

RESERVED JUDGMENT



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr X  
**Respondent:** Lowell Financial Limited

**Heard at:** Leeds Employment Tribunal  
**Before:** Employment Judge Deeley, Ms Fleming and Dr Langman

**On:** 23-29 January, 30 January – 2 February (in private) and 3 February 2023

**Representation**  
**Claimant:** in person (with assistance from Ms N Bi)  
**Respondent:** Ms A Smith (Counsel)

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1. The claimant's claims of:
  - 1.1 direct discrimination (disability, race and religious belief);
  - 1.2 harassment (disability, race and religious belief); and
  - 1.3 victimisation;fail and are dismissed.

## WRITTEN REASONS

### INTRODUCTION

#### Tribunal proceedings

1. This claim was case managed at three previous Preliminary Hearings by:
  - 1.1 Employment Judge Maidment - 25 February and 5 December 2022; and
  - 1.2 Employment Judge Evans - 17 May 2022.
2. We considered the following evidence during the hearing:

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- 2.1 a joint file of documents and the additional documents referred to below;
- 2.2 witness statements and oral evidence from:
  - 2.2.1 the claimant and Mr Aidan Hopkins (a former employee of the respondent);
  - 2.2.2 six witnesses for the respondent:
    - a) Ms Sharon Ramsden;
    - b) Mr Michael Cooke;
    - c) Mr Benjamin Gregg;
    - d) Ms Jill Connolly;
    - e) Ms Sally Jeffers;
    - f) Mr Zoltan Acs;
- 2.3 written unsigned witness statements from:
  - 2.3.1 Mr Nasir Rashid (a current employee of the respondent);
  - 2.3.2 Mr Afzal Mulla (a current employee of the respondent); and
  - 2.3.3 Ms Mumtahina Siddique (a former employee of the respondent).
3. During the hearing, additional documents were disclosed by both parties and added to the hearing file with their consent.
4. We also considered the helpful oral and written submissions from both representatives, provided on the sixth day of this hearing.

## Adjustments

5. We asked the parties if there were any adjustments that they wished us to consider. Neither party asked for any adjustments, other than frequent breaks for one of the respondent's witnesses. We informed the parties that they could ask for additional breaks at any time.
6. The claimant was assisted throughout the hearing by Miss Bi. The claimant confirmed that he had received all of the documents from the respondent. However, he did not bring all of the documents to each day of the hearing and was provided with spare copies of the hearing file, witness statements and other documents during the hearing.
7. The claimant thanked the Tribunal panel during his submissions at the end of the hearing and stated:

*"Thanks for hearing me out – yourself and members of panel. It's been a difficult few days for myself .*

*I believe that there are elements within bundle – there's positive feedback on myself and remarks throughout – it highlights my performance and pride taken in my work*

*Thanks for showing such impartiality. I've had a lack of impartiality throughout this whole process – that's probably what's the main reason that I felt that I've been determined to be heard out. The fact that I have has helped in the sense that it has taken a big weight off my shoulders – obviously the courts, Tribunal are here for*

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*disputes. I believe the panel and the judge has really made it an easy comfortable process.”*

### Claimant's applications for witness orders

8. The claimant originally applied for witness orders relating to Mr Junaid Khan and Mr Sarfraz Hussain prior to the preliminary hearing on 5 December 2022. Employment Judge Maidment considered the claimant's applications and discussed them with the parties at the preliminary hearing. Judge Maidment noted in his case management summary:

*“The claimant did not, on consideration, pursue his applications for witness orders in respect of Junaid Khan and Sarfraz Hussain. It was not clear that those witnesses would support the claimant's case and he felt, in any event, that he had sufficient evidence from his other witnesses to prove his case.”*

9. The claimant made a further application for witness orders at the start of this hearing. The claimant stated that he had submitted witness statements for five witnesses, but only Mr Hopkins was willing to attend the hearing. The claimant said that his other witnesses, Mr Khan and Mr Hussain were 'too scared' to attend the hearing because he stated the respondent had 'a culture where people are too scared to speak out'.

10. We discussed the evidence that the claimant believed that Mr Khan and Mr Hussain could provide in relation to the specific factual allegations raised by his claim (set out in the table at Annex 1). The claimant stated:

10.1 Mr Khan could provide evidence regarding Allegations 2, 8 and 9. The claimant stated in relation to Allegation 2 that Mr Khan had also been refused permission to take holiday during Ramadan 2021; and

10.2 Mr Hussain could provide evidence regarding Allegation 8 only.

11. The respondent stated that they accepted that no return to work meeting took place on 6 September 2021, which meant that there was no factual dispute in relation to Allegation 9. In relation to Allegation 2, the respondent maintained that its position was that the claimant did not submit a request to take holiday during Ramadan 2021.

12. We noted that Allegation 8 related to a Teams call between the claimant and Mr Cooke. The claimant's position was that Mr Khan and Mr Hussain could overhear that conversation. We then heard submissions from both parties regarding the claimant's application for a witness order.

13. We asked the claimant if Mr Khan and Mr Hussain were available to attend the hearing. The claimant stated that he had not spoken with them recently and would attempt to contact them during the course of the first day of the hearing. The claimant confirmed at around midday on the first day of the hearing that Mr Hussain did not want to provide evidence and that he no longer wished to apply for a witness order in relation to Mr Hussain.

14. We concluded that it would not be appropriate to issue a witness order in relation to Mr Khan. The claimant had already had the opportunity to discuss his application at the preliminary hearing on 5 December 2022 and had decided not to pursue the application. We noted that if we were to issue an order on the first day of the

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hearing, it would be very short notice for Mr Khan to attend. Instead we granted permission (if Mr Khan was willing to attend) for:

- 14.1 the claimant to provide a statement for Mr Khan by 9am on the second day of the hearing; and
  - 14.2 Mr Khan to attend the hearing and give evidence on the morning of the third day of the hearing.
15. The claimant stated on the second day of the hearing that he had been unable to contact Mr Khan.

## Anonymity

16. Please refer to the Anonymity order of 24 July 2023

## CLAIMS AND ISSUES

17. Employment Judge Evans agreed a list of issues for the final hearing of this claim during the preliminary hearing in May 2022. Judge Evans noted:

*“51. **The discussion of the issues:** the claimant is unrepresented. His claim form and the attachment to it did not clearly identify his claims. At a previous case management hearing on 25 February 2022 (which the claimant did not attend) he was ordered to provide information to be included in a draft list of issues prepared by the respondent. In response he sent a lengthy email on 27 March 2022. When the respondent pointed out that that did not comply with the order made he sent another lengthy email on 29 March 2022. Realistically, neither email set out clearly either the factual allegations upon which the claimant relied or the claims which he said arose from those factual allegations.*

*52. Prior to the preliminary hearing on 17 May 2022 the respondent prepared a further draft list of issues taking into account the contents of the two emails. The claimant did not accept that this captured all of his allegations. Consequently, the greater part of the 3-hour hearing on 17 May 2022 was taken up with going through the draft list of issues with reference to the original claim form and the two emails detailed above and the parties agreeing amendments to the list of issues. Mr Brown for the respondent prepared amendments to the list of issues on his laptop during the hearing. That agreed list of issues is attached and the following points in particular should be noticed in relation to it.*

*52.1 **Completeness:** I emphasized to the claimant that the preliminary hearing was his opportunity to suggest **all** necessary amendments to the list of issues. I emphasized that this exercise would **not** be carried out again. At the end of the discussion at the preliminary hearing the claimant confirmed that the list of issues as amended was complete.*

*52.2 **Amendment:** the list of issues contains factual allegations which post-date the claim form. The claims to which they are alleged to give rise were not out of time at the hearing. Mr Brown for the respondent sensibly did not object to the*

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*claim being amended to include them and so it was amended by consent accordingly.*

**52.3 Prospects of success:** *given the lack of clarity in the claim form and the two lengthy emails of 27 and 29 March 2022, the discussion focused on how the factual allegations of the claimant could be framed in legal terms. It did not focus on the likely merits of the complaints because there was no time to do this. The claimant **should not assume** that the fact that particular complaints were included in the list meant that the Tribunal took the view that those complaints were likely to succeed.”*

18. We asked the parties to place the factual allegations (which were unchanged) into a table format for ease of reference and added in additional legal questions relating to remedy.
19. The claimant withdrew Allegation 10 in the table during his oral evidence in relation to Alison Ford only (i.e. the allegations regarding discussions relating to his PIP on 20 September 2021). He continue to pursue Allegation 10 in relation to Mrs Connolly.
20. The claimant withdrew Allegation 17 in the table on Friday 27 January 2023 (i.e. the allegation that in March 2022 he was given an end of year rating of 2 for the year ending 2021, which he stated was an act of victimisation).
21. We also note that some of the dates provided in the table were inconsistent with the undisputed evidence of both parties. We have amended them in the copy of the updated list of issues at Annex 1 to this Judgment.

## RELEVANT LAW

22. The Tribunal has considered the legislation and caselaw set out at Annex 2, together with any additional legal principles referred to in the parties' submissions.

## FINDINGS OF FACT

### Context

23. This case is heavily dependent on evidence based on people's recollection of events that happened some time ago. In assessing the evidence relating to this claim, we have borne in mind the guidance given in the case of *Gestmin SGPS -v- Credit Suisse (UK) Ltd* [2013] EWHC 3560. In that case, the court noted that a century of psychological research has demonstrated that human memories are fallible. Memories are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe our memories to be more faithful than they are. External information can intrude into a witness' memory as can their own thoughts and beliefs. This means that people can sometimes recall things as memories which did not actually happen at all.

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24. The process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to the parties. It was said in the *Gestmin* case:

*“Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”*

25. We wish to make it clear that simply because we do not accept one or other witness’ version of events in relation to a particular issue does not mean that we consider that witness to be dishonest or that they lack integrity.

**Background**

26. The respondent’s business involves debt collection. The respondent buys debts from third parties then arranges repayment plans with its customers (i.e. the individuals who have incurred those debts). The respondent employs around 1400 staff, the majority of whom are based at its Leeds office, and is regulated by the Financial Conduct Authority.

27. The key individuals referred to in this Judgment include:

<b>Name</b>	<b>Job title (at relevant time)</b>
Mr Aidan Hopkins	Customer Solutions Associate (left the respondent in late March/early April 2021)
Mr Benjamin Grigg	Customer Solutions Associate, Acting Team Leader covering Mr Sharif’s team in March 2022
Ms Danni Oxley	Head of Customer Engagement Centre
Mr Gregory Watson	Customer Solutions Associate
Mrs Jill Connolly	Director of Litigation Operations
Mr Michael Cooke	Operations Manager and Miss Ramsden’s line manager
Mr Anthony Greaves	Operations Manager and Mr Sharif’s line manager in 2021/2022
Mr Paul Winspear	Team Leader and claimant’s line manager until February 2020
Miss Sharon Ramsden	Team Leader and claimant’s line manager from 14 September 2020 to mid-September 2021
Ms Sherri Ibbotson	Team Leader and claimant’s line manager from February 2020 to September 2020
Mr Afzul Sharif	Team Leader and claimant’s line manager from late 2021 onwards
Mr Michael Farrar	Team Leader and claimant’s line manager from mid-September 2021 to late 2021
Mr Zoltan Acs	UK Head of Audit

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28. The claimant started his employment with the respondent as a Customer Solutions Associate on 9 October 2017, based in its Customer Engagement Centre (“CEC”) in Leeds. There were around six hundred Customer Solutions Associates in Leeds at that time, reporting into Team Leaders who reported in turn to one of seven Operational Managers. The claimant’s employment was continuing as at the date of this hearing.
29. The role of a Customer Solutions Associate involved speaking to customers of all backgrounds regarding their debt, which the respondent had purchased. Another team within the respondent would send customers a letter notifying them that their debt had been assigned to the respondent. Customers would then call the respondent and one of the Customer Solutions Associates would attempt to set up a repayment plan for them. Customer Solutions Associates would also occasionally deal with outbound calls, via an automated dialler. The Customer Solutions Associate role involved speaking with customers by phone for the entirety of any shifts, save for any time spent in team meetings, training or other internal matters.
30. Customer Solutions Associates worked a variety of shifts from Monday to Saturday, depending on their personal circumstances and the cover available within each team. For example, some team members worked mornings only. Others, including the claimant, worked 12 hour shifts on certain days of the week plus overtime. Customers Associates were managed by Team Leaders, who in turn reported into Operations Managers. A Team Leader typically managed up to fifteen Customer Solutions Associates at a time.
31. The respondent required all of its employees to work from home during the Covid-19 lockdowns from late March 2020 and during 2021. The claimant’s team started working one day per week from the respondent’s office from 6 September 2021 onwards.
32. The claimant was originally managed by Mr Paul Winspear (Team Leader), as part of the operational area of Mr Anthony Greaves (Operations Manager). Mr Winspear moved roles in February 2020 and Ms Sheri Ibbotson took over as a temporary Team Leader.
33. Miss Ramsden took over management of the claimant’s team on 14 September 2020 as their permanent Team Leader. She was previously a Team Leader in the respondent’s Call Quality department and had worked in the Call Quality team for the majority of her 15 year career with the respondent. Miss Ramsden reported into Mr Cooke. Her shifts varied on a day to day basis. For example, she normally worked from 9am to 5.15pm on a Friday. If Miss Ramsden was not working during one of her team members’ shifts, that team member reported to another shift manager in her absence.
34. Miss Ramsden’s team during the period September 2020 to September 2021 included the individuals set out in the table below at various times.

Team member (from September 2020 to September 2021)	Race and/or religion (if known and as described by the claimant)
JK	British Pakistani Muslim

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Team member (from September 2020 to September 2021)	Race and/or religion (if known and as described by the claimant)
SH	British Indian Muslim
Mr Gregory Watson	White British, not Muslim
Mr Aiden Hopkins	White British, not Muslim (left the respondent in late March or early April 2021)
MS	British Bengali Muslim
NR	British Pakistani Muslim
AB	British Pakistani Muslim
AM	British Indian Muslim
WA	British Pakistani Muslim
BH	British Pakistani Muslim
JF	British/Dominican Christian
CW	White British

35. The claimant stated that several team members struggled with difficulties affecting their mental health. He stated that this included SH, who suffered from depression.

**Aqua – Quality Assurance Framework**

36. The respondent changed the way in which customer calls were evaluated in 2020. They moved from an evaluation system that focussed on whether staff had presented a payment option to a customer, to a Quality Assurance Framework focussed on whether the option presented was the right option for the customer. The respondent's presentation to Customer Solutions Associates stated that:

*“AQUA is the new framework for how calls are assessed. Quality Assurance and the Customer Engagement Centre have worked together to design an improved way of assessing calls that aligns to our Lowell 23 goals and a better fit for who we are as a business. The framework supports you in your role, empowering you to own and deliver fair customer outcomes, deliver exemplary customer experience and an enhanced business performance.”*

37. The presentation also stated:

*“We want the performance metrics to drive the right behaviours, meaning that we get it right for our customer. We want to empower you to deliver a great experience for our customers and do the right thing for them. So there is a huge shift in focus from ‘following call quality guidelines’ to delivering the right thing for the customer. It allows you the freedom to make your own decisions and do what is right for the customer, even when that means going outside of normal process without fear of ‘being marked down’.”*



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38. The respondent introduced a new 'score card' for calls which had four possible outcomes for each area evaluated by its Call Quality team:

<b>Outcome</b>	<b>Definition</b>
Pass – Customer Excellence	<input type="checkbox"/> Positive customer experience <input type="checkbox"/> All best practice and process followed <input type="checkbox"/> No customer detriment <input type="checkbox"/> No business/regulatory impact
Pass – Fair Outcome	<input type="checkbox"/> Elements of customer experience require enhancement <input type="checkbox"/> Elements of best practise or process not followed <input type="checkbox"/> No customer detriment <input type="checkbox"/> No business/regulatory impact
Development Required	<input type="checkbox"/> Negative customer experience and/or <input type="checkbox"/> Process not followed <input type="checkbox"/> Business or regulatory impact <input type="checkbox"/> No customer detriment
Unfair Outcome	<input type="checkbox"/> Best practice, process or regulation not followed leading to customer detriment– actual or potential.

39. The claimant's team was one of the first teams to work under the Aqua Framework. They formed part of the trial within the respondent that started in 2020, some months before Miss Ramsden took over the management of the claimant's team. Miss Ramsden gave evidence (which was consistent with the copy provided of an Aqua staff presentation) that part of her role when she took over as Team Leader was to help manage the trial and to train her team on the new processes. She stated that Team Leaders whose teams were taking part in trials were sent two calls every week to evaluate personally using the Aqua Framework. The Team Leaders, Operations Managers and the Head of Call Quality and Compliance then met weekly to discuss the rationales for the call scores that they had awarded. Miss Ramsden then held a similar discussion with her own team members so that they could understand how they would personally be evaluated and to feedback on good practice.

40. Many Customer Solutions Associates, including the claimant, found the move to Aqua Framework somewhat challenging. They had been regarded as high performers under the previous system. The change to Aqua affected many team members' review ratings against the respondent's objectives. For example, Miss Ramsden stated that another team member (SH) had some difficulties in 'getting his head around the new call structure'. SH had worked for the respondent for around 8 years and had previously been a high achiever with very good call quality outcomes. Miss Ramsden stated that she and SH discussed his concerns. She said that he was struggling with the difference from taking actions as part of the respondent's previous call guidelines, compared to the requirements to make sure the right solution was found for the customer under the AQUA Framework.

