude and abrupt to him. That was simply not true. He had been present at the meeting. He then set out details of the emails exchanged between Ms Briggs and the Claimant on 9 March. The "external factors" that they both referred to related to the situation with Russia/Ukraine. The Claimant had previously said that he was part Russian and part-Ukrainian and the previous few weeks had been a constant worry to him. He had offered him support and time off if he wanted it, but he had wanted to carry on working. He then set out what had happened at the meetings on 10 and 21 March. He said that his own work and state of mind had been affected by the Claimant's constant poor behaviour. He concluded that the Claimant was "*disruptive and detrimental*" to what they were trying to achieve and that he refused to acknowledge that improvements were required. He recommended that his employment be terminated.

46 Mr Betteridge sent his report to Ms Briggs and HR on 23 March. Ms Briggs responded that she completely agreed with his recommendation. HR advised them that the employee needed to be given three working day' notice of the hearing. That was incorrect. The Respondent's Performance and Capability Procedure states that the employee should be given five working days' notice.

47 On 25 March the Claimant called Mr Betteridge and said that he had to go for a breast cancer screening on 28 March and sent him a screenshot on his telephone of the invitation. If there was any reference in that screenshot to the Claimant having HIV Mr Betteridge did not see it. The Claimant was reluctant to go to the cancer screening and Mr Betteridge encouraged him to attend.

48 On 25 March Ms Briggs invited the Claimant to a probation review meeting to be chaired by her on 30 March 2022. She also sent him a copy of the Respondent's Performance and Capability Procedure and Mr Betteridge's probation review report.

She advised him that at the meeting he would have the opportunity to respond to the concerns raised and warned him that it could potentially lead to the termination of his employment. He was advised of his right to be accompanied.

49 The Claimant responded to that by saying that it was “*extremely adversarial*” and he did not deserve to be treated like that, especially after all the effort that he had made to remedy the situation. It was clear to him that she had already made up her mind. He suggested that the best way forward was for him to resign the following week and for them to provide him “*reasonable references*.” He concluded,

“I am happy to join a long list of Russians who were victimised and have lost their jobs recently through no fault of their own. It’s very clear that you have completely disregarded the trauma the situation has caused me. That’s fine, let’s just part on civilised terms.”

Ms Briggs responded that a decision had not already been made and the meeting was to discuss what his line manager had said and for him to put forward his version of events. She said that there was no reason for him to resign in haste. The Claimant asked whether they were prepared to let him go with agreed clean references. Ms Briggs responded on 28 March that if he wished to resign he should do so by emailing her and Mr Betteridge and advised him of the address he would need to email if he wanted a reference. The Claimant then sent Ms Briggs an email that he had changed his mind and would instead be submitting a grievance.

50 On the same morning the Claimant sent the whole procurement team an email. He said that he felt that their behaviour, including that of some of the managers, towards him had changed since the start of the Ukrainian war. He said that he had been seriously upset and asked the rhetorical question, “*How is the political situation my fault?*” He sent then a link to a video and asked them to watch it and to,

“understand that discrimination of Russians, direct or indirect, legal or illegal, is totally unacceptable.”

Some of the members of the team were upset and offended to receive that email and spoke to Ms Briggs about it. Ms Briggs instructed the team not to click on the link. She did not know what it would contain.

51 On 28 March the Claimant submitted a formal grievance and asked for that to be considered before, or together with, the probationary review meeting. He said at the beginning of the grievance that “*the situation*” had started with the Ukrainian war and that the behaviour of some members of the team had changed towards him “*as a Russian*”. It had culminated in a tool box talk meeting where he felt that at least three of his colleagues had been “*abrupt and negative*” towards his suggestions without a reason. He said after that Ms Briggs had invited him to “*an informal disciplinary hearing*.” She had demanded that he come up with an action plan on how his behaviour would change. He also complained about Mr Betteridge and his reaction to his action plan. He said that despite his producing a detailed action plan he had received a letter where his dismissal was recommended. A large section in the middle of the grievance dealt with what an experienced procurement professional he was and all the things that were wrong in the procurement team. Some of the things he said were,

“I have one of the highest calibres of expertise in the industry, being MCIPS, having more than 30 years of operational and strategic experience, working as a procurement trainer and an examiner. I was always very respected by my colleagues in the past and have taught a number of procurement professionals who are now working as Procurement Directors in both the private and public sector.”

