EMPLOYMENT TRIBUNALS

Claimant:	Mr J Mangrola	
Respondent:	The Home Office	
Heard at:	Reading	**On: 10, 11, 12, 13, 17, 18, 19, 20, 21, 24 and 25 July 2023**
Before:	Employment Judge Gumbiti-Zimuto Members: Mrs A Brown and Mr F Wright	

Appearances
For the Claimant: Mr I Aziz, lay representative
For the Respondent: Mr D Bayne, Counsel

REASON

[*Reasons for judgment provided at the request of the claimant.]*

1. In a claim form presented on the 27 January 2021 the claimant made complaints of harassment related to race, direct race discrimination, victimisation and suffering detriments because of making protected disclosures. By a response dated 3 March 2021 the respondent defended the claims. At the conclusion of evidence in the case the claimant withdrew the complaint about harassment that claim was dismissed on withdrawal.

2. The issues that the Tribunal has had to consider were set out in a record of a preliminary hearing on 20 January 2021 which set an agreed list of issues. The parties have also provided the Tribunal with an agreed chronology of events that are largely agreed.

3. The claimant gave evidence in support of his own case, the respondent relied on the evidence of Mr Scott Ronaldson, Mr Chinua Brown, Mr Richard Appiah, Miss Carla Johnson, Miss Sue Bentley and Mr Tony Erne. All the witnesses produced written statements which were taken as their evidence in chief. The parties also provided us with an agreed bundle of documents containing some 1032 pages of documents. The parties have also provided us with written submissions on the evidence we have heard and the law they ask us to apply in this case. From these various sources we made the findings of fact that we considered necessary to decide the issues before us and in the decision we set out below we have had regard to all these matters.

4. The claimant is employed by the Home Office as a Chief Immigration Officer. On 28 October 2019 the claimant instructed immigration officers conducting a marriage interview with Mr M, a Romanian citizen, to refuse a marriage application and to retain his two valid passports, an EU passport issued by Romania and a Ukrainian passport. The claimant then wrote a letter to Mr M explaining his decision. (p174)

5. Mr M went to the Romanian Embassy and sought their assistance.

6. In January 2020, The Home Office received a letter from the Romanian Embassy via the Foreign and Commonwealth Office complaining about the way that the claimant had dealt with Mr M and the content of the letter he had written. (172)

7. The claimant states that between 30 January 2020 and 4 February 2020 (later revised in his oral evidence to on 30 January 2020) he was called to attend a meeting with Mr Scott Ronaldson who asked him to explain why he had refused Mr M's application, when the claimant provided his explanation the claimant says that Mr Ronaldson was not happy with it and overturned his decision directing the claimant to return Mr M's passport to him. This meeting is hotly contested by the parties: the claimant insisting his evidence about the meeting is correct, the respondent firmly asserting that no such meeting took place. Mr Ronaldson denies that any such meeting took place between him and the claimant on 30 January or any date between the 30 January and 4 February 2020. Mr Ronaldson gave evidence explaining why the meeting could not have taken place. The claimant gave evidence explaining why he had changed his evidence so that it was pinned down to one specific day the 30 January.

8. What is agreed happened is that Mr Ronaldson caused the passports and identity documents to be returned to Mr M.

9. It is agreed that Mr Ronaldson became aware of the letter from the Romanian Embassy on 30 January 2020. Mr Ronaldson states that he passed the letter to the claimant by email and asked him to draft a response at a time when he had yet to properly consider the content of the letter. Mr Ronaldson considered that the claimant was the appropriate person to deal with the issues arising because it was a concerning a marriage interview. We can see from the timing of the email to Mr Ronaldson and the timing of the email in which Mr Ronaldson forwarded the letter from the Romanian Embassy to the claimant that a very short of time has elapsed. In our view it is more likely than not that what Mr Ronaldson said about not having considered the letter at the point he forwarded the letter is likely to be correct.

10. When he did properly consider the issues raised in the letter Mr Ronaldson's evidence was that he considered the actions of the claimant were a serious matter giving rise to the potential of reputational damage to the respondent. Mr Ronaldson discussed the issue with his my line manager, Mr Chris

Edwards, and also with HR. Following his discussions with HR, Mr Ronaldson considered that the matter could warrant a formal investigation and potential disciplinary action so he took steps which led to Mr Brown and Mr Appiah being appointed, respectively, as Investigation Manager and Decision Manager, in accordance with the respondent's disciplinary policy and procedure.

11. On 4 February 2020 Mr Ronaldson prepared a draft response to the Romanian Embassy, this draft was approved by his superiors. (p178) The response apologises for the way that Mr M's case was handled and it states that it was not in line with the respondent's current policies and procedures.

12. On 6 March 2020, the claimant received a formal notification that he was to be subject of a disciplinary investigation. The charges at that stage were misconduct on 28 October 2019 during the course of a marriage interview; a decision taken to seize both the Ukrainian and Romanian passports and identity cards belonging to Mr M; writing a letter to Mr M which was not authorised by his line manager or any other senior managers or policy.