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41. Miss Ramsden stated that the claimant's team took longer to adjust to the new way of working, compared to other teams. However, she stated that the team's call quality results improved 'massively' from January 2021 onwards after she had spent some time coaching the team. We note that the claimant himself stated in his mid-year review in July 2021 that his call quality had improved after he completed an action plan.
42. The respondent used standard 'coaching forms' to provide feedback to staff. These coaching forms also changed as a result of the Aqua Framework. The Call Quality team provided feedback on a sample of each member of staff's calls, which was available for managers to view on the respondent's Verint online system. Team Leaders would then listen to the call in question, insert that feedback into a coaching form and discuss the individual's strengths and development needs to be included in the form. Coaching forms were then placed in a team folder on the respondent's shared drive.

### Claimant's performance during 2020 and 2021

43. The claimant found the move to the Aqua Framework challenging. However, his performance remained good throughout the calendar years 2020 and 2021. He received an end of year rating for 2020 of a grade 3 (Strong Performer) from Miss Ramsden. Miss Ramsden stated: "*I thought [X] was a strong performer overall but was inconsistent and needed to improve his call quality, amongst other things.*"
44. The respondent did not award formal ratings during mid-year reviews. However, Miss Ramsden stated that the claimant's indicative mid-year rating following his review on 14 July 2021 remained that of a grade 3 (Strong Performer). The claimant left Miss Ramsden's team in mid-September 2021. He subsequently received a lower rating of grade 2 for his end of year rating for 2021 from his Team Leader at the time (Mr Sharif).

### Allegation 1 – 19 January 2021 – upheld customer complaint investigation

45. The claimant had a call with a customer at some point during late 2020 or early January 2021. The customer subsequently complained to the respondent regarding the call and stated that he was not willing to speak to the claimant again. The respondent's Complaints team evaluated the call in early January 2021 and upheld the customer's complaint. The Complaints team then referred the matter to the respondent's Call Quality team. The Call Quality team evaluated the call, entered their findings into the respondent's Verint online system and referred the matter to Miss Ramsden.
46. The Verint print out for the call set out the following grades or outcomes for the call:
- 46.1 Call opening and Know Your Customer – excellent;
  - 46.2 Appropriate solution – unfair outcome;
  - 46.3 Understanding next steps – development required;
  - 46.4 Communications skills – unfair outcome - the claimant interrupted/talked over the customer fifteen times during the call (and the exact times at which he did so were noted on the Verint system). In addition, the customer did not want to speak to the claimant again;

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- 46.5 Overall outcome – unfair outcome and the customer’s complaint was upheld.
47. Miss Ramsden and the claimant listened to the call on 19 January 2021. During that discussion, the claimant accepted that he had been ‘too passionate’ during the call, that he should have taken a ‘step back’ and that he could have handled the call better.
48. Miss Ramsden asked the claimant if there was anything that he wished to raise by way of mitigation. The claimant stated *“I feel there is a lot on”*. However the claimant accepted during his oral evidence that he did not refer to any health issues during the meeting. The claimant said that this was because he had no prior warning of the subject matter of the meeting and that he was not comfortable in discussing his health during that meeting.
49. Miss Ramsden decided at the end of the meeting to refer the matter to a disciplinary hearing because she viewed it as a ‘serious matter’ and that there was a ‘misconduct case to answer’.
50. At 5.31pm on 19 January 2021, the claimant sent a Teams message to Miss Ramsden stating::
- 50.1 *“mentally I am struggling a lot at the moment and I feel that I am having a somewhat breakdown...there are aspects of my life I choose not to share with anyone”*
- 50.2 Miss Ramsden replied at 6.05pm and they spoke briefly that night. Miss Ramsden permitted the claimant to finish work early that evening because ‘head was all over the place’;
- 50.3 on 20 January 2021, Miss Ramsden and the claimant exchanged further messages and had a call. The claimant stated that he felt much better.
51. Miss Ramsden stated that in her view the claimant’s mental health difficulties resulted from his reaction to the investigation, rather than from any underlying condition. She also stated that these matters could be dealt with in more detail during the disciplinary hearing.
52. Mr Cooke **had** spoken with the claimant about his concerns on 29 January 2021. The conversation centred on the claimant’s concerns regarding Miss Ramsden’s management style, rather than any health difficulties that the claimant was experiencing at that time.
53. We also note that the claimant referred to this investigation in his Speak Up Complaint that he emailed to the respondent on 20 August 2021 (with our emphasis):
- “On the 9th February I was taken to investigation for an upheld complaint against myself, the complaint was regarding interrupting a customer whilst on a call. The initial investigation was escalated by my Team Leader Sharon Ramsden.*
- Although I made Sharon aware of my reasons for not dealing with the call well such as; working from home, having to watch the children, look after my parents, poor internet connection and also due to PC IT issues, Sharon deemed that the situation is to be escalated and reviewed by two other team leaders and to proceed to disciplinary.”*

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54. The claimant did not state that his mental health condition had affected his ability to deal with the call in question that was the subject of the **19** January 2021 investigation meeting and the subsequent disciplinary hearing on 9 February 2021.

55. We concluded that:

55.1 Miss Ramsden was not aware that the claimant was struggling with any difficulties relating to his mental health at time of the investigation meeting on **19** January 2021;

55.2 Miss Ramsden made the decision to escalate the matter to a disciplinary hearing, based on the information available to her on **19** January 2021; and

55.3 the claimant did not provide Miss Ramsden (or the Tribunal) with any evidence that he was experiencing any significant difficulties relating to his mental health at the time of the call that was the subject of the upheld customer complaint (which had taken place in December 2020 or early January 2021 – please refer to the section in this Judgment on disability status and the respondent’s knowledge of disability).

56. Ms Wheeler considered the call at a disciplinary hearing on 9 February 2021. We were not provided with any documents relating to that hearing. However, it is not disputed that Ms Wheeler decided not to take any disciplinary action in relation to the call against the claimant.

**Allegation 2 - 15 March 2021 - Holiday request**

57. The claimant alleged that:

57.1 his request for holiday during Ramadan in 2021 was refused;

57.2 however, Mr Watson was granted a day’s emergency holiday to look after his new puppy during the time when Ramadan was observed in 2021.

58. The respondent introduced a one-off ‘wellbeing day’ in response to the efforts of the staff during the Covid lockdowns. The announcement was emailed to all staff on 19 March 2021. This day had to be taken between 1 April and 29 June 2021.

59. The respondent used an online system for holiday bookings for most of the year. The claimant stated that the respondent’s Real Time team block out the last 2 or 3 weeks of Ramadan from the holiday calendar, which meant that holiday requests could not be made via the online system.

60. The claimant was unsure as to when he made a request for holiday during Ramadan. The claimant confirmed in response to the Tribunal’s questions that the dates when he observed Ramadan in 2021 were around 12 April to 12 May 2021, with Eid starting on or around 13 May 2021. The claimant stated that he asked Miss Ramsden if he could take holiday during Ramadan and that she refused his request. However, the claimant could not recall the date or any details of whether that discussion took place verbally or in writing. The claimant confirmed that he did not ask Mr Cooke if he could take holiday during that time.

61. The claimant was also unable to recall the holiday dates or times that he states he requested. We note that the claimant worked slightly reduced hours on several occasions (marked as holiday in the respondent’s records) or was on sick leave

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on the dates in April and May 2021 set out in the table. We also note that the claimant's normal working pattern with effect from mid-April 2021 was 33 hours across three days i.e. Mondays, Wednesdays and Fridays.

Holiday	14 April 2021	1.5 hours
Holiday	21 April 2021	2 hours
Holiday	28 April 2021	3 hours
Holiday	5 May 2021	1.75 hours
Holiday	7 May 2021	2.75 hours
Holiday	10 May 2021	1 hour
Sick leave	10 May 2021	10 hours
Sick leave	12 May 2021	11 hours

62. Mr Cooke stated that the respondent's normal practice was to "block out" the two weeks around Eid on their online holiday system. The respondent then considered any holiday requests for time off during this period from all employees at the same time in order to manage holiday allocation fairly. This two week period would have been from around 6 to 20 May during 2021.
63. Miss Ramsden denied that the claimant had asked her if he could take any holiday during Ramadan 2021.
64. We were provided with copies of the Teams messages relating to Mr Watson's holiday request for 4 May 2021 between Mr Watson and Mr Cooke and also between Mr Cooke and Miss Ramsden. In summary, these show that:
- 64.1 Miss Ramsden had initially refused Mr Watson's request for holiday;
  - 64.2 Mr Watson approached Mr Cooke to ask if it would be possible to take holiday on 4 May 2021;
  - 64.3 Mr Cooke checked the team's capacity with Miss Ramsden and she confirmed that there was 1.5 hours available to be taken as holiday that day;
  - 64.4 Mr Cooke authorised Mr Watson to take a wellbeing day (introduced by the respondent for a 3 month period following Covid lockdowns).
65. We accept Mr Cooke's oral evidence that there was normally a 'tolerance' in the ability of the team's capacity to cover its customer duties of up to 10 hours' of Customer Solutions Associates' working hours on any particular day. This is why there was sufficient cover within the team on 4 May 2021 to grant Mr Watson a wellbeing day on that date.
66. We concluded that:
- 66.1 the claimant did not in fact ask Miss Ramsden if he could take holiday during Ramadan 2021. The claimant was unable to provide any details of the holiday requested, the date of any such request and the manner in which that holiday was requested and/or refused;

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- 66.2 the reason why Mr Watson was granted a wellbeing day on 4 May 2021 was because he approached Mr Cooke and requested leave for that date. There was sufficient capacity within the team for Mr Cooke to authorise a wellbeing day for that date at the time that Mr Watson made his request;
- 66.3 the claimant confirmed that he did not approach Mr Cooke to request holiday during Ramadan. However, we accepted Mr Cooke's evidence that if the claimant had approached him, then Mr Cooke would have treated the claimant's request in the same manner as he treated Mr Watson's request.

### Claimant's Flexible Working Request – March and April 2021

67. The claimant submitted a flexible working request, which was considered at a meeting on 5 March 2021. The claimant was originally working 37.5 hours per week, which consisted of varying shifts on 5 days (Monday to Friday) plus 1 in three Saturdays. He requested to work three twelve shifts from 8am to 8pm on Mondays, Tuesdays and Wednesdays, with one in three or four Saturdays.
68. In response to the question "*What has changed in your circumstances to prompt your request*", the claimant stated:  
*"I had 3 Car accidents so I had to car share as my insurance was too high and had to do the same shifts as one of my colleagues plus I have had some children and my wife is struggling to look after the kids as she needs to learn about passing the exam for her to gain UK citizenship. I need 3 days to focus on work and the rest to focus on supporting my family"*
69. In response to the question '*What arrangements have changed*', the claimant stated:  
*"My parents have got elderly and they can't support as much"*
70. The claimant did not refer to his own mental health as a reason for making his flexible working request.
71. The respondent reviewed the teams' current working patterns and rejected the claimant's request. The respondent instead offered to change the claimant's normal working pattern to 33 hours across three days i.e. Mondays, Wednesdays and Fridays. The claimant stated in his teams messages on 8 April 2021 that:  
*"i have been thinking about the shifts you know they actually might work out better"*

### Allegation 3 - Performance improvement plan

72. The respondent's Managing Performance policy included the following statement regarding the 'informal' stage of any performance improvement process:

#### ***"Informal Stage***

*The first stage is an informal discussion between the colleague and Line Manager to find out the reasons for the poor performance and give them the opportunity to improve.*

*If it is established that the poor performance is because the colleague is not able to do their job properly (e.g. due to a lack of skills), the manager should set a plan to be clear about the levels of expected performance and any*

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*support to be given.*

*This could be a performance improvement plan, coaching for improvement, action plan or other support. If the issues relate to the colleague's personal life, counselling could be offered.*

*Timescales should be agreed for the expected improvement and another review meeting will then take place to assess whether the plan has been successful and improvements made. In some instances, this might be in the form of an investigation meeting.*

73. Miss Ramsden had previously held a mid-year review with the claimant on 14 July 2021. The respondent did not assign a formal performance grade to mid-year reviews. However, Miss Ramsden confirmed by email that the claimant's performance at the mid-year point suggested that he would receive a grade 3 (Strong Performer) rating if he continued with his performance during the year to date.
74. The claimant had received several coaching forms and Records of Discussion around this time, including:
- 74.1 a coaching form regarding kept rate (i.e. the percentage of customers who met their payment obligations under their repayment plans for a 3 month period) on 20 June 2021 and discussions in his Mid-Year Review on 14 July 2021;
  - 74.2 coaching forms relating to average call handling time, including one on 22 July 2021 (outbound conversion), five coaching forms on 23 July 2021 (all relating to efficiencies: outbound voicemail length, outbound other party hang up length, 3<sup>rd</sup> party no recall length, wrong number outbounds, average call handling time) and one coaching form on 10 August 2021 (call dispute).
75. For example, in relation to kept rate, the coaching form on 20 June 2021 and the Mid-Year Review noted that:
- 75.1 Q1 – for the period from January to March 2021 inclusive, the claimant's results were in the 'effective' zone;
  - 75.2 Q2 – for the first part of Q2 in April and May 2021 – is the claimant was in the 'developing zone'. (We note that the kept rate targets increased between Q1 and Q2, due to the respondent's progress in introducing the AQUA system);
  - 75.3 Q2 – as at the mid-year review on 14 July 2021, the claimant's kept rate had reduced to 46.69% which placed him in the 'not effective' zone. The claimant's results for June 2021 were particularly low, which had reduced his average for Q2 significantly.
76. The evidence provided by both parties in relation to the claimant's performance improvement plan was somewhat confusing. We concluded that the claimant was told that he would be subject to two separate action plans in the Spring or Summer of 2021. These consisted of:

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- 76.1 **Call Quality** – an action plan relating to the claimant’s Call Quality feedback. The claimant improved his call quality and this action plan was completed by the time of his Mid-Year Review on 14 July 2021 (as noted in the review document); and
- 76.2 **Efficiencies** – an action plan relating to ‘efficiencies’. Miss Ramsden told the claimant at the end of the investigation meeting on 11 August 2021 into call avoidance that he would be subject to an action plan relating to efficiencies.
77. The claimant set out his understanding of events in both his Speak Up Complaint (emailed at 12.46pm on 20 August 2021) and in his grievance against Miss Ramsden on 15 September 2021 (with our emphasis underlined):
- “I was also put onto an action plan due to my call quality results. I was told by Sharon during my 121’s that without good quality results and performance it is difficult for me to cover the team or do additional jobs within the team.*
- I managed to turn this around successfully and improve performance and my action plan was ended, however I was then being put onto another action plan due to my efficiencies, as well as strong allegations of gross misconduct. Just when I thought I could potentially progress within the team something else was put on me to hold me back.”*
78. Miss Ramsden prepared a document dated 20 August 2021 with the title “performance improvement plan” (“**PIP**”). The PIP related to improving the claimant’s performance against the respondent’s ‘efficiencies’ measures, which covered three areas:
- 78.1 **Kept rate** – i.e. the percentage of customers who met their payment obligations under their plans for a 3 month period;
- 78.2 **Average call handling time**; and
- 78.3 **Update time** – i.e. the time taken by the claimant to:
- 78.3.1 update his notes following a call; and
- 78.3.2 end or ‘release’ calls if he encountered a voicemail or the customer was otherwise not available.
79. Miss Ramsden held a Teams meeting with the claimant on 20 August 2021. During that meeting, they discussed:
- 79.1 a coaching form; and
- 79.2 the PIP, which Miss Ramsden shared on her screen with the claimant during the meeting.
80. Miss Ramsden did not send the claimant a copy of the PIP after the meeting. Neither Miss Ramsden nor the claimant signed the PIP. The claimant did not receive a copy of the PIP until the respondent provided one as part of their response to his subject access request in late 2021.
81. The review meetings envisaged in the PIP did not take place because of the events that followed shortly afterwards including: the claimant’s absence on sick leave; Miss Ramsden’s absence on holiday; the claimant’s move to Mr Farrar’s team on 13 September 2021; and the claimant raised a grievance against Miss Ramsden



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on 15 September 2021. These matters are considered in more detail later in this Judgment.

82. The claimant also had a disciplinary hearing with Ms Wheeler on 23 August 2021, relating to the call avoidance investigation which Miss Ramsden discussed with him on 11 August 2021. This was a separate matter to the PIP. Ms Wheeler decided not to take any disciplinary action regarding the claimant.

83. We note that Miss Ramsden placed other team members on PIPs during 2021 and 2022, including the team members set out in the table below. Some of these team members were part of Miss Ramsden’s team at the same time as the claimant. Others joined the team after he left:

Team member	Race and religion (where described by the parties in their evidence)
a) Aidan Hopkins (relating to call quality and average call handling time – no PIP meetings held due to illness/leaving the business)	White British, not Muslim (left the respondent in late March or early April 2021)
b) WA (Miss Ramsden stated that he passed the PIP with ‘flying colours’)	British Pakistani Muslim
c) AB (insufficient improvement, first written warning issued)	British Pakistani Muslim
d) MS (insufficient improvement, referred to formal performance management hearing)	British Bengali Muslim
e) ACD	British mixed/multiple ethnic background – religion unknown
f) SDK	White British – religion unknown

84. Miss Ramsden did not place Mr Watson on a PIP. Mr Watson was given a final written warning in 2020 relating to his attendance. Miss Ramsden stated in her witness statement that Mr Watson improved his performance after he was given a final written warning. However, Mr Watson was not promoted whilst Miss Ramsden was line managing him. Miss Ramsden denied that she was attempting to ‘justify promotion’ for Mr Watson, as alleged by the claimant.