“I am dismayed that the very basics of public procurement completely escapes the Head of Procurement at MTVH. I feel Emma does not have sufficient skills to do the job and she is continuously brainstorming with the team in order to find strategic solutions from them, rather than leading on it.”

He also said the current political situation had made him feel really vulnerable and upset. He had requested working from home at this difficult time. He said that he had *“a formal disability under the DDA and failing to make reasonable adjustments breaches the law.”* He said that his request to work from home had simply been ignored.

52 The Respondent’s Grievance Policy Guidance states that if a grievance is raised during a disciplinary process, both processes will run at the same time. The Respondent can decide to temporarily pause the disciplinary process while they deal with the grievance process. It states,

“This will be decided on based on each case individually and will be by exception.” [sic]

53 On 29 March the Claimant was invited to the probation review meeting which had been rescheduled to 31 March 2022. He was advised that the meeting would be conducted by Manjit Gupta, Head of Business Systems. In advance of the meeting, on 30 March the Claimant sent Mr Gupta various documents, which he said included new policies, processes and templates that he had created in the past two months. The presentation of his work plan that the Claimant had been supposed to do on 23 February had been rescheduled to 31 March. As the Claimant was to attend the probationary review meeting on that day, Ms Briggs postponed it.

54 The probation review meeting took place on 31 March 2022. It was conducted by Mr Gupta and he was advised by Natalia Augustin in HR. At the outset of the meeting the Claimant said that he had not been given five days’ notice as required under the Procedure. However, he did not ask for the meeting to be adjourned. He also said that there was no issue about his performance and that it was discrimination against him from management as a Russian. In a discussion about the Tool Box meeting on 9 March the Claimant said that one of his colleagues had said that there was nothing wrong with the waiver process. Mr Gupta asked him if a colleague told him that why would he not listen to it. The Claimant responded,

“Well I just said what they are saying is not true and I’m right about it, I got agitated because it’s not professional when my colleagues act unprofessionally then they defend the processes. I think I have a right to act as human, that’s the only situation when it happened actually. I was under a lot of external pressure, I was depressed and spoke to management about it and that it’s taken a toll on me, management completely dismissed it and Emma has come back to me with offensive comments that I have to think

about others and not just myself, that is when the situation started.”

At the meeting they went through Mr Betteridge’s probation review report and the Claimant provided his comments on it. At the end of the meeting the Claimant was advised that he would be notified of the decision in writing.

55 Having considered the matter Mr Gupta’s view was that the Claimant had provided no evidence to show what Mr Betteridge had said in his report was incorrect and had not provided any satisfactory explanation of why he was not working collaboratively with colleagues, failing to prepare for and attend meetings and to follow simple management instructions. The Claimant seemed to refuse to accept that he had behaved inappropriately and had refused to take any responsibility for his actions. There was no evidence to support the Claimant’s assertion that the attitude of management had changed towards him following the Russia/Ukraine conflict. He was satisfied on the evidence before him that the Claimant had behaved as stated by Mr Betteridge in his report and that Mr Betteridge’s concerns were justified and valid.

56 Mr Gupta sent the Claimant his outcome letter on 1 April 2022. He said that at the meeting he had discussed with the Claimant the Respondent’s concerns about his suitability in the role of Procurement support Manager which had been:

- Unprofessional attitude and behaviour towards his colleagues and manager;
- Working on and changing existing processes without discussing with your colleagues and manager;
- Not attending important meetings without providing a suitable explanation;
- Not completing priority items allocated to you;
- Being dismissive of other colleagues’ input in a meeting.