13. On 6 May 2020 the claimant was first contacted by Mr Brown and it was arranged that the claimant would attend an investigation meeting on 13 May 2020. On 11 May 2020 the claimant sent Mr Brown his statement and accompanying documents which set out his position in relation to the matters under investigation.

14. The disciplinary investigation took its course and the Investigating Officer found that the claimant had a case to answer.

15. Arrangements for a disciplinary hearing were put in place and Mr Richard Appiah was appointed as the Decision Manager. Mr Ronaldson was not involved in the disciplinary investigation or disciplinary process except for providing the original source documentation and summary of the incident.

16. The claimant was found by Mr Appiah to have been guilty of serious misconduct or potentially gross misconduct. The claimant was given a final written warning for an 18 month period. The claimant appealed the decision to award this sanction and the appeal was heard by Miss Carla Johnson was not upheld, the disciplinary decision was affirmed.

17. The claimant raised a grievance the claimant's grievance was considered by Miss Bentley and she found that there had been some unfairness in the way that the claimant had been dealt with in respect of his PDR prepared by Mr Ronaldson but that the claimant had otherwise not been subjected to the bullying, harassment and discrimination, or victimisation about the various matters of which he had complained about in his grievance. The claimant appealed the grievance outcome and the claimant's grievance appeal was not upheld.

18. The issues that the Tribunal has had to consider were set out in a record of the preliminary hearing on 20 January 2023. (p139) The Tribunal's

approach is to begin with consideration of the matters under the heading protected disclosures and to attempt to answer each of the several questions posed in section 2 and then to go on to consider the matters in section 5, discrimination, and finally to address the matters under the heading of victimisation. The Tribunal does not address the issue of time limits as we considered it unnecessary having regard to the conclusions we had reached.

Law

Direct discrimination

19. Section 13(1) of the Equality Act 2010 (EA) 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.' The initial burden of proof rests on the claimant. In order to discharge that burden he must, in relation to each allegation: show something more than merely a difference in treatment between himself and his comparator; do more than merely showing that R has behaved unreasonably.

20. Where the alleged acts are not of themselves discriminatory, but are alleged to have a discriminatory motivation, the claimant must establish facts from which the tribunal could conclude that there was that motivation.

21. By section 23(1) of the EA, the claimant can only rely upon comparators where there is 'no material difference between the circumstances relating to each case'.

22. The word 'detriment' should be interpreted broadly, and from the perspective of the complainant. A worker suffers a detriment if: they genuinely feel that they have been treated to a disadvantage; and a reasonable worker would or might share that view. An "unjustified sense of grievance" is not enough.

Victimisation

23. By section 27 EA it is provided that 'a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act'. It is a protected act to bring proceedings under this Act; to make an allegation (whether or not express) that A or another person has contravened this Act. A detriment cannot be because of a protected act if there is no evidence that the decision maker knew of the protected act.

Whistleblowing

24. Sections 43A and 43C of the Employment Rights Act 1996 (ERA) provide that a protected disclosure is a qualifying disclosure made by a worker to their employer. By section 43B, a qualifying disclosure: "means any disclosure of information which, in the reasonable belief of the worker

making the disclosure, is made in the public interest and tends to show one or more of the following (as relevant to this case):

> (a)that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c)that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> …
>
> (f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed."

25. A protected disclosure therefore involves the giving of information, and not simply the voicing of a concern or the raising of an allegation. Whilst an allegation may contain information, it will not inevitably do so. The ordinary meaning of giving "information" is conveying facts. Only having identified the information given is it possible to consider whether, in the reasonable belief of the worker, it tends to show one of the specified types of malpractice: The worker must subjectively believe the information tends to show the malpractice; and That belief must be objectively reasonable, albeit it matters not whether it is correct.

26. When considering the public interest requirement, it is not the motive of the employee, but their subjective belief and whether it is objectively reasonable.

27. The Tribunal noted that the claimant in his submissions made the following points.

> "There is however no need to show that the doing of the protected act was the legal cause of the victimisation, nor that the alleged discriminator was consciously motivated by a wish to treat someone badly either because of their sex or race, or because they had engaged in protected conduct. The respondent will not be able to escape liability by showing an absence of intention to discriminate, provided that the necessary link in the mind of the discriminator between the doing of the acts and the less favourable treatment can be shown to exist."

We also noted that the claimant makes the point.

> "In the whistleblowing case *Royal Mail Group Ltd v Jhuti [2019] UKSC 55*, *[2020] IRLR 129*, *[2020] ICR 731* Lord Wilson (giving the only judgment) noted at [42] that 'The need to discern a state of mind, such as here the reason for taking action, on the part of an inanimate person, namely a company, presents difficulties in many areas of law. They are difficulties of attribution: which human being is to be taken to have the state of mind which falls to be attributed to the company?' In that case the Supreme Court overturned the decision of the Court of Appeal and held that 'if a person in the hierarchy of responsibility

> above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason."'