85. We concluded that:

- 85.1 the claimant’s PIP was not part of the respondent’s formal performance review process. The respondent’s policy states that a formal hearing had to take place before any formal performance management review process started;
- 85.2 Miss Ramsden should have been clearer in her communications around the claimant’s PIP and should have provided him with a copy of the plan after their meeting on 20 August 2021;

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- 85.3 the claimant was understandably confused by the number of action plans, disciplinaries and other performance discussions that were taking place around that time;
- 85.4 however, there were several prior coaching forms and other documents relating to the matters that were due to be addressed as part of the PIP. The claimant did not challenge those earlier documents;
- 85.5 Miss Ramsden told the claimant on 11 August 2021 that he would be placed on an action plan regarding ‘efficiencies’, including kept rate. This is reflected in the claimant’s Speak Up Complaint on 20 August 2021. We have concluded that it is probable that the claimant sent the Speak Up Complaint shortly before the meeting to discuss his PIP and other matters on 20 August 2021 because the claimant does not mention his meeting with Miss Ramsden on that day;
- 85.6 Miss Ramsden and the claimant did not meet to review his performance against the PIP because of the events described above in late August and early September 2021. We note that Mr Hopkins’ PIP was also placed on hold because of his absence due to illness and his resignation from the business;
- 85.7 there is no evidence to suggest that Miss Ramsden placed the claimant on a PIP to “*make the claimant look bad and justify promotion for Mr Watson*”, as alleged by the claimant.

**Allegation 4 - July 2021 - Miss Ramsden’s holiday cover**

- 86. Miss Ramsden was due to take 4 days’ holiday in September 2021. She thought that this would provide an opportunity for any team members who wanted to become Team Leaders to ‘act up’ by covering her role in her absence.
- 87. Four team members stated that they were interested in covering Miss Ramsden’s holiday:
  - 87.1 the claimant;
  - 87.2 Mr Hussain;
  - 87.3 Mr Watson; and
  - 87.4 Mr Khan.
- 88. Miss Ramsden decided that the fairest way to select who would cover her holiday would be to assess the four team members’ performance against the 2021 objectives (as set out in the respondent’s 2021 Mid-Year Review document) for the year to date. A full breakdown of each individual’s scores against seven criteria for the months of January to June inclusive was included in the hearing file. The total average scores were:

<b>Mr Watson</b>	20
<b>Mr Hussain</b>	17.7
<b>the claimant</b>	16
<b>Mr Khan</b>	9

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89. The claimant stated during his evidence that Miss Ramsden should have used the customer outcome criteria only to select who should cover the team. However, we accept that it was appropriate for Miss Ramsden to use all of the annual objectives set by the respondent as the criteria for her holiday cover because these were the respondent's objectives for Customer Solutions Associates for 2021.
90. We have seen evidence in the hearing file supporting the scores set out in the table. The claimant did not seek to challenge those scores and accepted in his Mid Year review that his performance had deteriorated in June 2021, but had improved following the action plan relating to call quality.

### **Allegation 5 - June/July 2021 – Claimant's attendance to his father during working hours**

91. The claimant was unable to provide the date or dates when he alleges that Miss Ramsden told him that he could not attend his father during working hours.
92. The claimant stated at paragraph 59 of his witness statement that:
- "Refusal to attend father, Sharon did categorically make it clear I am unable to do this and if this continued, I would need to go back into the office."*
93. We were provided with Teams messages relating to two dates on which the claimant attended to his father during working hours:
- 93.1 **18 June 2021** – the claimant stated that he took his father to an emergency GP appointment and that there were traffic delays the way back. This took around 2.5 hours around lunchtime (compared to his usual lunch break of 30 minutes); and
- 93.2 **26 July 2021** – the claimant logged on to work two hours late.

#### **18 June 2021**

94. We reviewed the teams message for 18 June 2021 and concluded that:
- 94.1 the claimant did not tell Miss Ramsden that he was taking his father to an emergency appointment with the GP;
- 94.2 the claimant contacted the respondent's sickness absence line, but they did not contact Miss Ramsden. Miss Ramsden then contacted the claimant and he stated:
- "sorry i called in sick line, my father wasn't feeling too good had to take him doctors";*
- 94.3 Miss Ramsden responded, saying:
- "Oh is he okay ? Just drop me a message to say what going on and then I do not have to chase you smile*
- Let me know when your making back the time for RT [Real Time] to update";*
- 94.4 the claimant responded stating:
- "no worries - sorry i expected to be back was just jam packed traffic - I will do i owe you 15 mins from other*

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*evenings too - so will make back on saturday in total i think it works out 45 mins"*

**26 July 2021**

95. We reviewed the teams message for 26 July 2021 and concluded that:

- 95.1 the claimant had again telephoned the respondent's sickness absence line and why he would be logging on two hours late;
- 95.2 neither the claimant nor the sickness absence line told Miss Ramsden why he was logging on late (as stated in Miss Ramsden's message below of 5.18pm);
- 95.3 Miss Ramsden and the claimant then exchanged the following messages:

*"[26/07 17:01] Sharon Ramsden*

*Hello, you called in this morning advising you would be 2 hours late logging on, however you have not provided a reason to me for this - it is important you are on top of this going forward and communicate with me.*

*Can you please advise what caused this lateness this morning ?*

*[26/07 17:17] [Mr X]*

*hello, yes i called in the sick line and told them the reason for logging on late, my father is in critical condition and is back at the hospital he was admitted late last night due to his condition. The reason for my lateness is due to this, I will be making the time back this week on Thursday this week.*

*26/07 17:18] Sharon Ramsden*

*Hello - I am sorry to here your Dad's back in hospital, how are you? unfortunately they only provide minimal update ( IE LATE )*

*[26/07 17:20] [Mr X]*

*i know dont worry if you wasn't to know not your fault love - and im okay in Gods hands all we can do is work around his condition now and make sure he is getting the right treatment, which there has been some progress regarding that*

*[26/07 17:21] Sharon Ramsden*

*He will be in my thoughts love, please let me know if you need anything smile*

*[26/07 17:22] [Mr X]*

*thank a lot sharon it means a lot smile just got to keep the faith and trust the process, have a good evenin"*

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96. We concluded that Miss Ramsden did not tell the claimant that:

- 96.1 he could not attend to father during working hours;
- 96.2 he would face disciplinary action if he did so.

97. It was part of Miss Ramsden's role as the claimant's line manager to check why he was not logged on to the respondent's systems during working hours. The claimant was working from home during all of his shifts at this time due to the Covid-19 pandemic. We accept the claimant's evidence that he had informed the respondent's sickness absence line and that it was not his fault that they failed to inform Miss Ramsden. However, this did not mean that Miss Ramsden should not have checked with the claimant as to why he was absent.

98. The claimant himself stated in response to the Tribunal panel's question:

*"I was always being criticised or scrutinised in what I was doing...I was never offered support or help. I wouldn't say this was harassment – it is a tick box exercise from my perspective".*

### **Claimant's IT issues**

99. The claimant was having IT difficulties, relating to his internet speed and also his computer equipment in the lead up to August 2021. The claimant went into the office on 4 August 2021 to pick up new computer equipment, due to the technical issues he was having whilst working from home. On the way home he dropped off a computer monitor for a colleague who lived close by and unfortunately was involved in a car crash with a cyclist.

100. Miss Ramsden stated at the end of the investigation notes on 11 August 2021 (which are considered in more detail later in this Judgment):

*"I am putting you on a 4 - week action plan for efficiencies*

*And I will be monitoring your previous internet issues along with your focus and efficiencies, if they are not improved, I will be requesting you work back in the office full time."*

101. We concluded that Miss Ramsden's statement that the claimant may be required to work from the office related to his IT issues and not to any need to attend to his father during working hours.

102. In any event, we note that the claimant did not start working one day **per week** from the office until 6 September 2021. This was the date from which the claimant stated that everyone in Miss Ramsden's team was required to work Mondays in the office. In addition, the claimant and the respondent's witnesses confirmed that other CEC teams were required from that week to work one day per week in the office. The particular day was staggered between teams, due to the social distancing measures in place at that time.

### **Allegation 6 – 23 July 2021 request for 'time back'**

103. The claimant and Miss Ramsden exchanged Teams messages on Friday 23 July 2021 from 4.54pm to 4.56pm regarding the claimant working the following Tuesday and Thursday. The claimant intended to work those days in order to make up for hours that the claimant 'owed' to the respondent from earlier weeks.

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104. Miss Ramsden responded three separate times to the claimant's messages during that 2 minute period. Miss Ramsden accepts that she did not respond to the claimant's last messages at 4.56pm which stated:

*"hopefully I wouldn't have gone over*

*I'll have a look*

*10-8 Tuesday-Thursday – 10-2pm – this should cover the hours"*

105. Miss Ramsden normally finished working at 5.15pm on a Friday. We accept that it was genuine oversight on her part that she did not respond to the claimant's final messages. We note that the claimant was absent on sick leave on Monday 26 July 2021 and that he and Miss Ramsden exchanged teams messages on that day (as set out earlier in this Judgment). The claimant did not ask Miss Ramsden again about working Tuesday and Thursday in his messages on 26 July 2021.

106. In addition, we accept Miss Ramsden's evidence that the claimant did not need permissions to work the time back. Permission was only required to take off time during working hours in the first place. The claimant did not dispute this.

### **Allegation 7 – 11 August 2021 – Call avoidance investigation**

107. Miss Ramsden chaired an investigation meeting (with Mr West attending) on 11 August 2021 related to a number of incidents, including:

107.1 **30 July 2021** – claimant logged out of work (and therefore not taking calls) for 30 minutes;

107.2 **6 August 2021 (morning)** – claimant logged out of work for around 25 minutes;

107.3 **6 August 2021 (afternoon)** – claimant logged out of work for 55 minutes and later took an additional 15 minute break.

### **30 July 2021**

108. Mr Andrew West (Shift Manager) was managing the claimant's shift on the evening of 30 July 2021. The following events took place after 7pm that evening (i.e. after Miss Ramsden had finished working):

108.1 the claimant was on a call with a customer for less than one minute;

108.2 he sent a Teams message to Mr West to ask him to check that he had completed the security check (requiring the customer's personal information for data protection purposes) properly;

108.3 the claimant then logged out of taking calls from 19.16 to 19.45 – he stated in the investigation meeting on 11 August 2021 that he was too worried to go another call. However, he did not inform Mr West that he had done so; and

108.4 Mr West asked the claimant to go back to taking calls at 19.45.

109. Mr West emailed Miss Ramsden at 19.51 that evening to raise this matter with her. He stated:

*"Just a quick one, [Mr X] messaged me asking whether or not he did DPA on a call as this would determine whether or not he needs to log a complaint.*

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*My concerns are;*

- Surely he should know if he did dpa, this was only 51 second call.*
- He then phone FW helpline to ask them*
- He was logged out from 1916 all the way until 1946*

*o What was he doing during this time?*

*The below is a snippet of the convo – hate to jump to conclusions but saying he hasn't gone back on due to speaking to a FW doesn't ring true with me considering he was on the FW call for 55 seconds."*

### **6 August 2021 incident (morning)**

110. Mr West was also the Shift Manager for the claimant's shift on the morning of 6 August 2021. The following events occurred:

- 110.1 the claimant logged out at around 8.33 and then failed to respond to a Teams message from Mr West until 8.57;
- 110.2 the claimant stated to Mr West that he was logged out whilst on a call but call records show that he was not on a call from 8.33am-8.57am.

111. Mr West again raised this incident with Miss Ramsden.

112. During the investigation on 11 August 2021:

- 112.1 Miss Ramsden asked the claimant what had happened and showed him the log of the call times;
- 112.2 the claimant stated: *"let me see if I have a doc – nothing is there, I had to attend my father at those times, I think I sent him the wrong message";* and
- 112.3 the claimant said: *"It doesn't look good – I should have been honest...I should have reached out, I take responsibility".*

### **6 August 2021 incident (afternoon)**

113. Miss Ramsden raised additional concerns regarding the claimant's working hours during the afternoon of 6 August 2021.

114. The claimant was logged out from 4.40pm to 5.45pm. He did not respond to Miss Ramsden's message. He stated during the investigation:

*"Yes, I put my son down and I fell asleep with him he is 4. No excuses I told the SM on the day"*

115. Miss Ramsden also stated: *"You had taken your lunch at 11.30-12pm but at 6.12pm you took another 15 minutes, can you advise..."*

116. The claimant stated that *"I don't recall"* in response.

### **Miss Ramsden's decision to escalate the call avoidance incidents to a disciplinary hearing**

117. Miss Ramsden asked the claimant if he had any 'mitigating circumstances' that he wanted her to take into consideration. The claimant responded:

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*“My head as been all over as my dad has heart failure and I have had a lot on getting treatment for him I openly admit my head is not in the right place, taken my eyes off the ball I admit.”*

118. Miss Ramsden adjourned the meeting. When they returned, she stated:

*“thank you for being honest, we are looking at gross misconduct - I am concerned re the honesty of the situation and not talking to me- I will be inviting you to a formal meeting”*

119. We note that Ms Wheeler (who chaired the disciplinary hearing on 23 August 2021) accepted the claimant’s mitigation and decided not to impose any disciplinary sanctions on the claimant. However, Ms Wheeler stated that she ‘fully supported’ the decision to investigate and refer the claimant’s conduct to a disciplinary hearing. The notes record the exchanges between Ms Wheeler (referred to as “CW” in the notes) and the claimant that evidence this, including (with our emphasis underlined):

*“CW - We know you have said you have been dishonest and why you acted that way. I know you have spoken to MC today and MC is working with you.”*

...

*“CW - Due to allegation, and being dishonest, the right thing to do this investigation and disciplinary. You held your hand up and said you were in the wrong. You have gone into more details with your answers.*

*[X] – questions has better and probing me to be open.*

*CW – yeah and I do think you opening up and giving us reasons to open up. Steps are now in place to support you going forwards. On the back of that, I am happy that what you have said today covers what and why things happened. We don’t have the best judgement when pressed, a fear. We are not going to take this any further. No further action is taken. I fully support the reason for investigation and disciplinary.”*

120. We concluded that:

- 120.1 the reason why Miss Ramsden escalated the call avoidance incidents to a disciplinary hearing was because of the claimant’s admitted lack of honesty in his communications with Mr West;
- 120.2 we note that the claimant did not have any advance warning of the investigation meeting. However, the claimant did have an opportunity to prepare for the disciplinary hearing on 23 August 2021 and put forwards his mitigation at that meeting;
- 120.3 although Ms Wheeler did not take disciplinary action against the claimant, she stated that it was the ‘right thing’ to do to investigate the allegation and refer it to a disciplinary hearing. She said that this was due to the nature of the allegation and the claimant’s initial dishonesty regarding this matter.

**Claimant’s ‘Speak Up’ complaint – 20 August 2021**

121. The claimant emailed his 6 page ‘Speak Up’ complaint to the respondent’s designated speak up email address. This formed part of the respondent’s whistleblowing policy. The claimant stated as part of his Speak Up complaint that:



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*"I feel Sharon has not shown genuine compassion throughout the year towards myself and I feel targeted, victimized and bullied by her. I am scared of her.*

*I am aware two members of the team have actually left the business since she has been our manager and I do not know her intention if she is wanting me to leave the business too just like my former colleagues.*

*I am aware of other members in the team also feeling bullied by her and not comfortable being at work due to her.*

*I am aware that upper management has made it clear to she will be supported and that nothing will change irrespective of the stress and mental health issues it is causing.*

*I am aware former colleagues have left due to impact on mental health.*

*I feel very vulnerable and having suicidal thoughts a lot at the moment due to my mental health."*

122. Mr Acs acknowledge the claimant's complaint on behalf of the audit team on 23 August 2021 and stated that the team would contact him shortly regarding next steps. Mr Acs also stated:

*"The speak-up process covers matters relating to a wrongdoing about the workplace where the interest of others (e.g. customers, colleagues or clients) or the organisation may be at risk. If you have individual concerns primarily relating to you and your personal circumstances these should be raised under the applicable people policy which can be found on the HR section of policy hub. I would also recommend (if you haven't done so already) that you talk to your People business partner who could review the particular situation and offer available support regarding mental health or wellbeing."*

**Allegation 8 – 6 September 2021 – Teams call with Mr Cooke**

123. The claimant was on sick leave in late August and early September 2021. He called the respondent HR team and spoke to Ms Aija Ziaceva (HR Administrator) who emailed Mr Cooke stating:

*"I just got off the call now from a colleague [Mr X] in Sharon's team who is currently off sick and was concerned he has not heard anything back in regards of his concerns raised about his situation (in particular email to Speak up team ) about direct TL not being supportive about his situation. I am not aware off the full situation as first time I have spoken with him but the word grievance was mentioned on few occasions.*

*The colleague expressed suicidal thoughts and that is struggling currently. He did mention that Change of the team leader would help, also I understood he has been referred to occ health – so would be worth to update him as where we at as well.*

*Since Philippa is back in tomorrow, it would be greatly appreciated if somebody could reach out to this colleague."*

124. Mr Cooke spoke with the claimant on 2 September 2021. He initially arranged a meeting with the claimant on 3 September 2021, because the claimant intended to return to work that day. However, the claimant did not return to work until 6 September 2021.