He said that at the meeting the Claimant’s explanation had been:

- He was under a lot of pressure sine the Russia/Ukraine conflict;
- He had expressed concern that there was a concerted effort in the UK to dismiss all Russian employees;
- His unprofessional demeanour towards his colleagues had been due to their negative reactions to his suggestion;
- The director of procurement’s attitude towards him had changed since the Russia/Ukraine conflict;
- He was a highly qualified procurement professional and his knowledge should not be questioned.

Mr Gupta said,

“Having considered all the information you presented and the discussion during the meeting, I have come to the decision that you have not met the expectations of the role during your employment. You have therefore not passed your probationary period and your contract with be terminated with immediate effect.”

The Claimant was paid one week’s pay in lieu of notice.

57 Joanne Cripp, Workspace Services Support Manager, investigated the Claimant’s grievance. She met with the Claimant on 6 April 2022. The Claimant said at the start of that meeting that he wanted to make three main points. They were,

“1 I was discriminated against by management and my colleagues treated me badly because of my nationality, that’s because of external factors... I was born in the Soviet Union in Russia. I left Russia and haven’t been back in 20 years, but I still feel my colleagues were punishing me because of the war...”

2 My disability – I had disclosed my disability status which is confidential but I disclosed it to management, they are fully aware that I am protected under disability discrimination act...

3 I was unfairly dismissed.”

The Claimant was asked whether he had disclosed his disability when he had applied for the job and he said that he had not because,

“this is a type of disability that is stigmatic and I don’t feel like shouting about it”

He was asked at what point he had told his managers about it, and he replied that it was in February and,

“I needed to go to an appointment and I told Ricky about and it’s to do with my diagnosis.”

58 On 7 April the Claimant requested a review of the decision to dismiss him. He said that it had not been demonstrated that there had been a failure by him to meet reasonable targets and his conduct had been affected by exceptional or mitigating circumstances. Additionally he had demonstrated that there had been only one regular review meeting and that insufficient support had been provided.

59 In the course of the grievance investigation Ms Cripp interviewed Sandra James (from Governance who had attended to Tool Box Talk on 9 March), Tanaka Mombe (Category Specialist in the Procurement Team), Mr Betteridge and Ms Briggs.

60 Ms James said that there had seemed to have been a lack of preparation on the Claimant’s side and that members of the team had not been sure of what was going on. The meeting had not been very polite. She did not want to name any one person in particular but it had been a bit uncomfortable for her as an outsider to the team; there had been a bit of tension. Colleagues had asked why they were changing what was not broken. It had come across as internal wrangling. The Claimant had sent her an email apologising and saying that he had felt under a lot of pressure. She had not really understood those comments because she was unaware of his nationality.

61 Ms Mombe said that she worked closely with the Claimant because she supported what he did. She said that they were keen and eager when he started because they had waited for him to start. Within a few weeks of starting the Claimant changed the way that he spoke to them, because he realised that they questioned things and criticised each other’s ideas and bounced their ideas off each other. She said that he was not used to that way of working and took it as personal attacks. She said that when he realised that it wasn’t a matter of him coming in and picking up a policy and recreating it and that would be job done, he started to see them in a negative light and complained that everything he said was being challenged. She said that he got people’s backs up because he approached everything in an attack mode because he expected everyone to challenge him or say no to his ideas. She said that she had not witnessed any discrimination towards him. When he had said to her that everyone was challenging his ideas she had said to him that they were not challenging him as

a person but were challenging the work he was proposing and his ideas, and they were questioning him so that could understand what he was trying to do. She said that she had been surprised that she had been sent the email of 28 March. She had not even known that he was Russian until then and after the email she had heard someone else say that he had previously said that he was Ukrainian. His nationality had not been talked about in the team and she had not seen anyone discriminate against him because of where he was from.