28. We have considered all the points that the claimant makes in his written submissions but refer to the points set out above in particular to explain that the evidence in this case does not support the proposition that the claimant relies on. The claimant at one stage appeared to make the point that the acts upon which the claimant relied were the decision of Mr Ronaldson whose actions were tainted by discriminatory motives. The evidence simply does not support such a conclusion and we have rejected it. At another point in his presentation the claimant appeared to suggest that the motivation for his treatment arose from a desire of his colleagues to support the decision made by the Patricia Fitzmaurice, the Director of Enforcement. If this were the case, and there is no evidence to support this, the claimant's case would in any event fail because on his version of events her motivation was neither the claimant making any protected disclosure, doing any protected act or his race. The evidence presented in the case simply does not support such a position.

Protected disclosures

29. Did the claimant make protected disclosures as alleged in section 2.1 of the list of issues?

PD1: The claimant said to Mr Ronaldson, early February 2020, you breaking two laws, the immigration Act because it is fraudulent and the Equality Act because you must treat EU Citizens the same as the rest of the world

30. The claimant states that there was a meeting on the 30 January 2020 at which the claimant made a protected disclosure to Mr Ronaldson. Mr Ronaldson denies that the meeting took place or that the claimant made the said disclosure of information or that the claimant disclosed the matters on which he relies on. The conclusion of the Tribunal is that there was no meeting on the 30 January 2020 and our reasons for that conclusion are because of the following matters.

31. The claimant states that at the meeting on the 30 January 2020 after explaining to Mr Ronaldson why he had acted as he did at the marriage interview on 28 October 2019, Mr Ronaldson told the claimant that he must rescind his decision to treat Mr M as an illegal immigrant and to withdraw the notice served on him and to return his passport. It is then that the claimant made his protected disclosures by saying to Mr Ronaldson, that would be breaking two laws, the Immigration Act because it is fraudulent and the Equality Act because you must treat EU citizens the same as rest of the world. In his witness statement at paragraph 57 the claimant states as follows,

> "I explained to Mr Ronaldson that I regret I couldn't do that as it would be illegal under the Immigration law and just because Mr M was white

> did not make him a less an immigration offender than any other person who was non-white. I was not prepared to treat Mr M more favourably because of his ethnicity as that would be illegal not just under Immigration Law but also under Equality Law., and for me to do so would be in breach not only of the two laws but also put me in the frame for misconduct in public office."

32. However, there is an email from Mr Ronaldson to the claimant on 30 January 2020 (see p1008), when the claimant is told: "Given this relates to a marriage interview, please could you look into this for me and draft a response?" That is the request that starts the interaction between the claimant and Mr Ronaldson about the letter sent to Mr M and the response from the Romanian Embassy. The claimant was being asked to draft a response to the letter from the Romanian Embassy. It was the evidence of Mr Ronaldson that at the time he forwarded the letter to the claimant he had not read the attachment and it was sent within a few moments of receiving it. We can see that the email providing the Romanian Embassy letter to Mr Ronaldson was sent at 13:17 on 30 January 2020 and the email Mr Ronaldson sent to the claimant was sent at 13:19. This is consistent with the evidence of Mr Ronaldson that he had not read the attachment when it was forwarded to the claimant.

33. The claimant's draft response, (p1017-1022) is written in terms which indicate to the Tribunal that the meeting the claimant refers to as taking place on 30 January 2020, at which the alleged protected disclosure was made could not have yet taken place. There is no recognition in the draft letter of Mr Ronaldson's viewpoint as expressed by the claimant in his evidence about that meeting when the claimant was being asked to return the passports but refused and it is in the course of explaining why he could not act as Mr Ronaldson requested that the claimant made the alleged protected disclosure.

34. The meeting, according to the claimant's evidence, did not happen on the 4 February 2020. Mr Ronaldson denies that the meeting took place. The evidence does not allow for a conclusion that the meeting took place on 4 February. We consider in any event that the meeting could not take place on that date because Mr Ronaldson was in an inspectors' meeting for part of the time and the email correspondence shows that Mr Ronaldson's view was that the claimant had acted in a manner that was "not in line with current policies and procedures." There is not any room for the conclusion that the meeting occurred on the 4 February. In any event the claimant in his oral evidence to the Tribunal pinned his colours to the mast and said that the meeting took place on the 30 January 2020.

35. However, in our view the meeting could not have taken place on the 30 January 2020 for the reasons we set out above which shows that on 2 February when the claimant wrote the letter responding to the request from Mr Ronaldson to draft a reply to the letter from the Romanian Embassy, it is not really possible for us to conclude that the meeting had taken place at that point. The effect of that is, it not now being suggested by the claimant that the meeting took place at any other date, and bearing in mind the

evidence given by Mr Ronaldson about his activities on the dates between 30 January 2020 and 4 February 2020, our conclusion is that there was no meeting 30 January or the 4 February as the claimant describes. In those circumstances our conclusion is there was no protected disclosure as set out in the list of issues at 2.1.1.