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125. Mr Cooke sent an invite on the morning of 6 September 2021 to the claimant to attend a Teams call that afternoon. They exchanged messages via Teams about the meeting from 9.25am onwards. The call was originally arranged for 2.30pm, but later pushed back to 2.40pm.
126. The claimant confirmed in a Teams message that he was free before their call started. The claimant was in the office that day. Mr Cooke stated that he did not realise that the claimant was in the office because the claimant's camera was switched off.
127. The claimant stated that Mr Cooke should have been aware that he was in the office because it was the first day back in the office for his team. However, we concluded that only some of Mr Cooke's teams were working from the office that day due to social distancing measures in place following the Covid-19 pandemic. We note that Mr Cooke was the Operations Manager for around seven teams, consisting of around 100 people.
128. We concluded that the claimant had the opportunity to move to a private area to take the Teams call when Mr Cooke told the claimant that he would be free in five minutes.
129. The claimant stated that during the Teams call, he was "*threatened*" by Mr Cooke and "*told not to raise his concerns*". The claimant said that other people gathered round his desk and overheard the call.
130. We note that the claimant provided witness statements for four witnesses who did not attend this hearing. Of these witnesses, only Mr Mulla states that he overheard the call. Mr Mulla states that Mr Cooke "*threatened [the claimant] in front of the whole office*". However, Mr Mulla does not say in his witness statement what words Mr Cooke used. Mr Mulla did not attend this hearing and therefore has not been questioned about his evidence.
131. In addition, we find that it is unlikely that other people could have overheard what Mr Cooke was saying to the claimant. If they were gathered around the claimant and not wearing their own headsets, they would have heard the claimant's side of the call and would have seen Mr Cooke's video feed. The claimant did not suggest that Mr Cooke raised his voice during the call.
132. The claimant was asked during cross-examination why he stated that Mr Cooke threatened him during the call. The claimant stated:

*"he said if I raise grievance about Miss Ramsden, he would be one investigating it – he said the only way I would get a team change was if my grievance upheld. That was threatening behaviour"*

133. Mr Cooke said that he told the claimant that if the claimant raised an informal grievance, then Mr Cooke may deal with it. However, if the claimant raised a formal grievance, then it would be allocated to an appropriate manager by HR.
134. The respondent's grievance policy states:

***Informal***

*If informal discussions with a Line Manager cannot resolve the situation it might be appropriate for a colleague to raise a formal grievance by following this policy. If a*

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*colleague feels unable to approach their Line Manager directly, they should approach a member of the People Services team, who can discuss how to deal with the matter.*

**Formal**

*The first stage of the formal procedure is for the colleague to put their complaint in writing. This should clearly set out their grievance and the outcome they are looking for. If the grievance is unclear, they may be asked to clarify their complaint before any meetings happen. It should be headed "Formal grievance" and sent to their Line Manager, unless it relates to them and then it can be sent to a more senior manager.*

*Depending on the complaint there may be another attempt to resolve it informally but if the colleague is not satisfied with the outcome, the colleague can ask for a full grievance hearing."*

135. Mr Cooke sent some Teams messages to the claimant on the morning of 8 September 2021. In those messages:

135.1 Mr Cooke stated *"Morning mate, I'm reviewing all the investigations and diso's at my end, Sharon is back today – want to make sure you're ok, as may take a while for me to investigate"*

135.2 the claimant replied: *"no worries on Mondays meeting with yourself you advised me that you had looked into everything and felt that a change was not needed as you felt Sharon hasn't done anything and has support me..."*

135.3 Mr Cooke responded *"...I did tell you on Monday I was going to review all the information so I'm just waiting on it before I decide next steps bud"*

135.4 they exchanged further messages set out below:

***"Claimant (8/9/21 09:22):** im sorry Michael I don't think it was appropriate in the way i was approached on Mondays meeting with yourself. Everyone in the office had a view of my screen and could clearly see i was on a video call with yourself and that i was getting emotional and upset. I also have had a lot of stress, mental health and suicidal thoughts – i have a appointment with the GP tomorrow to discuss my health further – as during my time off sick i was not able to get any appointments at all – on Monday nobody did a return to work conversation and that you kind of went in hard over the meeting especially with people having a view of me talking to you and myself getting worked up and upset*

*I do not have anymore sick days paid left – and I cant afford to go off work sick without paid due to my family situation.*

*also you said on Monday that you reviewed the information and feels Sharon has done enough to support*

***Mr Cooke (8/9/21 09:34):** I'm sorry you feel that way [X], we had agreed to meet on Friday and that's why I met you on Monday as you weren't in. I will definitely pick up why your RTW was not completed as that is not ok – so I apologise for that. I had reviewed the support she had given – what I am reviewing next is the investigations and disciplinaries to ensure they were all done appropriately at both stages."*

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136. The claimant then spoke with Mr Acs on 8 September 2021 regarding his discussion with Mr Cooke on 6 September and his later discussion with HR on 8 September. Mr Acs recorded the following notes of the claimant's account of those calls.

□ *“Meeting with Michael Cooke on Monday 06.09.2021 where MC asked the individual to evidence the allegations he is making against the team leader*

*o Agreed to take occupational health assessment in the coming week*

*o Discussed team change process to which MC advised it would need to go through a grievance process which he would determine the outcome for but already signalled that not supportive of the move*

*o [X] reiterated that he's view did not change on his treatment. Also feels that opportunities were taken away from him as previously he deputised for Team leaders and now that opportunity is given to someone else. Feels that the investigations (even though dismissed at the end) tarnished his reputation / perception and limits future opportunities to excel and develop*

*o The meeting left him upset and feeling suicidal. Feels that it was unfair that MC pursued the meeting whilst he wasn't in a comfortable location with others overseeing his screen in the office*

*o Feels that line manager (team leader) is out of depth in her role and MC supports her as he recruited them into role*

*o [X] explained that he used the Speak Up arrangements (and previously given benefit of doubt to line manager, which is he is not willing to do any further)*

*o [X] observed that MC appear to be backtracked (after learning about the Speak Up involvement) and now offered to review the situation in detail and revisit the investigations against [X]*

*o [X] feels that Operations leaders believe they are above the HR process and can control the outcome of any situation*

*o MC projected an attitude that suggest 'you are lucky to have a job' with the pandemic and general economic situation. Feels that MC uses power of authority incorrectly. CCM role is a significant role in the structure and the way they deal with people in the team did not create a positive spirit or align to consistent values.*

□ *[X] later spoke to HR services team leader on 08.09.2021 and understand that the team change process described by MC was incorrect and feels it created more pressure for him in attempt to 'discourage' from pursuing the change formally (as it would be assessed by MC anyway). HR informed that the process would be independent and decision would not be made solely by MC.”*

137. We concluded that during the call on 6 September 2021, the following key points were discussed:

137.1 **Team change** – Mr Cooke stated that he would not grant the claimant's request to change teams at that point in time. Mr Cooke said that he would look into things further;

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- 137.2 **Grievance process** – Mr Cooke was in effect treating the claimant's concerns as an informal grievance. The claimant's concerns related to Miss Ramsden, who was the claimant's own line manager, and it was appropriate for Mr Cooke to consider these in his role as Miss Ramsden's line manager;
- 137.3 Mr Cooke did not state that if the claimant raised a formal grievance, that he would be dealing with it. The claimant had not yet raised a formal grievance in writing, as required by the respondent's policy. The claimant had already raised a written Speak Up complaint but was advised by Mr Acs that this was a separate matter to any grievance;
- 137.4 The claimant was emotional and upset during the call, as reflected by his Teams messages on 8 September 2021. However, Mr Cooke did not 'threaten' the claimant during their call and did not tell him 'not to raise his concerns', as alleged by the claimant.

### **Allegation 9 – 6 September 2021 – no return to work meeting**

138. The respondent accepts that they did not carry out a return to work meeting with the claimant on Monday 6 September 2021 or at any time during that week.
139. Miss Ramsden was on holiday at the start of that week. Mr Watson was the acting Team Leader on 6 September 2021. Miss Ramsden stated that she did not think it would be appropriate for Mr Watson to carry out a return to work meeting with the claimant, given the sensitive nature of the claimant's absence and that they were colleagues within the team.
140. We were provided with internal emails between Mr Cooke and HR. These show that Mr Cooke granted the claimant emergency holiday for Wednesday 8 September 2021 and stated that the claimant was planning to go to the GP on Friday 10 September 2021.
141. The claimant moved to Mr Farrar's team with effect from Monday 13 September 2021 and was not line managed by Miss Ramsden after her return from holiday. Mr Farrar did not carry out a return to work meeting with the claimant.
142. We concluded that the respondent's failure to carry out a return to work meeting with the claimant was an unintentional error. It was due to Miss Ramsden's absence on holiday and the claimant changing teams the week after her holiday.
143. In addition, we note that the claimant had already had two discussions with Mr Cooke regarding his health and the concerns that he had in relation to Miss Ramsden on 2 and 6 September 2021. Mr Cooke stated that in his last Teams message with the claimant on 8 September 2021 that he would 'pick up' the matter and apologised that the claimant's return to work had not been completed.

### **10 September 2021 – call with SJ and Claimant's team move**

144. Mrs Jeffers called the claimant on 10 September 2021, following his calls to the HR Helpdesk and a request from the audit team that HR speak to him regarding any support available. The claimant told Mrs Jeffers that he wanted to leave Miss Ramsden's team. The claimant said that he wanted to move to Mr Greaves' operational area and report to Mr Afzal Sharif as his Team Leader. We have seen a copy of Mrs Jeffers' handwritten notes of their discussion. It is clear from Mrs

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Jeffers' notes that the discussion was a lengthy one and covered many matters not previously raised with Mr Cooke.

145. Mrs Jeffers spoke with Ms Danni Oxley (Head of Customer Engagement). Ms Oxley agreed that the claimant could move teams on a temporary basis until his concerns had been formally dealt with under the grievance process. Ms Oxley stated that there was not enough capacity in Mr Sharif's team for him to move to that team. Instead, she arranged for the claimant to move to Mr Farrar's team (which was part of Mr Cooke's operational area).

146. Mrs Jeffers contacted the claimant about his team move and noted that **the claimant's** office day would then need to change from Monday to Wednesday. The claimant responded on 12 September 2021 by text stating: "*that's absolutely fine with me*". He then moved to Mr Farrar's team on Monday 13<sup>th</sup> September 2021.

### 15 September 2021 – Claimant's grievance regarding Miss Ramsden

147. The claimant emailed his written grievance regarding Miss Ramsden to the respondent on 15 September 2021. The content and wording of the grievance overlapped in many areas with the claimant's Speak Up Complaint. The grievance also included various issues relating to Mr Cooke, although the claimant stated that this grievance related to Miss Ramsden.

148. The claimant's grievance concluded with the following statements:

*"I do believe Lowell is a very inclusive and diverse workplace, however I fear the actions of my manager Sharon Ramsden if left unnoticed – will have detrimental impacts on people, colleagues and reputation of the business. As her behaviour has been very unethical, uncompassionate and pretty much bullying me via her position of power – and this is not right.*

*For so long I assumed maybe I am that problem, however it seems someone has a problem towards me and like I said earlier I am not sure what the reason for this is. I cant help but conclude this is due to the nature of the colour of my skin, my religious belief or my ethnicity of where I derive from.*

*There is no other valid explanation for this behaviour – especially when Carla wheeler twice has interjected utmost compassion and delivered an outcome my personal manager ideally should be coming to. It is just a shame events and people like this exist in 2021. I hope we can get everything resolved and I just hope nobody else is impacted the way my self esteem has been.*

*Please refer to my previous Personal Evaluations, My previous one to ones with my previous managers and see for yourself regarding my work ethic and self-esteem. Please also refer to my performance level since I joined Lowell all the way through now.*

*I had a team leader interview after academy and was told I had strongest interview. However, I did not get the job due to tenure. When it has come to Sharon she has overlooked my tenure as well as others and given Greg someone who swears in team meetings and let people sit and do nothing to cover the team and her decision making is completely unchallenged and unjustified.*

*This is why I think it is racially motivated her actions, as I cant seem to reach any other conclusion.*

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*I reach out to you hoping you can help*

*- I would like a team move permanently away from Sharon's team*

*- I would like to also move from Michael Cooke's area – as I have reached out to him with my problems on several occasions.*

*Thanks for your time”*

149. The respondent's representative asked the claimant during cross-examination to explain why he stated in his grievance that Miss Ramsden had discriminated against him, harassed him and/or victimised him. The claimant stated in relation to Miss Ramsden:

*“I was unsure what I was doing always wrong and why I was always being doubted and why I was being mistreated – constant feelings and questions. I wasn't given a fair opportunity – I wasn't sure why I was having to work in such a hostile working environment.”*

150. The Tribunal panel later asked him why he believed the matters raised in his grievance amounted to discrimination. The claimant stated:

*“Due to the mitigating circumstances that I was providing for any of the issues that I arose – each time I provided mitigating circumstances, each time a different manager would give an outcome of no further action.*

*I believe [Miss Ramsden] never took my word for anything – attending my father, the cyclist incident. My words were not taken at face value – there was no credibility in what I was saying to her.*

*I felt just her mistreatment and each time I'm finding myself having to explain myself and I'm trying to be honest – again it's not taken seriously or with any creditability. Once or twice, I can turn a blind eye. But when it's constantly – especially towards myself and others – that was how I perceived it.*

*I don't understand what the motive was here of mistreating myself in this way”*

151. The claimant also **stated** in his grievance that he thought that the respondent's senior management (including Ms Oxley, Mr Cooke and Miss Ramsden) 'micro-managed' people of ethnic backgrounds out of the business. The claimant stated:

*“It just seemed that people leaving the team – seeing different individuals leaving the team and life being made hard for them – obviously then with myself being managed in the manner that I was – I felt like there's no other explanation.*

*You have to treat people fairly – I believe there is mistreatment – one rule for others and one rule for them.”*

152. When the Tribunal panel asked the claimant if he was saying that he believed that he was subject to discrimination because he could not see any other reason for such mistreatment, the claimant responded:

*“There's a pattern of intent and a pattern of being targeted. For example, if you have a 'development required' call – any aspects of call should be challenged via conversation – but zero calls were challenged by [Miss Ramsden].*

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*When I moved into Afzul's team – my first 5 calls he got four overturned from a 'development required' to a pass/fair outcome, he was very pro-active in terms of having coaching session.*

*Miss Ramsden had not been on the phones before – she was in a different department – there was a complete breakdown in relationships with members of the team.”*

### **Allegation 10 – 24 September 2021 – discussion with Mrs Connolly re claimant's PIP**

153. The respondent's HR team arranged for Mrs Connolly to hear the claimant's grievance. Mrs Connolly was Overdale's Director of Litigation Operations. She worked in a separate area of the respondent's business to the CEC and was more senior than Mr Cooke within the respondent's organisation.

154. Mrs Connolly wrote to the claimant on 21 September 2021 to invite him to attend a grievance investigation meeting on 24 September 2021. The letter offered him the right to be accompanied to the meeting.

155. Mrs Connolly and the claimant had a lengthy grievance investigation meeting on 24 September 2021. We have been provided copies of the notes of that meeting. The claimant stated that there had been some omissions from the notes, but was unable to state during his evidence specifically what parts had been omitted.

156. The claimant stated in his grievance (with our emphasis in bold and underlined):

*“I was also put onto an **action plan due to my call quality results**. I was told by Sharon during my 121's that without good quality results and performance it is difficult for me to cover the team or do additional jobs within the team.*

*I managed to turn this around successfully and improve performance and my action plan was ended, however I was then being put onto another **action plan due to my efficiencies**, as well as strong allegations of gross misconduct. Just when I thought I could potentially progress within the team something else was put on me to hold me back.”*

157. Mrs Connolly (referred to in the notes as 'JC') asked the claimant about the performance management processes:

*“JC If there's a trend, over a couple of months you've had 3 calls where you've had feedback. Does Sharon give you feedback on the form? You don't get a coaching session where Sharon talks you through mistakes / improvements. Should be two-way discussion trying to make sure you feel supported. Shouldn't be 3 pieces of feedback then you're on an action plan or a pip. Which one is it as there's a difference?*

*[X] I don't know if it's action plan or pip – have to double check. They say it's not serious, don't need to be concerned but still adds pressure.*

*JC PIP is formal process, put on a formal action plan – not performing to standards expected. PIP should be seen as supportive tool, not being penalised.*

*[X] Not sure which it is – it's 1 of the 2. Will have to clarify.*

*JC If you've been on action plan or PIP, can you find out which one it actually is?*

*[X] Mine was personally a PIP – is PIP formal?*



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*JC PIP is formal*

*[X] Mine was the other one than, action plan.*

*JC Nothing wrong with action plan*

*[X] Not saying anything wrong with it but knowledge gaps. Asking me to give examples of where issues stemmed from.*

*JC Think I have a good understanding of where you're at. Going to call out key points from grievance for your input."*

158. We note that:

- 158.1 the claimant mentioned in his grievance that he was subject to two action plans, one of which had ended;
- 158.2 the claimant did not mention that he was on a PIP in his grievance against Miss Ramsden;
- 158.3 the claimant himself said he would need to double check if he was on a PIP or an action plan;
- 158.4 Miss Ramsden had told the claimant that he would be on an action plan relating to efficiencies at the end of the meeting on 11 August 2021 (referred to earlier in this Judgment). However, she had then produced a PIP document which she shared with the claimant on 20 August 2021, but which was not sent to the claimant;
- 158.5 the claimant was not sent a copy of the PIP document until the respondent included a copy as part of their response to his subject access request in December 2021.

159. We have concluded that:

- 159.1 the claimant was understandably confused as to the nature of the plan that he had been placed on for efficiencies in August 2021 – i.e. whether it was an action plan or a PIP;
- 159.2 Mrs Connolly worked in a different part of the business. She was asking questions to try and clarify whether the claimant was on an action plan or a PIP. Mrs Connolly did not have access to the claimant's performance documents at that stage;
- 159.3 Mrs Connolly did not 'deny' that the claimant had been placed on a PIP. The claimant said he would need to "*double check*" the position and Mrs Connolly asked him "*can you find out which one it actually is*".

**Allegation 11 – 29 September 2021 – Miss Ramsden's seating arrangements**

160. The claimant alleged that on Wednesday 29 September 2021, Miss Ramsden sat next to the claimant's new team in a "*deliberate attempt to intimidate the claimant*".