62 Ms Briggs said that she had not been aware of the Claimant's nationality when he started and he had said that half Russian and half Ukrainian when he had complained about Mr Canzian's presentation on 18 February. She did not know whether anyone else in the team was aware of his nationality. She gave detailed information about the team's reaction to the meeting on 9 March at her and Mr Betteridge's meeting with the Claimant on 10 March. She said that she was not aware the Claimant had a disability and that he had not disclosed anything to her.

63 Mr Betteridge said that when he had interviewed the Claimant he had said that he was part Russian and Part Ukrainian. He said that the Claimant had never told him that he had a disability. He had told him that he had a medical appointment for breast cancer screening, but had not said anything about a disability. The Claimant had sent him a letter for the cancer screening. He thought that that had been in February.

64 Ms Cripp prepared a detailed grievance investigation report on 12 April. She set out the names of the people she had interviewed and what they had said and the documentary evidence she had seen. She said that she had found no evidence of discrimination against the Claimant based on his Russian nationality since the start of the war. People had either not known his nationality or had thought that he was part Russian and part Ukrainian. She also found no evidence that he had disclosed any disability to MTVH either during the recruitment process or directly to Mr Betteridge, his line manager, or to Ms Briggs as the head of the procurement team.

65 The outcome of the grievance was conveyed to the Claimant at a meeting on 27 April 2022. A letter was sent to the Claimant on the same day. His two grievances were summarised as being (i) an allegation of race discrimination because he was Russian after the start of the Russia/Ukraine war on 24 February 2022 (ii) an allegation of discrimination and failure to make reasonable adjustments after the disclosure of a disability. Neither was upheld and reasons were given for not upholding them. The Claimant was advised of his right of appeal and that he could only appeal on the grounds that there had been unfairness in the decision made or there had been a problem with the process. That was in accordance with the Respondent's Grievance Policy. The Claimant appealed the grievance outcome on 28 April 2022. His grounds of appeal were that the matter had not been investigated thoroughly and impartially and that there had been no finding on one of the main parts of his grievance, namely that there had been a culture of swear words being used by the team and encouraged by Ms Briggs.

66 The probation appeal hearing took place on 4 May 2022. It was conducted by Damien Martin (Financial Services Director). The Claimant was rude, offensive and obstructive throughout the hearing. He did not put forward any material to support his appeal and did not answer straightforward questions. Mr Martin wrote to the Claimant on 19 May 2022 that his appeal had not been upheld.

67 The grievance appeal was heard by Dominic Briant, Head of Funding and Research on 4 August 2022 and the outcome was conveyed in a letter on 14 November 2022. The appeal was not upheld.

Medical evidence

68 The Tribunal had very limited medical evidence from the Claimant. Notes from the Claimant's GP surgery showed that he registered with that surgery on 4 February 2022. Under "Active Major Problems" it was recorded that he had HIV from 1993 and that it was ongoing. Under "Active Problems" it was recorded that he had chronic depression from 15 May 2018 and that it was ongoing. The Claimant's evidence was that he had had depression on and off for ten years and that he took anti-depressants when his health worsened and he needed them. According to the medical records on 11 March 2022 he was prescribed Venlafaxine, which he said was an anti-depressant, for six months. It was also noted that he had "*low mood*."

Conclusions

Failure to make reasonable adjustments

69 The Respondent had conceded that the Claimant was disabled by reason of HIV infection. The Claimant never told anyone at the Respondent that he had HIV. He believed that there was stigma attached to it and it was not a fact that he wanted to share with his employers. The Claimant told Mr Betteridge about his appointment for breast cancer screening. He did not say anything about HIV in connection with that appointment. He showed Mr Betteridge a screen shot of the letter inviting him to that appointment. If there was a reference somewhere on that letter referring to HIV Mr Betteridge did not see it. The Respondent did not know and could not have been reasonably expected to know that the Claimant was disabled by reason of HIV. The Claimant is not obliged to tell his employers of any disability that he has if he does not want to. However, he cannot then complain if the Respondent does not make any adjustments to accommodate that disability.