36. If we are wrong and the meeting did take place or at least there was a discussion as the claimant alleges then we note that the way that the claimant dealt with this in the grievance meeting with Miss Bentley: (p639)

37. On this alternative version of events the claimant is not making any PD in his encounter with Mr Ronaldson We are not satisfied that the claimant made the said PD. The notes of the grievance meeting include the following:

> JM – It hurts my dignity that at this point in my career I am subject to a Disciplinary and written warning when for the last 27 years I have been doing well.
>
> SB – I assume you will still be in disagreement with findings of the Disciplinary process?
>
> JM – Yes, there is no way I can challenge this now except externally which I have
> pursued.
>
> SB – Thanks for that, that is useful.
>
> SB – Can I take you on to the Bullying, Harassment and Discrimination element of your allegation. We will start with Harassment that you have outlined in the document that you have called 'Further and Better Particulars'. This is the relationship between you and Chris Edwards. You have sent me further information since, but I want to understand specific instances where you feel you have been harassed by Chris.
>
> JM – There are two parts. I have known Chris since we worked at Terminal 3. After decades, we met at Eaton House, he was an Inspector then. We got amalgamated and I chose to come to West London. There were two people that I liked there, Paul Smith and Sarah Burton. I know them and they are good people. That was my motivation for coming to West London. Chris was Inspector, then Acting AD, then became the AD. There was a big difference from when he was at the airport to when in West London. I mean, people change. I observed he was susceptible to flattery. Cliques formed that are difficult to
> manage in an ICE team and there was conflict between the cliques. This didn't affect me that much, except I don't flatter anyone, and I don't expect anyone to receive this from me. Because I don't flatter him, I am not in a favoured group. In January and February 2020, it took a turn for the worse. On 19th January, there was a letter received from the Romanian Foreign Office and this got to the Home Office. I then noticed a change in his behaviour. He became hostile with a passive aggressive manner and gave me the cold shoulder.

> SB – Anything specific?
>
> JM – No, as I didn't know why. First or second week of February, Scott came to me and asked about the specific case and we had a discussion in the forgery room. Scott was not convinced – he thought a genuine Romanian passport means a genuine reason to get citizenship. But it was not legal. I think something had come down from Senior Managers that caused Chris to behave like this. After I had a second conversation with Scott, I realised that might be why behaviours had changed.
>
> SB – Did Scott say that?
>
> JM – No, I just concluded.

In the record of the meeting the claimant then goes on to deal with events that happened later on in March 2020.

38. The above passage from the grievance meeting is an indication that the claimant was able to express his view of events around the investigation which was the principal source of his grievance. It set out his views about Mr Edwards, who was Mr Ronaldson's line manager, he set out what happened in his meeting in the "first or second week of February" with "Scott". We presume that is an allusion to the meeting that he alleges in fact occurred on the 30 January 2020, if it is and therefore there was a meeting along the lines that the claimant contended, then what it also shows is that there was no protected disclosure as the claimant alleges. In this passage we would have expected to see something that looks like the protected disclosure on which he relies and there is no such thing. When the claimant is later asked if there is anything else he would like to say about the bullying harassment and discrimination the claimant said of his relationship with Mr Ronaldson: "the relationship that should exist between a manager and employee does not exist".

39. Even on the alternative version events that there was a meeting the evidence in our view does not support that there was a protected disclosure as alleged by the claimant.

PD2: *In a statement dated 11 April 2020 prepared for the disciplinary hearing.*

40. The claimant prepared a statement dated 11 April 2020 prepared for the disciplinary process. (p248) In this statement the claimant explains how he came to the conclusion that he did about Mr M. The document is wide ranging in that it also contains a section of four paraphs on "geo-political considerations", "corporate (Home Office) considerations" as well as setting out the claimant's response to the specific grounds for the disciplinary investigation. The final section of document includes the following passage which capture the spirit of the document as a whole:

> "Finally
> Based on my experience and knowledge, my assessment was that Mr M did not qualify to exercise treaty rights in the UK. For me to look away and ignore possible immigration abuse or wrongdoing and grant him authority to exercise EU treaty rights immediately would be unlawful
> and constitute misconduct in public office.
>
> Further, for me ignore or subvert the stated desire of the current legitimately elected government to reduce free movement of persons from the EU or to assist in subverting their manifesto would put me in breach of my obligations of impartiality under the Civil Service code. I am a warranted Law Enforcement Officer and a Crown Servant. My loyalty is to Her Majesty's Government not to any foreign nation. It is not reasonable to ask me to break the law or breach my obligation of impartiality under the Civil Service code in order to mollify a corrupt banana republic to whom I owe no allegiance.
>
> There is really no case to answer. My decision is based on fact, knowledge and experience and is entirely:
>
> i. Proportionate – Mr M was not required to leave the UK or prohibited from working or detained),
> ii. Lawful – as it was consistent with UK immigration law and protected his rights under the Human Rights Act,
> iii. Auditable as the requisite information was entered onto CID and
> iv. Necessary to maintain an effective immigration control."