161. We note that the claimant's normal office day had changed from Monday (whilst he was in Miss Ramsden's team) to Wednesday (when he moved to Mr Farrar's team). The claimant worked from home for the rest of the week during September 2021. The claimant accepted the change to his office day during his discussions with Mrs Jeffers on 10 September 2021.

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162. We note that the claimant did not in fact attend the office on 29 September 2021. He stated in his grievance regarding Mr Cooke that a colleague informed him that Miss Ramsden was in the office and he decided to work from home instead:

*“There is another big meeting MC is carrying out today with SR present in the office. When weds it not her day in the office and it was now changed to mine – why would you think its suitable to call her in and make her sit in an area where I was meant to be sat. If it wasn’t for a colleague on MF team – who made me aware Sharon is in the office and is sat very close to the team – and asked where I was – thankfully I did not go into the office and avoided any confrontation.”*

163. Miss Ramsden’s normal office day during September 2021 was a Monday. Miss Ramsden stated that she was in the office on Wednesday 29 September 2021 because she was attending the monthly strategy day, arranged by Mr Cooke. Miss Ramsden stated that all of Mr Cooke’s direct reports attended these meetings as a management group. She said that the sessions were booked out for the whole day in a separate room. Miss Ramsden stated that after the session had finished, she then went back to her desk and a brief catch up with team members.

164. We accept Miss Ramsden’s oral evidence that she had a DSE (Display Screen Equipment) desk that she sat at every time that she was in the office. This desk could be adapted for her use and if she were in the office, no one else would use that desk. Miss Ramsden’s desk was located close to her team and Mr Cooke’s other team leaders.

165. We also accept Miss Ramsden’s oral evidence that as at 29 September 2021:

165.1 she did not know what the claimant’s normal office day was, because he did not work in her team at that time;

165.2 she did not know that the claimant had raised a Speak Up Complaint;

165.3 she was aware that there were ongoing issues, which had resulted in the claimant moving from her team to Mr Farrar’s team. Miss Ramsden stated during her oral evidence that she “may not have been aware” that the claimant had raised a formal grievance against her because she was not interviewed by Mrs Connolly regarding the grievance until 8 October 2021. However, we concluded that Miss Ramsden was likely to have been aware that the claimant had raised a grievance, along with other team members who had raised similar grievances against her.

166. We therefore conclude that:

166.1 Miss Ramsden was probably aware that the claimant had raised a grievance, resulting in team move, by 29 September 2021;

166.2 Miss Ramsden sat in her usual seat, both before and for a short time after the end of the monthly management session;

166.3 Miss Ramsden choice of desk did not constitute a deliberate attempt to intimidate the claimant, as he alleged.

**29 September 2021 – Claimant’s grievance regarding Mr Cooke**

167. The claimant sent a six page written grievance regarding Mr Cooke to Mrs Jeffers on 29 September 2021. The claimant stated:

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*"I am not happy in the manner Michael Cooke approached me on the back of myself raising several concerns to him."*

168. The claimant went on to state:

*"The stress has given me suicidal thoughts and has killed my self esteem it is very low. However MC does not seem to be concerned regarding the health and welfare of his agents, it seems to me they have agreed to micromanage people of ethnic backgrounds out of the business and make life very hard for them.*

*He seems to have a lot of prejudice against myself – although I have had valid concerns they have always been dismissed. He did not even get back to me after promising he would – HR intervened and managed to change my team on a temporary basis without an 'upheld grievance' in the way he suggested what is needed to get the team change."*

169. The claimant concluded his grievance stating:

*"There is another big meeting MC is carrying out today with SR present in the office. When weds it not her day in the office and it was now changed to mine – why would you think its suitable to call her in and make her sit in an area where I was meant to be sat. If it wasn't for a colleague on MF team – who made me aware Sharon is in the office and is sat very close to the team – and asked where I was – thankfully I did not go into the office and avoided any confrontation.*

*This was the case after the skip level meeting also – Sharon and greg held their own private meeting away from the team*

*They have created a divide within the workplace and excluded myself from any additional promotional chances or responsibilities.*

*I have highlighted the need for intervention from someone superior to avoid any damages being caused further, these people have been allowed to push their weight and authority when they want how they want and are not scared of any reprisal or any consequences.*

*I am living my life and doing my job constantly in fear, constantly working after hours worried about my future, worried for my colleagues and others who must put up with this unethical behaviour.*

*I really hope someone can intervene before its too late. I am sad I have to consider my career here to put my wellbeing first and I never expected this at Lowell and I am shocked to see people get away with behaving like this and nothing happening on the back of it .*

*On numerous occasions now I have put my life at risk due to the stress that is on my shoulders, once again nobody is wanting to listen to these concerns and people can manipulate HR policies and act like Lowell is their company. I urge someone to intervene and help someone like myself put my mind at ease.*

*I am really sad to write this and really sad that this is what has come of Lowell and my career. I am sad that I used to mentor always, I used to cover the team and now I am just being pushed out and to a side – I look forward to hearing from you."*

**Allegation 12 – 8 October 2021 grievance interview (reference to 'they')**

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170. Mrs Connolly interviewed Mr Cooke on 8 October 2021 as part of her investigations into the claimant's grievance and separate grievances raised by some of the claimant's colleagues.

171. The claimant was not present during that grievance interview. He received a copy of the interview notes during the grievance investigation and complained about them by email on 27 October 2021. Mrs Connolly records in the grievance outcome letter of 2 November 2021:

*"Further to your email dated 27th October 2021, whereby you refer to "prejudice within the hearings with Michael and me both referring to yourself as somewhat a misogynist". I acknowledge the point you are referring to (investigation notes dated 8th October), and would like to point out that Michael was responding to discussion points during the investigation meeting when discussing management styles. Michael was expressing his opinion in response to those points raised and there is no evidence whatsoever to substantiate this allegation of misogyny."*

172. The claimant complained that the last page of the 8 October 2021 notes record that Mrs Connolly implied that people of the same race or religious background as the claimant, were opposed to female management, when using the word 'they'.

173. The context to this discussion was that Mrs Connolly had noted that the individuals raising grievances had referred to Mr Watson several times, particularly that he was chosen to cover for Miss Ramsden during her absence.

174. The relevant parts of the notes are set out below. The entry that the claimant complains about under Allegation 12 is highlighted in bold and underlined. The redacted parts of the notes refer to the claimants' colleagues (the version of the notes that were included in the hearing file contained these redactions).

***JC - Really aggrieved that they feel GW is doing all cover - he's favoured. They were all band 5 agents under total reward, why aren't they being chosen now? Are you aware of any issues with NH, [redacted] performance?***

***MC - I don't get into why team put certain people forward. No set criteria but they do need to be performing - if they're not performing they wouldn't be covering. Number of those people haven't been performing.***

*Make sure we have 1 or 2 people in each team and upskill them. [redacted] Without looking at cover plan, assumption would be chosen GW since for performance.*

***JC - Can I ask you to look at cover Sharon has needed since July and who's done it?***

*Be good to understand if [X] [redacted] not been performing. How do we measure good behaviours, what does it look like? Is it all subjective?*

***MC - Goes against capability framework - clear framework with each of 5 values. We judge our mid year and end year on. Tell my TLs to use this.***

***JC - Be good to know if SR has done this though.***

*That's all I've got for now - will reach back out if I have further questions. Have a reflection on what we've spoke about today. Got people that are aggrieved, not aggrieved for no reason unless people just aren't used to being managed.*

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**MC** - For context - I get they're aggrieved but they were aggrieved when Sheri was TL as well. Sheri had challenges from behavioural issues with some of these individuals. Some were good at the time, some challenging. This team have been aggrieved about everything since they stopped having PW - real challenge to overcome.

**JC** - Put that in an email to me - if trends with other TL similar to SR I will need to understand that. **Need to understand if it's SR or if they've had 2 female managers they don't like that have tried to manage them vs a manager that hasn't picked them up on things.**

**MC** - Will have a look for any emails regarding challenges Sheri had.”

175. We concluded that the claimant's interpretation of the word 'they' was incorrect. We accept Mrs Connolly's evidence that her comment was in response to Mr Cooke's previous statement. Mr Cooke stated (with our emphasis in bold and underlined: *“This team have been aggrieved about everything since **they** stopped having PW”*. Mrs Connolly then replied and we concluded that her words 'they've' and 'they' related to the whole team. Miss Ramsden's team included individuals of different ethnicity and/or religious backgrounds to the claimant during 2020 and 2021, as set out earlier in this Judgment.

### **Allegation 13 – 13 October 2021 – discussion between Mrs Jeffers and the claimant**

176. The claimant was concerned about the length of time that the respondent was taking to conclude the grievance process. The claimant sent a lengthy Teams message to Mrs Jeffers at 8.58am on 13/10/21 stating that he was very worried and nervous. He stated that he had seen:

176.1 comments on the respondent's Bright recognition system relating to Miss Ramsden (which described Miss Ramsden in favourable terms);

176.2 Mr Greaves giving Mr Cooke a lift to work.

177. The claimant stated:

*“This pattern has gone on for over a year and nothing I have said seems to be taken seriously.”*

*“Michael Cooke also continues to recognise Sharon on bright for a good job she is doing. This really concerns me further and adds insult to injury already done. It seems to be MC is doing the best to play mind games even though there have been some very serious concerns put forwards.”*

*“I am just very concerned these people are free to roam and do as they [please] with no fear of consequence.”*

178. He also asked about 6 hours' flexi time that he wanted to be approved.

179. Mrs Jeffers responded at 9.09am asking: *“...are you free for a quick chat as it might be easier to talk. If not, I can always respond via this message chain”*

180. In relation to their call:

180.1 the claimant accepts he was upset during the call – but denies that he 'ranted' about his concerns (as stated by Mrs Jeffers);

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180.2 Mrs Jeffers accepts that **she** raised her voice slightly – we accept her evidence that this was because she had to make herself heard over the claimant, because the claimant accepted that he was upset during the call;

180.3 we note that when Mrs Jeffers and the claimant previously spoke on 10 September 2021, the claimant stated that he wanted to move to Mr Sharif's team (part of Mr Greaves' operational area). We accept that it is likely that Mrs Jeffers and the claimant referred to the claimant's move to Mr Greaves' area during their call. However, we do not accept that Mrs Jeffers told the claimant that 'he should be happy' about the move. That is not consistent with Mrs Jeffers' and the claimant's follow up messages (set out below);

181. Mrs Jeffers then messaged the claimant at 9.39am confirming his 6 hours' flexi time had been approved and stated:

*"Like I said please get back in touch on Friday if you have any further queries. I do really hope that you at least understand why things might seem like they're taking a long time..."*

182. The claimant responded with a 'thumbs up' emoji.

### Grievance outcome – 2 November 2021

183. Mrs Connolly wrote an eight page letter to the claimant on 2 November 2021 to confirm the outcome of his grievances against Miss Ramsden and against Mr Cooke. Some of the claimant's complaints were partially upheld and others were not upheld.

184. The letter stated that the claimant had the right to appeal against the grievance outcome:

*"In line with the Grievance Policy, you have the right to appeal. If you wish to exercise this right you should do so in writing within seven calendar days of the date of this letter to People Services on hrhelpdesk@lowellgroup.co.uk clearly stating the grounds of your appeal."*

185. The claimant has not raised any allegations regarding his grievance outcome as part of this claim. We have therefore not made any findings of fact regarding the grievance outcome.

### Allegation 14 – 3 November 2021 – discussion between Mr Acs and the claimant

186. The claimant called Mr Acs on 3 November 2021. The claimant alleges that Mr Acs told him: *"not to appeal things and that internal audit was taking these things seriously and that the claimant should watch how he spoke to people because the investigation was being dealt with at a very senior level"*.

187. Mr Acs made a note of their call, which was retained in the log of the audit investigation, shortly after the call took place. This stated:

*03/11/2021 – C [the claimant] called ZA on his mobile. C shared their discontent on delayed progress and reiterated their personal situation. ZA reassured C that this investigation is being dealt with at the highest levels and reiterated the independent oversight of the process. ZA also reassured C that a summary of this case was brought to the Non-Executives oversight and that it has the Board's*

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*attention to ensure its concluded fairly and professionally. ZA asked C to allow the process to work for them (and other complainants) and requested that C continue to be constructive and respectful in their communication to all parties.*

188. The context of this call was that Mr Acs' audit team was dealing with the claimant's Speak Up Complaint, not his grievance (which was part of HR's remit). We note that the respondent's whistleblowing policy states that employees have no internal right of appeal against the outcome of any Speak Up Complaint. Instead, any further concerns would have to be raised with the Financial Conduct Authority.

189. We also note that the claimant did appeal against the grievance outcome on 8 November 2021. In his grievance appeal, the claimant referred to his call with Mr Acs and stated:

*On 3rd November, I reached out to Zoltan, Head of UK Audit. Zoltan on this telephone call politely reminded me here wants to protect me and help protect me going forwards. However, Zoltan also made it clear that I would need to watch the way I need to speak with people. He also advised me that he is aware I have raised my further concerns to Robert Taylor. Zoltan also advised that the people looking into my concerns are two levels above Robert Taylor also. I feel victimised by Zoltan and feel he has indirectly threatened me by advising me to watch how I speak to people. I advised Zoltan I speak with respect and will continue to conduct myself in this manner. I also advised him the conversation with Sally was on the back of her being adamant I decided this outcome for myself. I also have a copy of this call too."*

190. The claimant did not disclose any notes or recording of his 'copy' of the call as part of these proceedings.

191. There is no dispute that:

191.1 Mr Acs was 'very polite' to the claimant at the start of their call, as noted by the claimant;

191.2 Mr Acs told the claimant that the respondent's senior executives were aware of the Speak Up Complaint. This is evidenced by the audit team investigation log, which refers to general updates on the progress of the investigation being provided to executives. In addition, we were provided with copies of papers prepared for the respondent's Audit Committee and Board meetings;

191.3 Mr Acs asked the claimant to continue to be respectful in his communications with all parties; and

191.4 the claimant did proceed to appeal against the grievance outcome on 8 November 2021.

192. Ms Heath-Edwards emailed the claimant on 5 November 2021, stating:

*"As you are aware after initial review of the concerns raised it was decided that the grievance process should be allowed to conclude prior to any further wider investigation in order to address your individual concerns. I am aware from the engagement with the People Services team that the grievance investigation has now concluded and that final outcome letters will soon be issued.*

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*Further to reviewing the analysis conducted to date we have concluded that wider investigation is needed to fully consider the concerns raised. To summarise the cultural issues raised were:*

- 1) Staff are being racially discriminated against.*
- 2) Staff are not being supported and coached, in addition due process for disciplinary and other people processes are not being adhered to.*
- 3) There is a toxic work environment in the team due to management and staff are not psychologically safe leading to staff suffering from mental health issues and/or leaving Lowell.*

*We anticipate that this analysis will conclude by the end of November, if there is any changes to the anticipated timeframes you will be notified.*

*We will try to be transparent about the review and outcome as possible. However, due to the confidentiality of the information reviewed and any associated actions and recommendations the amount of information we will be able to share will be limited. Please be assured of the impartiality of the on-going review and that this matter has the attention of the Non-Executive Directors and the Board.*

*In order for us to perform our review effectively please keep any information shared with yourself confidential, as sharing details of the review will impact our ability to conduct the assessment and share information with you.*

*Thank you for your patience.”*

193. We concluded that:

- 193.1 Mr Acs did not tell the claimant not to appeal against the grievance outcome. The audit investigation was continuing at that time and the grievance appeal process was HR's responsibility, rather than that of Mr Acs' audit team. There was in fact no right of appeal against the outcome of any Speak Up Complaint, because the next step (if the claimant were dissatisfied) would be to raise any issues with the Financial Conduct Authority;
- 193.2 Mr Acs did not tell the claimant to 'watch how he spoke to people', but he did ask him to continue to be respectful in his communications. The claimant had been in frequent contact with the audit team, as evidenced by their investigation log; and
- 193.3 there was no suggestion of any 'cover up' of the claimant's complaints – we have seen evidence of lengthy investigations by both HR and the audit team into the claimant's Speak Up Complaint and his grievance. We accept Mr Acs' evidence that the subsequent audit investigation involved considering data relating to 600 agents throughout the CEC. The claimant does not agree with the outcome of those processes, however he has not raised any legal complaints in relation to the outcome of either process as part of this Tribunal claim.
- 193.4 the claimant contacted ACAS by 29 October 2021 (alleging disability, race and religious discrimination) and the respondent sought legal advice around this time in relation to the complaints that he and his colleagues had raised. It is not unusual in the Tribunal's experience for



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employers to seek legal advice when complaints of discrimination are raised against them.

### Grievance appeal and appeal outcome

194. The claimant appealed against the grievance outcome on 8 November 2021. The respondent appointed an external grievance appeal investigator who produced a report. Mr Kevin Blake (the respondent's UK Chief Risk Officer) considered the claimant's appeal, including the report and the claimant's email of 5 March 2022. Mr Blake rejected the claimant's appeal in a letter dated 6 April 2022.

195. The claimant has not raised any allegations regarding his grievance appeal outcome as part of this claim. We have therefore not made any findings of fact regarding the grievance appeal outcome.

### Speak Up Complaint outcome

196. The respondent decided that it would be appropriate for the claimant's grievances (and those of his colleagues) to be investigated before dealing with the claimant's Speak Up Complaint (and those of four of his colleagues). This was because many points raised in the claimant's grievance overlapped with his Speak Up Complaint.