70 It was not conceded that the Claimant was disabled by reason of chronic depression. We know from the medical evidence that the Claimant has had chronic depression since May 2018. The Claimant's evidence was that he had had it on and off for a number of years. The only evidence that we had about the Claimant being on any medication for it was that he had been prescribed anti-depressants for six months on 11 March 2022. There was no evidence before us what impact the chronic depression had had on the Claimant's ability to carry out normal day to day activities. We could not conclude on the basis of the evidence before us that the chronic depression had at any stage had a substantial and long-term adverse effect on the Claimant's ability to carry out normal day-to-day activities and, if it had, that it was likely to recur. The Claimant had failed to establish that he was disabled at the material time by reason of chronic depression.

71 Even if he had been disabled by reason of chronic depression the Respondent did not know and could not reasonably have been expected to know that. The Claimant did not tell anyone at the Respondent that he suffered from chronic depression. He did not declare it on the questionnaire he filled in before he started his employment. Both Mr Betteridge and Ms Briggs had realised that the conflict in Ukraine was

having an impact on the Claimant and Mr Betteridge had offered him support, including time off if he wanted. One of his colleagues had been concerned about his well-being after the Tool Box Talk on 9 March. The Claimant had referred at the meeting on 10 March to having contacted his medical consultant to get anti-depressants. On the form for one-to-one meeting on 21 March, the Claimant had mentioned stress and anxiety due to internal and external factors. The Claimant being weighed down by the conflict in Ukraine, trying to get anti-depressants and feeling stress and anxiety due to internal and external factors are not matters from which the Respondent could reasonably have been expected to know that he suffered from chronic depression which had a substantial and long-term adverse effect on his normal day-to-day activities. The Claimant had not been absent sick from work. The Claimant did not mention the words “depression” or “disability” to the Respondent, nor did he ask for reasonable adjustments at the meeting on 10 March or thereafter. What he said was that he thought working from away and the team would be a way of supporting him.

72 Having reached those conclusions, it was not necessary for us to consider whether the Respondent applied the PCPs of which the Claimant complained. Had we had to do so, our conclusions would have been that they did not. The Claimant was not required to work in the office every day. From the end of January the Respondent expected employees to spend more of the working week in the office at work than at home. That translated to an expectation that employees would work a minimum of three days a week in the office, which is what the Claimant did from 10 to 31 March 2022. It was not clear to us what the Claimant meant by the allegation that he had been required to work in a stressful environment. The work environment was not, objectively viewed, stressful. The Claimant might have found it stressful to create a work plan or to explain why the changes that he wanted to make were better than what was in place or to have others question his ideas and not agree with him. It was perfectly reasonable for his managers to expect that and for his colleagues to express their views. By doing that they did not create a stressful work environment. The Respondent did not require the Claimant to work in a stressful work environment. It required him to work in a way which the managers expected him to work and the team normally worked.

Direct race discrimination

73 It was not in dispute that the Claimant was dismissed and that dismissal amounts to a detriment. The only issue for us was whether in dismissing him the Respondent treated the Claimant less favourably than it would have treated someone else in not materially different circumstances and, if it did, whether it did so because of his Russian ethnic origin. The Claimant has not proved facts from which we could infer that in dismissing the Claimant (a) the Respondent treated him less favourably than it would have treated someone else in similar circumstances and (b) that it did so because of his Russian origin.

74 We have found that Ms Briggs did not know the Claimant’s nationality when he was appointed and that in his email of 18 February 2022 the Claimant described himself as being half Russian and half Ukrainian. The Claimant told Mr Betteridge at his interview that he was part Russian and part Ukrainian. His colleagues in the team had either not known his nationality or had believed that he was part Ukrainian. If people did not know his nationality or believed him to be part Ukrainian, it is difficult to see why they would have become hostile to him after the invasion of Ukraine.