41. This is not a qualifying disclosure because, it simply does not contain any information. There is no disclosure of information tending to show any of the matters set out in section 43B (1). To the extent that it does contain any information in our view it was not reasonable for the claimant to believe that a requirement to permit Mr M to retain his genuinely issued documents amounted to breaking the law or his obligations under the Civil Service Code.

PD3: *On 11 May 2020 in a written statement to the investigating manager, Mr Chinua Brown.*

42. The claimant is here referring to the document at pages 292-293 we have read this document and the conclusion of the Tribunal is that the document does not contain information which tends to show any one of the matters set out in section 43B (1) ERA. In our view there is nothing in that document that amounts to a protected disclosure .

PD4: *On 1 July 2020 in an email to Mr Appiah*

43. This is found at p316 - p319. In this document the claimant does not set out information that tends to show any one of the matters set out in paragraph 43B (1) ERA. To the extent that there has been a disclosure of information in that document it is not reasonable for the claimant to conclude that there

has been a breach of one or more of the matters set out in the section 43B (1). The document here is one that the claimant has drafted in which he sets out a number of matters which he says are flaws in the way that the disciplinary investigation was conducted by Mr Brown: the document is a critique of the way that Mr Brown did his investigation.

44. In relation to PD3 and PD4 we consider that the manner in which the claimant has sought to put forward that there was a protected disclosure makes it difficult for us to find a protected disclosure because the claimant does not identify what it is that are the specific facts that he is disclosing in these documents that amount to the "information" on which he relies that should direct us to the conclusion that there is a disclosure of information tending to show a breach of one of the matters referred to in section 43B(1).

45. Our conclusion therefore is that the claimant has not made any protected disclosures. It is not necessary for us to go on to consider the question whether the claimant was subjected to detriment because of making a protected disclosure. However, if we are wrong and there is a protected disclosure made by the claimant we are satisfied that the claimant was not subjected to a detriment because he made a protected disclosure for the reasons we set out below:

Direct discrimination

46. The list of issues at paragraph 5.2 asks did the respondent do the following things and thereafter lists 9 matters, about which, if they happened we are asked to consider if they were a detriment and if so whether there was less favourable treatment of the claimant.

47. *On the 6 March 2020 the claimant was placed under investigation*. The Tribunal is satisfied that this happened. This is a matter which is capable of being a detriment.

48. *Between 6 March and 18 June 2020 inform the claimant that additional disciplinary allegations were being made.* The Tribunal' position on this is that the original allegation that was being made that the claimant had brought "discredit" to the respondent and this overtime mutated into putting the department into "disrepute". However, from the outset the investigation was concerned to consider whether the claimant by his actions on 28 October 2019 was bringing discredit to the Home Office and while this does mutate into disrepute the Tribunal is satisfied that there was no detriment to the claimant in that mutation because in the investigation taking place, considering it overall and in all aspects, in reality never changed in relation to the scope or seriousness of the matters. It is right to say that the way in which matters were expressed over time differed but in our view, it was always clear what was being alleged did not change over the time that the claimant was subjected to investigation. Yes, analysing the words used in the various letters about which the claimant points out differences one will find difference but standing back and looking at the allegations as they began and as they concluded the Tribunal finds that in the mutation of those

allegations it is not reasonable to conclude that there was any detriment to the claimant because what was being investigated at the beginning was the same as what was being investigated at the end. There was no detriment to the claimant in relation to additional disciplinary allegations.

49. *Increase the level of seriousness of the allegations faced by the claimant from misconduct to gross misconduct.* 6 March 2023 Notification of Discipline Investigation (p198) it makes no mention of the level of seriousness, it is an investigation to establish whether formal action is appropriate in line with the Discipline Policy and Procedure in relation to bringing discredit to the Home Office. The letter of the 7 May 2020 Mr Brown states that he is seeking to interview the claimant in respect of "serious misconduct bringing discredit to the Home Office". Mr Brown states that his role is to gather evidence and decide it there is a case to answer. (p741-743)

50. The procedure set out that "discredit" to the home office is classified as serious misconduct, whereas "disrepute" to the Home Office is gross misconduct. Letter of 18 June 2020 states that the allegations if proven could be "serious or gross" misconduct under the Discipline Policy and Procedures. In our view there can be no detriment to the claimant in regard to any alleged increase in seriousness, in reality the nature of the investigation never changed. Whether it is "serious" or "gross" misconduct is a matter that the investigation would determine. In that determination it would in our view depend on the view taken by the Decision Manager to decide which it is in their opinion.