197. The respondent's audit team investigated three key 'cultural issues' and associated concerns raised in the claimant's Speak Up Complaint (and those of four of his colleagues) from 8 November 2022 onwards. These consisted of the following:

*"The cultural issues raised were:*

- *Staff are being racially discriminated against.*
- *Staff are not being supported and coached, in addition due process for disciplinary and other people processes are not being adhered to.*
- *There is a toxic work environment in the team due to management and staff are not psychologically safe leading to staff suffering from mental health issues and/or leaving Lowell."*

198. The investigation was based on data relating to Miss Ramsden's team and the wider CEC, including in relation to leavers, sickness or other absence levels and disciplinary proceedings. The report stated that the team was not an 'outlier' in terms of the data reviewed and the investigation concluded that:

*"There are no indicators within the data to suggest any systemic issues exist within the team or the wider CEC, in relation to the cultural issues reviewed"*.

199. The outcome was not shared with the claimant because it was not concerned with individual issues (which were dealt with as part of the grievance process). However, Mr Acs emailed the claimant to confirm that the investigation was completed on 29 April 2022. We have also seen a copy of the Audit Committee paper that was prepared for the respondent's directors, summarising the outcome of the investigation.

200. The claimant has not raised any allegations regarding the outcome of his Speak Up Complaint as part of this claim. We have therefore not made any findings of fact regarding the outcome of this complaint.

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**Allegations 15 and 16 – 1, 4, 7 and 8 March 2022 –**

201. Mr Gregg is a colleague of the claimant, who had the same job role as the claimant at the times relevant to this claim. Mr Gregg had a number of stints as an acting Team Leader. In February 2022, Mr Greaves asked Mr Gregg to cover Mr Sharif's team at short notice. Mr Sharif was due to be out of the business for a number of months.

202. Mr Gregg confirmed that he had not met the claimant previously. We accept Mr Gregg's evidence that he was not aware of the claimant's previous health difficulties, his race or his religion because the claimant said to Mr Gregg before he started cross-examining Mr Gregg:

*"I don't know you and have never met you – don't want you to be uncomfortable because of a lack of communication.*

*However, Mr Sharif has specifically done every welfare assessment and catch up for any communications himself – even when he's been away – that's why I was very apprehensive and didn't know who you was and the calls kept coming."*

203. Mr Greaves provided Mr Gregg with a short handover note. This confirmed that the claimant was on sickness absence and that he had provided a fit note. However, it did not state the reason for his absence.

204. The claimant continued to be absent on sick leave from Tuesday 1 March 2022 onwards. The claimant's existing sick note had expired and he had not provided a further fit note, covering his continued absence.

205. The claimant alleged that:

205.1 **1 March 2022** - Mr Gregg rang him from a number that he did not recognise and also texted him, despite the claimant having provided a sick note explaining his mental health conditions and current status;

205.2 **4, 7 and 8 March 2022** – Mr Gregg made further calls to the claimant and *"tried to persuade the claimant that he needed to have an informal hearing about being off. The claimant felt that this was not suitable as he was not being allowed time off to recover and switch off"*.

206. However, in the claimant's oral evidence he was unable to recall the specific dates and times when he believed Mr Gregg had contacted him. The claimant did not provide his telephone records or any other documentary evidence in relation to this allegation.

207. Mr Gregg accepts that he called the claimant on 1 and 3 March 2022 and either spoke or left voicemail for the claimant regarding the need for a further fit note. Mr Gregg also texted the claimant with his email address so that the claimant could email him his fit note. The claimant provided a fit note dated 2 March 2022 to Mr Gregg on 4 March 2022. The fit note stated that the claimant was not fit for work due to 'work related stress' for the period from 1 to 31 March 2022.

208. Mr Gregg then emailed the claimant on Monday 7 March 2022, suggesting a date of 8 or 9 March 2022 for a welfare meeting. The email stated:

*"Morning [Mr X] ,*

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*Hope things are getting better for you?*

*I'm wanting to book in a meeting with you just to have a catch up and carry out a welfare check , it's nothing bad , it's just to see if we can do anything more to support you and if you need anything from us.*

*I'd like to do it on zoom or teams just so you can see what has been written down and to make sure you are happy with it .*

*Can you link in with me with a time for on either Tuesday or Wednesday this week please.*

*Thank you"*

209. The claimant did not respond. Mr Gregg called the claimant on 11, 14 and 18 March regarding the same matter, because the claimant had not responded to Mr Gregg's email. Mr Gregg had no further involvement with the claimant after 18 March because Ms Laura Edwards (Team Leader and Mr Gregg's line manager) took over responsibility for managing the claimant. Mr Gregg denies calling the claimant on 8 March 2022.

210. Ms Edwards emailed the claimant on 23 March 2022, setting out the welfare questions that the respondent would normally ask as part of a welfare catch up and a stress risk assessment form. The claimant responded on 20 April 2022. He did not mention any concerns regarding his contact with Mr Gregg.

211. We have concluded that:

211.1 the claimant did not provide the respondent with an up to date fit note on 1 March 2022. He cannot have done so because the fit note for the period from 1-31 March 2022 is dated 2 March 2022 by the GP;

211.2 we accept Mr Gregg's evidence because the claimant has no recollection of the dates or times of his contact with Mr Gregg. Mr Gregg emailed the claimant on 7 March 2022 to arrange a welfare meeting, then called the claimant on 11, 14 and 18 March 2022 because the claimant had not responded to his email. The claimant texted on 18 March 2022 to state that he would ring back, but he did not in fact call Mr Gregg;

211.3 the claimant could have asked Mr Gregg to stop contacting him about the welfare meeting (either by phone, by text or by email). However, he did not do so.

**Claimant's disability status, the respondent's knowledge of disability and the claimant's perceived disability status**

212. The claimant states that his conditions of anxiety, depression post-traumatic stress disorder amounted to a disability throughout the period covered by his factual complaints (i.e. from January 2021 to March 2022). He submitted medical evidence, including his GP records and Employee Assistance Programme ("EAP") records.

213. The claimant stated in his disability impact statement (prepared on or around 8 July 2022) that:

*"10.1 The claimant has had anxiety since 2017. The claimant has had depression since 2017. The claimant has had PTSD since 2017.*

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*The claimant has developed severe PTSD and suicidal thoughts since January 2021 – the claimant made management aware of his mental condition on worsening on January 2021.”*

214. The claimant also referred to the medical treatment that he had received in his impact statement:

*“10.5 the claimant has had medical treatment, the claimant has had counselling sessions, the claimant has had support from the Employee assistance programme to help manage his suicidal thoughts and attempts. The gp has prescribed Sertraline anti depressant tablets.*

*10.6 the claimant has [sought] counselling and support from his GP to help – counselling session details have been attached alongside clinical records.*

*10.7 without the support of Yuhlife Employee Assistance programme interventions and support the professional psychologist doctors helped the claimant calm down not to harm himself or go further with any suicide attempt.”*

215. There is no mention of post-traumatic stress disorder in any of the claimant’s medical records from 2017 onwards. The claimant did not state in his witness statement or in his oral evidence how he stated that he had been diagnosed with post-traumatic stress disorder.

216. The claimant’s GP records note that the claimant spoke to an Advanced Nurse Practitioner on 16 August 2021 and stated that he was struggling with:

*“...work related stress, dad poorly with heart failure, wife here on visa. work putting complaint in for poor time keeping. works debt collecting company feels ang at times- has hit himself in side of head few times. no suicidal ideation. over thinking. sleeping ok work are referring to OH & has had some counselling through work not particularly wanting further counselling or medications - just wanting it documenting*

*Plan: chatted about self help for his mental health”*

217. In his oral evidence the claimant said:

*“I’ve always been an upbeat person – for four or five years I’ve had symptoms but I managed to keep going without medication.”*

218. We also note that the claimant stated in his Speak Up Complaint that he emailed to the respondent on 20 August 2021:

*“After speaking with my personal GP, on the 16 August 2021. I think this is the most appropriate method of communication to voice my concerns.*

*I am usually a very resilient and upbeat optimistic individual therefore I have found it very difficult to accept and acknowledge the mental health issues I am currently facing.*

*This includes self-harm, to the level I have physically harmed myself by punching side of my head several times. This is an episode I have had twice this year, the most recent being dated 16/08/2021.*

*I have worked at Lowell near enough three years. I have never had any issues related to mental health or stress until this past year. I have always been recognised as one of the top performers consistently during my time at Lowell.*

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*I have no blemish on my career at Lowell and I have always been very positive and very happy to work at Lowell.”*

219. The claimant’s GP records also note that the claimant was prescribed sertraline medication starting on 1 June 2022, i.e. around 3 months after the events that are the subject of this claim.

220. The respondent referred the claimant to its occupational health provider on or around 17 August 2021. Miss Ramsden completed the standard referral form and stated that the reason for referral was:

*“Any stress, depression or anxiety related issues”.*

221. In response to the question “As far as you’re aware, what health issues has the employee been experiencing?”, Miss Ramsden stated:

*“Recent life changes, [Mr X] Father extremely ill and he live with [Mr X] who is caring for him additional in August his wife did not pass the UK residency to stay in the country and he looking at what need to happen to retake – appeal the decision to deport on 10.09.2021”*

222. In response to the question “For how long has this been apparent?”, Miss Ramsden stated:

*“Since 26/07/2021”.*

223. The claimant did not attend the occupational health appointment that was arranged.

224. In relation to counselling:

224.1 the claimant’s EAP records note that the claimant first contacted the EAP on or around 27 August 2021 and was assessed by the EAP on that date.

224.2 the claimant started receiving counselling and wellbeing checks from the EAP shortly after that time. The latest EAP clinical records that were disclosed date from January 2022. (The later entries dated June 2022 relates to the claimant’s request for copies of his EAP clinical records).

224.3 the claimant told his GP practice on 16 August 2021 that he did not want to consider any further counselling or medication at that time.

225. We note that in the months running up to mid-August 2021, the claimant was struggling with several challenges which affected his mental health including:

225.1 his father’s deteriorating health;

225.2 his wife’s visa status;

225.3 working under an action plan in relation to ‘efficiencies’ (considered later in this Judgment in more detail); and

225.4 being subject to a disciplinary hearing in relation to call avoidance.

226. We concluded that as at 16 August 2021:

226.1 the claimant’s conditions of anxiety and depression had more than a minimal or trivial effect on his ability to carry out normal day to day activities;

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226.2 it was likely that the claimant's anxiety and depression would continue to have that effect on him for a total period of 12 months or more.

227. We note that the respondent has conceded that if the Tribunal were to find that the claimant was disabled, then they had knowledge of such disability from 17 August 2021 (i.e. when Miss Ramsden completed the occupational health referral form).

228. In relation to the claimant's perceived disability status, we concluded that there was no evidence to suggest that the respondent perceived the claimant to have a disability until 17 August 2021. It was at this point that Miss Ramsden was sufficiently concerned to refer the claimant to the respondent's occupational health provider. Prior to that, Miss Ramsden understood that the claimant was experiencing stress in relation to 'recent life changes' (as stated above) since 26 July 2021, rather than anxiety and/or depression.

## APPLICATION OF THE LAW TO THE FACTS

229. We will now apply the law to our findings of fact. We note that claims of direct discrimination and harassment are brought as alternative claims – i.e. if the claimant succeeds under either type of claim, then we do not need to consider the alternative claim in relation to the same factual allegation.

### Claimant's perceived disability, race and/or religion

230. The claimant has pleaded discrimination on the basis of both his actual disability, race and/or religion and perceived disability, race and/or religion. We have already concluded that the respondent did not perceive the claimant to have a disability until 17 August 2021 (as set out in paragraph 228 above).

231. The claimant did not put any questions to the respondent's witnesses about their perception of his race and/or religion. The only witness of the respondent who stated that they were unaware of the claimant's protected characteristics was Mr Gregg, whom the claimant had never met. However, the claimant did not ask Mr Gregg during cross-examination whether Mr Gregg perceived him to be a British Pakistani Muslim.

### Victimisation – protected acts

232. The respondent accepted that the claimant's grievance against Miss Ramsden on 15 September 2021 amounted to a protected act for the purposes of the claimant's victimisation complaint. However, the respondent denied that the claimant's Speak Up Complaint of 20 August 2021 amounted to a protected act.

233. We have concluded that the claimant's Speak Up Complaint did amount to a protected act. This is because the claimant refers to matters set out in s27(2) of the Equality Act 2010, including "*making an allegation (whether or not express) that A or another person has contravened the Act*" (s27(2)(d) of the Act). The parts of the claimant's Speak Up Complaint that fall under s27(2) include implied allegations that Miss Ramsden had breached the Act:

*"I feel Sharon has not shown genuine compassion throughout the year towards myself and I feel targeted, victimized and bullied by her. I am scared of her.*

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*I am aware two members of the team have actually left the business since she has been our manager and I do not know her intention if she is wanting me to leave the business too just like my former colleagues.*

*I am aware of other members in the team also feeling bullied by her and not comfortable being at work due to her.*

*I am aware that upper management has made it clear to she will be supported and that nothing will change irrespective of the stress and mental health issues it is causing.*

*I am aware former colleagues have left due to impact on mental health.*

*I feel very vulnerable and having suicidal thoughts a lot at the moment due to my mental health.”*

**Allegation 1 – 19 January 2021 - escalation of investigation to disciplinary hearing**

234. We concluded that Miss Ramsden’s decision to refer the investigation into an upheld customer complaint to a disciplinary hearing could amount to:

234.1 less favourable treatment (for the purposes of a direct discrimination complaint); or

234.2 unwanted conduct (for the purposes of a harassment complaint).

**Direct discrimination**

235. We concluded that:

235.1 Mr Watson (or a hypothetical comparator) would have been treated in the same way as the claimant. We note that Mr Watson was referred to a disciplinary hearing in relation to his attendance. The claimant did not provide any evidence to suggest that a hypothetical comparator would have been treated differently to him; and

235.2 the reason for Miss Ramsden’s decision was not related to the claimant’s race, religion or disability (or his perceived race, religion or disability). In particular, we note that:

235.2.1 at that time, the claimant’s conditions did not amount to a disability and Miss Ramsden did not perceive him to have a disability;

235.2.2 the claimant did not provide any evidence to suggest that Miss Ramsden’s reason for escalating the matter to a disciplinary hearing was related to his race or religion. The key part of the claimant’s complaint was that Miss Ramsden failed to take account of his mitigating circumstances, which ultimately led to Ms Wheeler’s decision not to take any further action following the 9 February 2021 disciplinary hearing. However, the claimant accepted in his oral evidence that he only told Miss Ramsden: *“I feel there is a lot on”* and did not tell her that he was struggling with any health difficulties during the meeting on 19 January 2021 when Miss Ramsden decided to escalate the matter to a disciplinary hearing. In addition, the difficulties referred to by the claimant consisted of childcare, caring for his parents, poor

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internet connection and IT issues. There was no evidence to suggest that Miss Ramsden would have treated a team member who was not a British Pakistani Muslim differently to the claimant.

### ***Harassment***

236. We concluded that Miss Ramsden's decision did not relate to the claimant's disability, race or religion for the same reasons as those set out at paragraph 235.2 above.

237. The claimant's complaints of direct discrimination and harassment in relation to Allegation 1 therefore fail.

### **Allegation 2 – 15 March 2021 - holiday booking**

238. We concluded that the claimant did not ask Miss Ramsden if he could take holiday during Ramadan 2021, as set out in detail earlier in this Judgment.

239. The claimant's complaints of direct discrimination and harassment in relation to Allegation 2 therefore fail.

### **Allegation 3 – 20 August 2021 - PIP**

240. We concluded that Miss Ramsden's decision place the claimant on a PIP could amount to:

240.1 less favourable treatment (for the purposes of a direct discrimination complaint); or

240.2 unwanted conduct (for the purposes of a harassment complaint).

### ***Direct discrimination***

241. We concluded that the claimant was not placed on a PIP because of his race, religion or disability:

241.1 a hypothetical comparator would have been treated in the same way. We note that Mr Watson was not subject to an action plan in relation to his performance. However, Mr Hopkins was placed on a PIP in relation to matters including call quality and average call handling time. In addition, Miss Ramsden placed several other members of staff on PIPs during 2021 and 2022;

241.2 the reason for the PIP was not related to the claimant's race, religion or disability. In particular, we note that:

241.2.1 at that time, the claimant's conditions did not amount to a disability and Miss Ramsden did not perceive him to have a disability **during the discussion regarding the action plan on 11 August 2021;**

241.2.2 the PIP was part of the respondent's informal performance management, as set out in their policy. The claimant's PIP was not part of any formal performance management process, which would have required an initial formal hearing;



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241.2.3 the claimant did not challenge Miss Ramsden's feedback on his performance in relation to the respondent's 'efficiencies' measures, which were the subject of the PIP; and

241.2.4 the claimant did not provide any evidence to suggest that Miss Ramsden placed the claimant on a PIP to "*make the claimant look bad and justify promotion for Mr Watson*", as alleged by the claimant.

### **Harassment**

242. We concluded that Miss Ramsden's decision to place the claimant on a PIP did not relate to the protected characteristics of race, religion and/or disability for the same reasons as those set out in paragraph 241.2 above.

243. The claimant's complaints of direct discrimination and harassment in relation to Allegation 3 therefore fail.

### **Allegation 4 – July 2021 – Miss Ramsden's holiday cover**

244. We concluded that Miss Ramsden asked which team members were interested in covering her role in her absence, scored them against the respondent's 2021 objectives and decided that the two highest performing agents (Mr Watson and SH) would cover her role.

245. We concluded that Miss Ramsden's actions did not amount to either less favourable treatment (for the purposes of direct discrimination) or to unwanted conduct (for the purposes of harassment). The claimant, along with all other team members, was given the opportunity to indicate his interest and to be scored.

246. However, if our conclusion on this issue is incorrect, then we have also considered whether it would amount to direct discrimination or harassment.