75 We have not found that there was any change in either his managers' or his colleagues' attitude towards him after 24 February 2022. It is clear from the evidence before us that before 24 February his managers had concerns about the way in which he approached his work. On 10 February Ms Briggs was concerned that he was not focusing on what he had been asked to focus and was making changes without having understood why certain things were done the way that they were and explaining what the benefits of the changes were (paragraph 22 above), on 21 February Ms Briggs again expressed concern about the way in which he was making changes and the fact that he had still not produced an action plan (paragraph 27 above) and they were unhappy on 23 February when the Claimant was not in a position to present his action plan to the meeting (paragraph 28 above).

76 It was also clear from the evidence that in the procurement team people discussed ideas, questioned each other on ideas and when they disagreed with something they said so. The Claimant's colleagues did the same with his ideas before and after 24 February 2022. We have not found that the Claimant's colleagues were rude and hostile to him at the meeting on 9 March. We have found that they were confused (because the Claimant was not well prepared) and they asked questions and disagreed with what the Claimant said. We have found that the Claimant jumped in and took over from the two colleagues who were presenting, that he was ill-prepared, was defensive, rude and aggressive when he was asked questions and displayed a superior attitude.

77 In light of the complaints that Ms Briggs received about the Claimant's behaviour at the meeting on 9 March and what Mr Betteridge had witnessed at that meeting, it is not surprising that his managers invited him to a meeting to discuss what had happened. The Claimant was invited to that meeting because of the way he had behave at the meeting on 9 March 2022. The fact that he is of Russian ethnic origin had nothing to do with it. It is also noteworthy that both his managers had thought that what was going on in Ukraine might be impacting on his behaviour and they had been sympathetic and had tried to support him in that respect. The Claimant compounded matters at the meeting on 10 March by not acknowledging that his behaviour that his behaviour had been unacceptable and by blaming everyone else. He was asked to prepare the behaviour action plan to demonstrate that he understood and acknowledged what was unacceptable about his behaviour and how he was going to change it.

78 The Claimant did attempt to prepare such a plan although not in the way that he had been asked to. However, what was the last straw or the turning point as far as the Respondent was concerned was his conduct on the meeting on 21 March (paragraph 43 and 44 above). It demonstrated his attitude toward his colleagues and his managers, his failure to accept that he had done anything wrong and the strong likelihood that nothing would change if he was given more time. It was after that meeting that Mr Betteridge consulted HR and Ms Briggs and set in motion the process that led to the Claimant's dismissal.

79 As the Claimant has not proved a prima facie case of race discrimination, the burden did not shift to the Respondent. In any event, the Respondent has proved that it dismissed the Claimant for the reasons set out in Betteridge's probation review report which were accepted as being correct by Mr Gupta after the probation review meeting. The Claimant was dismissed because of his attitude and behaviour during

his probationary period. His Russian ethnic origin played no part in it.

Investigation of the Claimant's complaints of discrimination

80 Joanne Cripp investigated the Claimant's grievance. She met with the Claimant and gave him an opportunity to say what he wanted and asked him questions, she interviewed Sandra James, Tanaka Mombe, Mr Betteridge and Ms Briggs, she looked at the documentary evidence that was provided to her and produced a detailed investigation report. On the basis of the evidence before us we concluded that she did properly investigate the Claimant's grievance. The Claimant in his evidence did not say in which respect her investigation had been inadequate or what she had failed to look into. His evidence was that she had taken as true what the managers had said and had not taken a measured approach. When I asked him whether he was saying that she did that because he was Russian he said that he could not answer that question, he could only say that it was a faulty process.

81 Mr Bryant considered the Claimant's appeal and one of his grounds of appeal was that his grievance had not been investigated thoroughly and impartially. Mr Bryant upheld the grievance outcome.

82 We concluded that the Claimant was not subjected to the detriment of which he had complained and had not proven any facts from which we could conclude that he had been treated less favourably than an actual or hypothetical comparator or that his Russian origin had had anything to do with the way his grievance had been investigated.

Employment Judge - Grewal

Date: 27/06/2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

27/06/2023

FOR THE TRIBUNAL OFFICE