51. *Subject the claimant to a disciplinary hearing on 2 July 2020.* The claimant was subject to a disciplinary hearing on 2 July 2020 and potentially this could amount to a detriment.

52. *Issue the claimant with a final written warning on 20 July 2020.* The claimant was issued with a final written warning and potentially this could amount to a detriment.

53. *In the claimant's disciplinary hearing failed to deal with the claimant's complaints of discrimination.* The Tribunal's conclusion is that the claimant did not raise any complaints of discrimination to be dealt with at the disciplinary hearing. The claimant accepted that this was the case in the appeal hearing (see p510).

54. In his submissions the claimant states: "RA says at the time he did not see it as an allegation of discrimination. I put to him [in cross examination by the claimant's representative] that he was blind to the allegation, and he did not respond. An employer cannot claim ignorance in the face of a claim of discrimination expect that to take that as rational explanation." The claimant in his submissions is not clearly articulating how the Tribunal is to conclude that where there is no reference to discrimination on the grounds of race in the disciplinary hearing we should nonetheless find a reference to such discrimination.

55. The claimant states (p522-p523) that he has no 'old boys' network' to protect him. This is not a complaint of discrimination that could be sensibly investigated by Mr Appiah, it is either not such a complaint at all or is so oblique in the context of this case that Mr Appiah can be forgiven for not investigating it. It was never put to Mr Appiah that he ever failed to carry out any specific aspect of investigation as race discrimination or ask him to refer to the investigation manager to make further inquiries. It just was never explicit in the evidence that was given, or matters put to Mr Appiah. Our conclusion therefore is that we consider that the claimant did not make a complaint of discrimination in the disciplinary hearing.

56. *In the appeal manager, Carla Johnson, failed to address the claimant's allegations of discrimination about the disciplinary process, meaning that the claimant was required to bring a grievance process.* The notes of the appeal hearing illustrate how the matters were dealt with by the claimant at the time of the appeal hearing. (p512)

> CJ then asks JM what that has to do with his race?
>
> • JM says Scott he broke the law: -
> -By giving Mr M back his documents and allowed him to exercise treaty rights despite being made aware of the reservations regarding corruption. JM says he doesn't believe Mr M is entitled to exercise his treaty rights. JM says Scott is white – he has not been disciplined for doing that.
> -CJ says – not that JM knows of, he wouldn't know if Scott's faced any disciplinary action as these matters are confidential. In JM's view Scott has broken the law and he hasn't faced repercussions because Scott is white and JM is not, based solely on their race.

57. In her witness statement Carla Johnson explains how she addressed the issue of race discrimination raised by the claimant she states the following:

> 28. I do not agree that I failed to deal with allegations of discrimination in the appeal. In his further submissions Mr Mangrola stated that I "appeared hostile" in the meeting when he raised allegations of discrimination, page [452]. This is not the case. As can be seen in the minutes, I asked Mr Mangrola whether he had raised these concerns before, and he confirmed he had not, page [389]. Allegations of discrimination had also not formed part of Mr Mangrola's appeal. I was therefore slightly taken by surprise when the issue was raised and it can be seen in the appeal minutes that I tried to understand the allegations Mr Mangrola raised, pages [389 and 391-392].
> 29. What became clear was that Mr Mangrola was focussing on the marks that had been awarded in the end of year reviews of the staff he managed, his perception that Chris Edward's conduct towards him had changed, and his own end of year review. These matters were not within the scope of the discipline appeal. Mr Mangrola had also alleged that Scott Ronaldson had broken the law when he gave Mr M his documents back, and that Scott had not been disciplined for this, because of his race. I did not feel it was appropriate to discuss whether other people were subject to disciplinary processes.

> 30. I dealt with the allegations expressly in the appeal outcome, pages [539–540]. It was my assessment that there was nothing in the documents which supported the assertion that there had been any discrimination on the basis of Mr Mangrola's race throughout the process. As to the matters which were outside the scope of the appeal, I had reminded Mr Mangrola of the grievance procedure.
> 31. Any failure to deal with the allegations of discrimination had nothing to do with the disclosures that Mr Mangrola says he made.

The Tribunal consider that there is a clear explanation for the way that Miss Johnson acted in her dealings with the claimant in the appeal and we do not accept that there was a failure to address complaints of discrimination in the way that she considered the appeal. It was her judgment that the matters that the claimant raised about discrimination could be dealt with in the grievance and she gave the claimant a steer towards that we do not consider that there is any breach of the respondent's procedure or that the claimant has been subjected to any detriment in her decision to act in that way.