### **Direct discrimination**

247. We concluded that:

247.1 Mr Watson was treated in the same way as the claimant and that a hypothetical comparator would have been treated in the same way – i.e. they would have been scored against the respondent's 2021 objectives and the two top scorers would have been provided with the opportunity to cover Miss Ramsden's role for two days each. In particular, we note that SH (whom the claimant describes as a British Indian Muslim) also covered Miss Ramsden's absence for two days because he was the second highest scorer);

247.2 the reason why the claimant was not given the opportunity to cover Miss Ramsden's role was because he scored lower than Mr Watson and SH. The claimant did not challenge the scores allocated to him by Miss Ramsden in his oral evidence.

### **Harassment**

248. We concluded that Miss Ramsden's decision did not relate to the claimant's disability, race or religion for the same reasons as those set out at paragraph 247.2 above.

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249. The claimant's complaints of direct discrimination and harassment in relation to Allegation 4 therefore fail.

**Allegation 5 – June/July 2021 – claimant attending to his father during working hours**

250. We concluded that Miss Ramsden did not tell the claimant that:

250.1 he could not attend to his father during working hours; and

250.2 that disciplinary action would be taken against him if he did.

251. The reasons for our conclusions are set out in detail earlier in this Judgment.

252. The claimant's complaints of direct discrimination and harassment in relation to Allegation 5 therefore fail.

**Allegation 6 – 23 July 2021 – claimant's request for 'time back'**

253. We concluded that Miss Ramsden did not respond to the claimant's request for 'time back' on 23 July 2021. However, we concluded that this was an oversight and did not amount to unwanted conduct (for the purposes of a harassment complaint).

254. The key reason for our conclusions were that:

254.1 the claimant and Miss Ramsden had exchanged several messages before the claimant's request for time back at 4.56pm on Friday 23 July 2021. Miss Ramsden had responded to the claimant three times between 4.54pm and 4.56pm;

254.2 Miss Ramsden finished work shortly afterwards;

254.3 the claimant was absent on sick leave on Monday 26 July 2021. He exchanged messages with Miss Ramsden on that day, but did not remind her that he had asked to work time back;

254.4 we accepted Miss Ramsden's evidence that the claimant did not need permission to work the hours that he had requested. Permission was only required to take off time during working hours in the first place. The claimant did not dispute this.

255. In addition, there is no evidence to suggest that Miss Ramsden's oversight was related to the claimant's race or religion. (At that time, the claimant's conditions did not amount to a disability and Miss Ramsden did not perceive him to have a disability).

256. The claimant's complaints of harassment in relation to Allegation 6 therefore fails.

**Allegation 7 – 11 August 2021 – gross misconduct allegations made against claimant and escalated to disciplinary hearing**

257. We concluded that Miss Ramsden's decision to refer the August investigation matters to a disciplinary hearing could amount to:

257.1 less favourable treatment (for the purposes of a direct discrimination complaint); or

257.2 unwanted conduct (for the purposes of a harassment complaint).

***Direct discrimination***

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258. We concluded that:

258.1 Mr Watson (or a hypothetical comparator) would have been treated in the same way as the claimant. We note that Mr Watson was referred to a disciplinary hearing in relation to his attendance. The claimant did not provide any evidence to suggest that a hypothetical comparator would have been treated differently to him; and

258.2 the reason for Miss Ramsden's decision was not related to the claimant's race, religion or disability (or his perceived race, religion or disability). In particular, we note that:

258.2.1 at that time, the claimant's conditions did not amount to a disability and Miss Ramsden did not perceive him to have a disability;

258.2.2 the claimant accepted during the investigation meeting and the disciplinary meeting that he had been dishonest in his initial discussions with Mr West. It was the nature of the allegations and the claimant's dishonesty that led Miss Ramsden to refer the matter to a disciplinary hearing:

258.2.3 the claimant did not provide any evidence to suggest that the reason for escalating the matter to a disciplinary hearing was related to his race or religion. The key part of the claimant's complaint was that Miss Ramsden failed to take account of his mitigating circumstances, which ultimately led to Ms Wheeler's decision not to take any further action following the 23 August 2021 disciplinary hearing. However, Ms Wheeler noted in the disciplinary hearing notes (with our emphasis underlined):

"CW - Due to allegation, and being dishonest, the right thing to do this investigation and disciplinary. You held your hand up and said you were in the wrong. You have gone into more details with your answers.

*[X] – questions has better and probing me to be open.*

*CW – yeah and I do think you opening up and giving us reasons to open up. Steps are now in place to support you going forwards. On the back of that, I am happy that what you have said today covers what and why things happened. We don't have the best judgement when pressed, a fear. We are not going to take this any further. No further action is taken. I fully support the reason for investigation and disciplinary."*

### **Harassment**

259. We concluded that Miss Ramsden's decision did not relate to the claimant's disability, race or religion for the same reasons as those set out at paragraph 258.2 above.

260. The claimant's complaints of direct discrimination and harassment in relation to Allegation 7 therefore fail.

### **Allegation 8 – 6 September 2021 – Teams call with Mr Cooke**

261. We concluded that the claimant was upset during the call with Mr Cooke on 6 September 2021. However, we concluded that the call did not amount to either:

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261.1 less favourable treatment (for the purposes of a direct discrimination complaint); or

261.2 unwanted conduct (for the purposes of a harassment complaint).

262. The key reasons for our conclusions are:

262.1 Mr Cooke had previously spoken to the claimant on 2 September 2021, after the claimant contacted HR and expressed that he was struggling with his mental health. The claimant said that he was going to be back at work the next day (Friday 3 September 2021) and Mr Cooke arranged a meeting for that day;

262.2 the claimant remained on sick leave on 3 September 2021. Mr Cooke therefore arranged a meeting for Monday 6 September 2021. The claimant accepted Mr Cooke's invite and they exchanged messages from around 9.25am onwards on the morning of 6 September 2021 regarding the meeting;

262.3 6 September 2021 was the claimant's team's first day working from the office. Previously, the claimant's team had worked from home continuously since around March 2020. From 6 September 2021 onwards, the claimant's team normally worked Mondays in the office and the rest of the time from home;

262.4 Mr Cooke was working from home on 6 September 2021 and was not aware that the claimant's team were working from the office that day. Only some of the teams in Mr Cooke's area worked from the office on Mondays. Other teams within Mr Cooke's operational area worked from the office on other days. For example, Mr Farrar's team (which the claimant joined on 13 September 2021) worked from the office on Wednesdays;

262.5 the claimant did not switch his camera on during the call and Mr Cooke did not know that he was in the office. In addition, the claimant could have moved to a private area to take the call, having exchanged messages with Mr Cooke regarding their availability 5 minutes before the call started;

262.6 the claimant stated that witnesses overheard the call. However, the claimant only produced a witness statement from Mr Mulla which referred to the call. Mr Mulla did not attend the hearing and could therefore not be questioned on his evidence. In any event, Mr Mulla stated that Mr Cooke "*threatened* [the claimant] *in front of the whole office*". Mr Mulla did not set out in his witness statement what specific words Mr Cooke used;

262.7 the claimant stated that the 'threat' that Mr Cooke made towards him was that:

*"he said if I raise grievance about Miss Ramsden, he would be one investigating it – he said the only way I would get a team change was if my grievance upheld. That was threatening behaviour"*

262.8 we found that during the call on 6 September 2021, the following key points were discussed:

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262.8.1 **Team change** – Mr Cooke stated that he would not grant the claimant's request to change teams at that point in time. Mr Cooke said that he would look into things further;

262.8.2 **Grievance process** – Mr Cooke was in effect treating the claimant's concerns as an informal grievance. The claimant's concerns related to Miss Ramsden, who was the claimant's own line manager, and it was appropriate for Mr Cooke to consider these in his role as Miss Ramsden's line manager;

262.8.3 Mr Cooke did not state that if the claimant raised a formal grievance, that he would be dealing with it. The claimant had not yet raised a formal grievance in writing, as required by the respondent's policy. The claimant had already raised a written Speak Up complaint but was advised by Mr Acs that this was a separate matter to any grievance;

262.8.4 the claimant was emotional and upset during the call, as reflected by his Teams messages on 8 September 2021. However, Mr Cooke did not 'threaten' the claimant during their call and did not tell him 'not to raise his concerns', as alleged by the claimant.

263. The claimant and Mr Cooke had previously discussed the claimant's current health condition. However, there is no evidence to suggest that Mr Cooke discussed how the claimant's concerns would be dealt with because the claimant had a disability. In addition, there is no evidence to suggest that the discussions during the call took place because of the claimant's race or religion.

264. The context of the discussions was the claimant's health condition and to that extent, the background of the discussions related to the claimant's disability. However, the 'threatening behaviour' that the claimant complains of related to the handling of his potential grievance against Miss Ramsden. That discussion was not related to the claimant's disability. In addition, there is no evidence to suggest that the discussion related to the claimant's race or religion.

265. The claimant's complaints of direct discrimination and harassment in relation to Allegation 8 therefore fail.

**Allegation 9 – 6 September 2021 – no return to work meeting (harassment complaint only)**

266. We concluded that the respondent's failure to hold a return to work meeting on 6 September 2021 could amount to unwanted conduct (for the purposes of a harassment complaint).

267. However, we concluded that the respondent's failure to hold a return to work meeting did not relate to the claimant's disability, race or religion. The meeting was not held because of Miss Ramsden's absence on holiday and the events that took place shortly afterwards, including:

267.1 Miss Ramsden was on holiday on that date and Mr Watson was the Acting Team Leader. We accepted Miss Ramsden's evidence that it would not have been appropriate for Mr Watson to carry out the return to work meeting in her absence;

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267.2 the claimant had already had two discussion with Mr Cooke regarding his health and his concerns on 2 and 6 September 2021. Also, Mr Cooke apologised that the claimant's return to work meeting had not been completed on 8 September 2021 and granted him emergency holiday on that day;

267.3 the claimant moved to Mr Farrar's team on 13 September 2021, following discussions with Mrs Jeffers.

268. The claimant's complaint of harassment in relation to Allegation 9 therefore fails.

**Allegation 10 – 20 September 2021 – discussion with Mrs Connolly re PIP**

269. We concluded that Mrs Connolly did not deny that the claimant had been placed on a PIP, as set out in detail earlier in this Judgment.

270. The claimant's complaints of direct discrimination and harassment in relation to Allegation 10 therefore fail.

**Allegation 11 – 29 September 2021 – Miss Ramsden's seating arrangements**

271. We concluded that Miss Ramsden sat near the claimant's new team (managed by Mr Farrar) on Wednesday 29 September 2021. However, we concluded that she did not do so 'in a deliberate attempt to intimidate the claimant' as he has alleged because:

271.1 Miss Ramsden attended the office on that date for an all day meeting with Mr Cooke and his Team Leaders. Her normal day working from the office was a Monday;

271.2 Miss Ramsden was not aware that the claimant's normal day to work from the office was a Wednesday;

271.3 Miss Ramsden sat at her normal DSE desk briefly before and after the all day meeting. This was where Miss Ramsden always sat when she came into the office because the desk was specifically adapted for her to use. She did not sit there because the claimant had raised a grievance against her;

271.4 Miss Ramsden was not aware of the claimant's Speak Up Complaint and therefore cannot have sat at her normal DSE desk because of the claimant's Speak Up Complaint.

272. The claimant's complaint of victimisation in relation to Allegation 11 therefore fails.

**Allegation 12 – 8 October 2021 – Mrs Connolly's interview of Mr Cooke**

273. We concluded that the claimant's interpretation of the word 'they' in the final page of the interview notes of Mrs Connolly's meeting with Mr Cooke was incorrect. The claimant did not attend the meeting and has taken the wording out of context, as set out in detail earlier in this Judgment.

274. The claimant's complaints of direct discrimination and harassment in relation to Allegation 12 therefore fail.

**Allegation 13 – 13 October 2021 – Mrs Jeffers' call with the claimant**

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275. We conclude that Mrs Jeffers did not ‘speak inappropriately’ to the claimant. We concluded that during the call on 13 October 2021:

- 275.1 the claimant was upset and emotional, because it related to the matters set out in earlier in this Judgment;
- 275.2 Mrs Jeffers accepts that raised her voice slightly – we accept her evidence that this was because she had to make herself heard over the claimant;
- 275.3 we note that when Mrs Jeffers and the claimant previously spoke on 10 September 2021, the claimant stated that he wanted to move to Mr Sharif’s team (part of Mr Greaves’ operational area). We accept that it is likely that Mrs Jeffers and the claimant referred to the claimant’s move to Mr Greaves’ area during their call. This is because the claimant raised concerns in his Teams message about Mr Greaves giving Mr Cooke a lift to work. However, we do not accept that Mrs Jeffers told the claimant that ‘he should be happy’ about the move. That is not consistent with Mrs Jeffers’ and the claimant’s follow up messages (set out **earlier in this judgment**);

276. However, even if the claimant were able to establish that Mrs Jeffers’ conduct of the call amounted to a detriment for the purposes of his victimisation complaint, we concluded that Mrs Jeffers’ conduct of the call did not take place because of the claimant raised his Speak Up Complaint or his grievance against Miss Ramsden. The key reasons for our conclusion include:

- 276.1 the call took place after the claimant sent a lengthy Teams message raising his concerns to Mrs Jeffers on 13 October 2021 as set out earlier in this Judgment;
- 276.2 Mrs Jeffers gave the claimant the option of discussing his concerns in a phone call or via Teams messages;
- 276.3 Mrs Jeffers attempted to explain to the claimant why the respondent’s internal processes were taking some time and to manage the concerns that he had raised, including his concern that Mr Greaves had given Mr Cooke a lift to work.

277. The claimant’s complaint of victimisation in relation to Allegation 13 therefore fails.

**Allegation 14 – 3 November 2021 – claimant’s call with Mr Acs**

278. We concluded that Mr Acs’ discussion with the claimant did not take place in the manner alleged by the claimant at Allegation 14 for the reasons set out in detail earlier in this Judgment. . In particular, we concluded that:

- 278.1 Mr Acs did not tell the claimant not to appeal against the grievance outcome. The audit investigation was continuing at that time and the grievance appeal process was HR’s responsibility, rather than that of Mr Acs’ audit team;
- 278.2 Mr Acs did not tell the claimant to ‘watch how he spoke to people’, but he did ask him to continue to be respectful in his communications. The

**RESERVED JUDGMENT**

claimant had been in frequent contact with the audit team, as evidenced by their investigation log; and

278.3 there was no suggestion of any ‘cover up’ of the claimant’s complaints – we have seen evidence of lengthy investigations by both HR and the audit team into the claimant’s Speak Up Complaint and his grievance. We accept Mr Acs’ evidence that the subsequent audit investigation involved considering data relating to 600 agents throughout the CEC. The claimant does not agree with the outcome of those processes, however he has not raised any legal complaints in relation to the outcome of either process as part of this Tribunal claim.

279. The claimant’s complaint of victimisation in relation to Allegation 14 therefore fails.

**Allegations 15 and 16 – 1, 4, 7 and 8 March 2022 contact from Mr Gregg (harassment only)**

280. We concluded that Mr Gregg’s contact with the claimant may have amounted to unwanted conduct for the purposes of the claimant’s harassment complaint. This was because the claimant had previously provided a fit note and details of his health condition to the respondent (which Mr Gregg had not seen).

281. We accepted Mr Gregg’s evidence that he was not aware of the claimant’s previous health difficulties, his race or his religion because the claimant said to Mr Gregg before he started cross-examining Mr Gregg:

*“I don’t know you and have never met you – don’t want you to be uncomfortable because of a lack of communication.*

*However, Mr Sharif has specifically done every welfare assessment and catch up for any communications himself – even when he’s been away – that’s why I was very apprehensive and didn’t know who you was and the calls kept coming.”*

282. The claimant did not put to Mr Gregg in cross-examination any questions about Mr Gregg’s perception of his disability, race and/or religion.

283. In any event, we concluded that Mr Gregg’s contact with the claimant was not related to the claimant’s disability, race and/or religion:

283.1 the claimant did not provide the respondent with an up to date fit note on 1 March 2022. He cannot have done so because the fit note for the period from 1-31 March 2022 is dated 2 March 2022 by the GP. Mr Gregg contacted the claimant on 1 and 4 March 2022 because the claimant needed to send an up to date fit note;

283.2 we accept Mr Gregg’s evidence because the claimant has no recollection of the dates or times of his contact with Mr Gregg. Mr Gregg emailed the claimant on 7 March 2022 because he was trying to arrange a welfare meeting. Mr Gregg called the claimant on 11, 14 and 18 March 2022 because the claimant had not responded to his email. The claimant texted on 18 March 2022 to state that he would ring back, but he did not in fact call Mr Gregg;



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283.3 the claimant could have asked Mr Gregg to stop contacting him about the welfare meeting (either by phone, by text or by email). However, he did not do so.

284. The claimant's complaint of harassment in relation to Allegations 15 and 16 therefore fails.

**CONCLUSIONS**

285. For the reasons set out above, the claimant's claims of:

285.1 direct discrimination (disability, race and religious belief);

285.2 harassment (disability, race and religious belief); and

285.3 victimisation;

fail and are dismissed.