58. *In April 2020 performance review marked down the claimant for reasons that were not justifiable, namely Hours worked, and in the October 2020 performance review marked the claimant down because of the events giving rise to the disciplinary action.* Mr Ronladson completed Mr Mangrola's performance end of year review for the period April 2019 to March 2020, by giving him a 2 star marking out a possible 4 stars (1 star being the lowest performance rating and 4 stars being the highest performance rating). The reasons for marking Mr Mangrola at 2 stars were (i) Mr Mangrola had made errors of judgment when on detached duty for a different team; Mr Ronladson also considered the potential reputational damage from the incident relating to the marriage interview on 28 October 2019. The claimant complains that this was premature, in the sense that there had been no conclusion in the disciplinary process in respect of that matter at that stage. Our view however is that if Mr Ronaldson thought that the claimant had behaved inappropriately at that stage it would be within his right to express that in a performance review if it was his genuine view based on a fair assessment of what had happened, a performance review of this kind does require an objective assessment of the way that an employee has performed and if an honest objective assessment is that a person has behaved badly or poorly in a particular instance we do not consider that it is inadmissible to take that into account in an exercise like completing a PDR. (ii) The second matter that Mr Ronaldson relied on was that the claimant had divulged more information than was necessary about a colleague who did not wish to be deployed. (iii) The final matter was that the claimant had run out of his core hours that year.

59. In relation to the performance review for April 2020 to September 2020 Mr Ronaldson states that he awarded the claimant a 2 star rating, he states that this decision was made predominantly on the basis the claimant's lack of sound judgment on 28 October 2019 leading to a finding of serious misconduct and him being issued with a final written warning on 20 July 2020.

60. The Tribunal is satisfied that there was a potential detriment to the claimant in that the way that the PDR was dealt with it was required to be put right later. It is important to note that this is not in respect of the judgments made by Mr Ronaldson about the claimant rather it is the failure by Mr Ronaldson to properly engage with the claimant in the course of managing him so depriving the claimant from having the sort of input the claimant ought to have in his PDR.

61. *In the conduct of the grievance process the respondent failed to address the claimant's complaint of race discrimination, this relates to Sue Bentley in relation to grievance hearing and Tony Erne in relation to the grievance appeal*.

62. Miss Bentley did deal with the claimant's complaint of discrimination, she concluded that the claimant was not treated the way he was because of any protected characteristics, even where he was the victim of unfairness and poor management this was not because of any discrimination on the grounds of a protected characteristic or victimisation (we understood her reference to victimisation to incorporate whistleblowing complaint that the claimant was making).

63. Mr Erne dealt with the claimant's appeal and came to his conclusions we do not consider that the claimant has made out a complaint that having regard to what his role was in the process there was any culpable failure by Mr Erne.

Was the claimant subjected to less favourable treatment because of his race

64. The is no allegation of and no evidence of anyone acting towards the claimant in an overtly racist or racially discriminatory manner. The claimant in this case seeks to rely on the drawing of inferences from the surrounding circumstances. The Tribunal in this case have not been able to draw conclusions that the matters about which the claimant complains are matters which are infected by racial considerations.

65. The claimant relies on one actual comparator Mrs Lucy Roberts. We reminded ourselves that section 23(1) EA provides that on a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.

66. In his "employment tribunal claim statement" (p64) the claimant says that:

> "I was penalised with an adverse annual performance review for primarily 3 reasons *inter alia'* for failing to manage my annual contracted hours of employment i.e. I ran out of hours before the end of the contracted year, thereby allegedly inconveniencing my colleagues. I had offered to work for no payment so that my colleagues were not inconvenienced however this offer was rejected out of hand by my Head of Unit (Mr Edwards).

> At the same time, another CIO colleague Mrs Lucy Roberts who had also run out of contracted hours employment before the end of the contracted year and who had also failed to manage her annual contracted hours was never penalised.
>
> Mrs Roberts is of white ethnic origin."

67. Mr Ronaldson stated that he knew nothing of Lucy Roberts' circumstances. Mr Ronaldson states that the claimant did not flag to him or any other manager that he had run out of core hours.

68. Mr Edwards states that there is an important difference between the claimant's case and Mrs Lucy Roberts:

> "The important difference is that CIO Lucy Roberts did not have any fixed points/duty CIO shifts left, so it was not necessary to find someone to cover duty roles, unlike with Mr Mangrola. Further, although I am unable to recall the exact date, I recall that CIO Lucy Roberts informed us that she had run out of hours in an acceptable timescale, unlike Mr Mangrola who told us the night before his fixed point shift."

69. Miss Bentley dealt with this in her witness statement as follows:

> "Mr Mangrola had also compared himself to a colleague, CIO Lucy Roberts, who was of a different ethnic origin. Whilst I did not intend to investigate the EOY PMR, I briefly considered CIO Lucy Roberts case in comparison to Mr Mangrola's situation. I had checked this with Chris Edwards who told me that CIO Lucy Roberts had flagged in advance that she was going to run out of hours and was not rostered any shifts which impacted others by her absence. Mr Mangrola on the other hand was due to be the Duty CIO, a role which did impact others and he only notified Chris Edwards the night before his shift. I therefore noted there was a rationale for the decision in both cases. I did not see a correlation between the two. In any event, I did not understand how Mr Mangrola would be able to compare his case to CIO Lucy Roberts owing to the fact he would not have the details of CIO Lucy Robert's EOY PMR decision as this was confidential. [633–634]."

70. There are differences between the claimant and CIO Roberts, they are material differences, namely, she was not in Mr Ronaldson's team, she did not have any fixed shifts to cover and so her position did not impact on others) and she notified the managers in what they considered in good time unlike the claimant who did not.

71. The claimant also relies on a hypothetical comparator for his remaining complaints. In the way that the claimant was dealt with in the disciplinary hearing the claimant was dealt with in accordance with the procedure. The claimant was penalised, he was found to have a case to answer flowing Mr Browns investigation, it was in line with the respondent's procedures. Mr Appiah concluded that the claimant was guilty of "serious and potentially

gross misconduct" a decision of final written warning which was in line with the procedure.

72. The claimant appealed and in her appeal decision Miss Johnson concluded that the disciplinary decision issue a should be upheld. The Tribunal consider that Miss Johnson would have treated a hypothetical comparator in the same was as she did the claimant because in our view she has given a clear non-discriminatory explanation which would apply regardless of race.

73. In respect of the manner in which the claimant was treated by Mr Ronaldson there is no supporting evidence to the claimant's allegation that his actions were discriminatory on the grounds of race. The evidence supports the conclusion that Mr Ronaldson did not act in a professional manner at all times but the explanation for this is not related to any protected characteristics but his own situation. The evidence also supported the conclusion that there was a consistency in the way that he managed all his team there is no evidence that it was related to race or the claimant's race. The evidence is that Mr Ronaldson only conducted 1-2-1supervision sessions with those of his reports who specifically requested them and the claimant did not make a request. Mr Ronaldson gave a clear non-discriminatory explanation for the reasons why the claimant was marked the way that he was. The Tribunal note that some reliance was placed on the marking of the claimant's team in the standards setting meeting (p207) and the claimant relied on the fact that the meeting resulted in only people of colour being marked down. The respondent's reply is that this is a small sample from which it is not possible to extrapolate that the claimant was treated in a discriminatory way. The standard setting meeting results in all those who scored 4 other than one white person were marked down to 3, there is no evidential support for the claimant being discriminated against by Mr Ronaldson in the evidence emerging from this meeting.

74. The claimant relied on the existence of a discriminatory Mindset. He made references to the Windrush report, and also referred to institutionalised discrimination as defined by Lord McPherson's report. In his evidence in this case, he has not explained how the matters set out in those various documents which are entirely unrelated to his circumstances should be understood as providing any evidential support for discrimination in the claimant's own case.

75. The conclusion of the Tribunal is that to the extent that he suffered detriment the claimant was not treated less favourably because of his race. The reason that the claimant was subjected to the treatment he received was because of his actions on the 28 October 2019 and the view taken by many different unconnected people who had not colluded against the claimant that his behaviour was inappropriate and that his conduct was a matter that deserved censure under the respondent's disciplinary policy and procedures, that is what motivated the actions of the various individuals against whom the claimant makes allegations of race. In considering the claimant's grievances Miss Bentley and Mr Erne reached the conclusions

that they considered justified, the claimant's race did not infect the decisions made.

Victimisation

76. The claimant also complains that he was victimised. The respondent admits that the claimant did protected acts in that the respondent accepts that 7.1.3 of list of issues (comments made at the appeal hearing), 7.1.4 of the list of issues (subsequent written appeal submissions) and 7.1.5 of the list of issues (C's grievance) were protected acts. The respondent denies that any complaint of breaching the EA was made orally to Mr Ronaldson on around 30 January 2020 (7.1.1 of the list of issues); and the respondent denies that any complaint of breaching the EA is contained in the claimant's email of 1 July 2020 to Mr Appiah (p316-9) (7.1.2 of the list of issues).

77. The Tribunal's view is that even if the claimant is right and he did carry out protected acts as alleged in 7.1 of the list of issues or if the only protected acts are the matters admitted by the respondent, for the reasons we have already set out the claimant was not subjected to a detriment because of doing any of those protected acts, the reason for the claimants detriment are clear and have been explained by the respondent as arising from the view taken of his actions on 28 October 2019 and the subsequent consequences. The steps taken by the respondent were all because there was a genuinely held view that the claimant had on that occasion acted inappropriately. The fact that the claimant may in the events that followed may have done protected acts is not the reason he subjected to any matter that amounts to a detriment.

78. The conclusion of the Tribunal is that for the reasons we have set out above there was no victimisation of the claimant.

79. The claimant's complaints of direct discrimination, victimisation and detriment because of making protected disclosures are not well founded and are dismissed.

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Employment Judge Gumbiti-Zimuto

Date: 31 July 2023

Sent to the parties on:
13 September 2023

For the Tribunals Office