**Employment Judge Deeley**

**Date: 14<sup>th</sup> February 2023**

WRITTEN REASONS SENT TO THE PARTIES  
ON

.....  
AND ENTERED IN THE REGISTER

Date: 16<sup>th</sup> February 2023

.....  
FOR THE TRIBUNAL OFFICE

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## RESERVED JUDGMENT

## Annex 1 – Agreed List of Issues

## Table of factual allegations

Date	People involved	Allegation	Relevant complaint(s)	Protected characteristic(s) and comparators relied on by C
1. <del>9 February 2021</del> [19 January 2021]	Sharon Ramsden (“SR”)	C was investigated for an upheld customer complaint by SR and this was escalated to disciplinary by SR despite C presenting mitigating circumstances relating to his health.	Direct discrimination  Harassment	disability, race and religion  Hypothetical only
2. On or around 15 March 2021	SR and Michael Cooke (“MC”)	C’s request for holiday over Ramadan was refused by SR and MC whereas Gregory Watson (“GW”) was given emergency holiday.	Direct discrimination  Harassment	religion and race  [C confirmed not disability discrimination]  GW/hypothetical
3. <del>20 June 2021</del> [20 August 2021]	SR	C unfairly put onto a performance improvement plan by SR and formal performance improvement plan carried out by SR to make C look bad and justify promotion for GW.	Direct discrimination  Harassment	disability, race and religion  GW/hypothetical
4. July 2021	SR	SR decided GW was the best to cover the team when she was on holiday instead of C.	Direct discrimination  Harassment	disability, race and religion

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Date	People involved	Allegation	Relevant complaint(s)	Protected characteristic(s) and comparators relied on by C
				GW/hypothetical
5. June or July 2021	SR	SR told C that he could not attend his father during working hours, although his father was critical ill with heart failure, and that disciplinary action would be taken against him if he did.	Direct discrimination  Harassment	disability, race and religion  Hypothetical only
6. 23 July 2021	SR	C's request for "time back" was not acknowledged by SR.	Harassment	disability, race and religion
7. 13 August 2021	SR	Gross misconduct allegations were made against C by SR and escalated to a disciplinary hearing.	Direct discrimination  Harassment	disability, race and religion  GW/Hypothetical only
8. 6 September 2021	MC	C was threatened over Microsoft Team's video chat by MC and told not to raise his concerns.	Direct discrimination  Harassment	disability, race and religion  Hypothetical only
9. 6 September 2021	SR	No return to work meeting was carried out by R, although C had been unfit for work for mental health reasons.	Harassment	disability, race and religion
10. On or around 20 September 2021	Jill Connolly ("JC")	JC denied that C had been placed on a performance improvement plan <del>and on or around the same date so did Alison Ford.</del>  <i>[Allegation withdrawn in relation to Alison Ford only during</i>	Direct discrimination  Harassment	disability, race and religion  Hypothetical only

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Date	People involved	Allegation	Relevant complaint(s)	Protected characteristic(s) and comparators relied on by C
		<i>hearing.]</i>		
11. 29 September 2021	SR	SR sat next to the team C moved into in a deliberate attempt to intimidate C.	Victimisation	N/A
12. 8 October 2021	JC	During an investigatory interview conducted by JC with MC, JC was recorded as saying “they”, by which C understood people of the same race or religious background, were opposed to female management.	Direct discrimination Harassment	race and religion Hypothetical only
13. 13 October 2021	Sally Jeffers (“SJ”)	SJ spoke inappropriately to C in that she raised her voice and suggested he should be happy he was now in Anthony Greaves area.	Victimisation	N/A
14. On or around 3 November 2021	Zoltan Acs (“ZA”)	ZA told C not to appeal things and that internal audit was taking these things seriously and that C should watch how he spoke to people because the investigation was being dealt with at a very senior level.	Victimisation	N/A
15. 1 March 2022	Benjamin Gregg (“BG”)	An unknown team leader constantly rang C from number he do not recognise and text messages also sent by manager, although C provided a sick note explaining his mental health conditions and current status	Harassment	disability, race and religion
16. 4, 7 and 8 March 2022	BG	Further calls were made to C by unknown team leader ‘Ben’. Ben tried to persuade C that he needed to have an informal hearing about being off. C felt this was not suitable as he was not being allowed time off to recover and switch off.	Harassment	disability, race and religion
<del>17. March 2022</del>	<del>TBC</del>	<del>C was given an end of year rating for 2021 reduced from 3 (rate in 2020) to a 2-</del>	<del>Victimisation</del>	<del>N/A</del>

Case reference 1806686/21

RESERVED JUDGMENT

Date	People involved	Allegation	Relevant complaint(s)	Protected characteristic(s) and comparators relied on by C
		<i>[Allegation withdrawn during hearing on 27/1/23]</i>		

## Legal complaints

### 1. JURISDICTION

- 1.1 Were all of C's discrimination complaints presented within the time limits set out in sections 123(1)(a) and (b) of the Equality Act 2010 ("**EqA**")?
- 1.2 In particular, and where specific matters complained of took place outside the primary three month time limits in the EqA (as extended by the early conciliation period), were those matters part of a series of similar matters amounting to conduct extending over a period?
- 1.3 If so, did that conduct form part of a chain of continuous conduct which ended within three months of the claim form being submitted?
- 1.4 If any individual matters or any course of conduct occurred or came to an end outside the primary limitation period, would it be just and equitable for the Tribunal to hear that part of the claim?

### 2. DISCRIMINATION - DISABILITY

#### 2.1 Was C disabled?

At all times during the period from 9 February 2021 to March 2022:

- 2.1.1 Did C have a physical or mental impairment? *C relies on anxiety, depression and post-traumatic stress disorder.*
- 2.1.2 Did that impairment have a substantial adverse effect on C's ability to carry out normal day-to-day activities?
- 2.1.3 Was that adverse effect long-term?

### 3. DIRECT DISCRIMINATION (RACE, RELIGION AND / OR DISABILITY)

- 3.1 Did the respondent do the things alleged in Table A that C states are direct discrimination?
- 3.2 Was C treated less favourably than GW (or, if applicable, a hypothetical comparator) was or would have been?
- 3.3 If so, was the reason for the treatment either:-
  - 3.3.1 C's race, religion and or disability; or
  - 3.3.2 the perception of C's race or religion or that C was a disabled person?

#### **Comparators**

- 3.4 C relies on Gregory Watson ("**GW**") as his actual comparator. Were GW's circumstances materially the same as C's?
- 3.5 If not, C relies on a hypothetical comparator whose circumstances are materially the same as C's.

### 4. HARASSMENT

- 4.1 Did the respondent do the things alleged in Table A that C states are harassment?
- 4.2 If so, was that conduct unwanted?
- 4.3 If so, did it relate to the protected characteristic of race, religion and/or disability?
- 4.4 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?
- 4.5 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.

**5. VICTIMISATION**

- 5.1 C relies on the following alleged protected acts:-
  - 5.1.1 C's concerns raised to R's Speak Up team on 20 August 2021; and *[R does not accept that C's concerns were a protected act]*
  - 5.1.2 C's grievance made on 15 September 2021 against SR. *[R accepts that C's grievance was a protected act]*
- 5.2 Were either of these things protected acts, as defined by section 27(2) of the EqA?
- 5.3 Did the respondent do the things alleged in Table that C states are victimisation?
- 5.4 By doing so, did it subject the claimant to the detriments alleged in Table A?
- 5.5 If so, was it because the claimant did a protected act or protected acts?

**REMEDY**

- 5.6 If C's claims are upheld:-
  - 5.6.1 What financial compensation is appropriate in all of the circumstances?
  - 5.6.2 What award for injury to feelings (if any) is just and equitable?
- 5.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 5.8 Did the respondent or the claimant unreasonably fail to comply with it?
- 5.9 If so is it just and equitable to increase or decrease any award payable to the claimant?
- 5.10 By what proportion, up to 25%?
- 5.11 Should interest be awarded? How much?

## Annex 2 – Relevant Law

### RELEVANT LAW

1. The Tribunal has considered the legislation and caselaw referred to below, together with any additional legal principles referred to in the parties' submissions.

### TIME LIMITS

2. The provisions on time limits under the EQA are set out at s123 EQA:

#### 123 Time limits

(1)... proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 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.

...

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

3. The Court of Appeal in *Robertson v Bexley Community Centre* [2003] IRLR 434 stated that it is for the claimant seeking an extension of time to persuade the Tribunal that this should be granted.

4. The Court of Appeal in *Adedeji v University College Hospital Birmingham NHS Trust* [2021] EWCA Civ23 has recently set out the approach that the Employment Tribunal should take in relation to the just and equitable test. The Court of Appeal emphasised that there is no need to go through every factor set out in the s33 Limitation Act 1980 'checklist' recommended in *British Coal Corporation v Keeble* [1997] IRLR 336. Underhill LJ stated at paragraph 38 of his judgment:

*"The best approach for a Tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it*



*considers relevant to whether it is just and equitable to extend time including.....the length of, and the reasons for, the delay.”*

5. In addition, the Tribunal must consider the potential prejudice to the parties of any decision on time limits, including the merits of the claim (*Donald v AVC Media Enterprises Ltd* EAT/00016/14). We also note that in the recent case of *Secretary of State for Justice v Johnson* [2022] EAT1, the EAT applied *Adedeji* and noted that the Employment Tribunal should consider the effect that extending the time limit would have on the respondent’s ability to defend the claim where events took place some time ago.
6. Conduct extending over a period is to be treated as done at the end of that period and failure to do something is to be treated as occurring when the person in question decided on it. An act will be regarded as extending over a period if an employer maintains and keeps in force a discriminatory regime, rule, practice or principle which has had a clear and adverse effect on the complainant. The concepts of ‘policy, rule, practice, scheme or regime’ should not be applied too literally, particularly in the context of an alleged continuing act consisting of numerous incidents occurring over a lengthy period (*Hendricks v Metropolitan Police Commissioner* [2003] IRLR 96, CA at paragraphs 51-52).
7. There are additional provisions relating to time limits set out in Schedule 3 to the EQA which relate to omissions in reasonable adjustment claims. The Court of Appeal in *Matuszowicz v Kingston upon Hull City Council* [2009] EWCA Civ 22 considered the interpretation of these provisions in cases relating to a ‘non-deliberate’ failure to make reasonable adjustments. That case involved a disabled teacher who had difficulties working in the prison sector due to the weight of the prison doors. Mr Matuszowicz claimed that his former employer had failed to make an adjustment of transferring him to suitable alternative work, prior to his transfer to another employer under TUPE on 1 August 2006. The Council argued that the Mr Matuszowicz’s claim was submitted out of time on the basis that by August 2005, it had become clear that working in the prison sector was unsuitable because of his disability. The Court of Appeal held that Mr Matuszowicz’s claim should be characterised as a continuing omission, rather than a continuing act or a one-off omission (as held by the Tribunal and by the EAT respectively). The Court concluded that the date from which time should be taken to run was therefore 1 August 2006.

#### **DIRECT DISCRIMINATION (S13 EQA)**

8. Section 13 of the Equality Act 2010 provides that:

*“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”*
9. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee. It sets out various ways in which discrimination

can occur in the employment context, which includes the employer dismissing the employee or subjecting the employee to any other detriment.

10. There are two key questions that the Tribunal must consider when dealing with claims of direct discrimination:

10.1 was the treatment alleged 'less favourable treatment', i.e. did the respondent treat the claimant less favourably than it treated or would have treated others in not materially different circumstances;

10.2 if so, was such less favourable treatment because of the claimant's protected characteristic?

11. However, the Tribunal can, in appropriate cases, consider postponing the question of less favourable treatment until after they have decided the 'reason why' the claimant was treated in a particular way (*Shamoon v Chief Constable of the Royal Ulster Constabulary* 2003 ICR 337 HL).

12. In relation to less favourable treatment, the Tribunal notes that:

12.1 the test for direct discrimination requires an individual to show more than simply different treatment (*Chief Constable of West Yorkshire Police v Khan* 2001 ECR 1065 HL);

12.2 an employee does not have to experience actual disadvantage for the treatment to be less favourable. It is sufficient that an employee can reasonably say that they would have preferred not to be treated differently from the way an employer treated or would have treated another person (cf paragraph 3.5 of the EHRG Employment Code); and

12.3 the motive and/or beliefs of the parties are relevant to the following extent:

12.3.1 the fact that a claimant believes that he has been treated less favourably does not of itself establish that there has been less favourable treatment (see, for example, *Shamoon*);

12.3.2 in cases where the conduct is not inherently discriminatory, the conscious or unconscious 'mental process' of the alleged discriminator is relevant (see, for example, *Amnesty International v Ahmed* 2009 ICR 1450 EAT); and

12.3.3 for direct discrimination to be established, the claimant's protected characteristic must have had a 'significant influence' on the conduct of which he complains (*Nagarajan v London Regional Transport* 1999 ICR 877 HL).

13. The Tribunal also notes that if an employer treats all employees equally unreasonably, it is not appropriate to infer discrimination (see, for example, *Laing v Manchester City Council & another* 2006 ICR 1519 EAT and *Madarassy v Nomura International plc* 2007 ICR 867 CA).

### **Comparators**

14. To be treated less favourably implies some element of comparison. The claimant must have been treated differently to a comparator or comparators, be they actual or

hypothetical, who do not share the relevant protected characteristic. The cases of the complainant and comparator must be such that there must be no material difference between the circumstances relating to each case (section 23 Equality Act 2010 and see *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285).

15. It is for the claimant to show that any real or hypothetical comparator would have been treated more favourably. In so doing the claimant may invite the tribunal to draw inferences from all relevant circumstances and primary facts. However, it is still a matter for the claimant to ensure that the tribunal is given the primary evidence from which the necessary inferences may be drawn. The Tribunal must, however, recognise that it is very unusual to find direct evidence of discrimination. Normally, a case will depend on what inferences it is proper to draw from all the surrounding circumstances.
16. When considering the primary facts from which inferences may be drawn, the Tribunal must consider the totality of the facts and not adopt a fragmented approach which has the effect of 'diminishing any eloquence the cumulative effects of the primary facts' might have on the issue of the prohibited ground (*Anya v University of Oxford* [2001] IRLR 377).

## HARASSMENT

17. The provisions relating to harassment are set out at s26 of the EQA:

### 26 Harassment

- (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.
- (5) The relevant protected characteristics are – ...disability;
- ...

18. There are three elements to the definition of harassment:

- 18.1 unwanted conduct;
- 18.2 the specified purpose or effect (as set out in s26 EQA); and
- 18.3 that the conduct is related to a relevant protected characteristic: see *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336, as updated by

reference to the EQA provisions in *Reverend Canon Pemberton v Right Reverend Inwood* [2018] EWCA Civ 564.

19. A single act can constitute harassment, if it is sufficiently 'serious' (cf paragraph 7.8 of the EHRC Code).
20. The burden of proof provisions apply (see below). When a tribunal is considering whether facts have been proved from which it could conclude that harassment was on the grounds of a protected characteristic (such as disability), it is always relevant, at the first stage, to take into account the context of the conduct which is alleged to have been perpetrated on the grounds of that characteristic. The context may, for example, point strongly towards or strongly against a conclusion that harassment was on the grounds of that characteristic. The tribunal should not leave the context out of account at the first stage and consider it only as part of the explanation at the second stage, after the burden of proof has passed: see *Nazir v Asim & Nottinghamshire Black Partnership* [2010] IRLR 336 EAT.
21. In considering whether the conduct had the specified effect, the Tribunal must consider both the actual perception of the complainant and the question whether it is reasonable for the conduct to have that effect. That entails consideration of whether, objectively, it was reasonable for the conduct to have that effect on the particular complainant.
22. In *Dhaliwal*, the EAT considered the question of whether unwanted conduct violated a claimant's dignity and held that:

*"while it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct...it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase...if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question."*

23. The EAT in *Dhaliwal* also stated that:

*"Not every...adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended"*.

24. The EAT in *Weeks v Newham College of Further Education* (UKEAT/0630/11) considered the question of whether unwanted conduct created an intimidating, hostile, degrading, humiliating or offensive environment. The EAT held that:

*"...although we would entirely accept that a single act or single passage of actions may be so significant that its effect was to create a proscribed working environment, we also must recognise that it does not follow that in every case that a single act is in itself necessarily sufficient and requires such a finding...An*

*‘environment’ is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the workplace.”*

## VICTIMISATION

25. The provisions relating to harassment are set out at s27 of the EQA:

### 27 Victimisation

(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 –

...

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

...

26. There are four key questions which the Tribunal must bear in mind when considering a claim for victimisation:

26.1 Did either:

26.1.1 the claimant do a protected act; or

26.1.2 the respondent believe that the claimant had done or might do a protect act?

26.2 Did the claimant suffer a detriment (or detriments)?

26.3 If so, what was the reason for such detriment (or detriments)?

26.4 Did the respondent subject the claimant to such detriment (or detriments) because the claimant did (or might do) a protected act?

27. The respondent in this case accepts that the claimant did the protected acts set out in the List of Issues and does not seek to advance any defence under s27(3) EQA.

28. The law referred to above at paragraphs **Error! Reference source not found.** and **Error! Reference source not found.** in relation to whistleblowing detriments also applies to detriments relating to victimisation complaints.

29. In terms of causation, the respondent must subject the claimant to a detriment because he did (or might do) a protected act. The Court of Appeal held in *Greater Manchester Police v Bailey* [2017] EWCA Civ 425 that the ‘but for’ test does not apply.

30. If detriment is established, the issue of the respondent’s state of mind is relevant to establishing whether there is a necessary link in the mind of the alleged discriminator between the doing of the protected acts and the less favourable treatment (see *Nagarajan v London Regional Transport* [1999] IRLR 572 and *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830). However:

- 30.1 there is no requirement for the claimant to show that the alleged discriminator was wholly motivated to act by the claimant's protected act (*Nagarajan*). Where there is more than one motive in play, all that is needed is that the discriminatory reason should be of 'sufficient weight' (*O'Donoghue v Redcar and Cleveland Borough Council* [2001] IRLR 615, CA); and
- 30.2 the respondent will not be able to escape liability by showing an absence of intention to discriminate if the necessary link between the doing of the acts and less favourable treatment exists.