Case Numbers: 3203125/2019 &
3201568/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mr Kamran Hussain**

Respondent: **London Fire Commissioner**

Heard at: **East London Hearing Centre**

On: **10, 11, 12, 13, 17, 18, 19, 23, 24, 25, 26, 31 January 2023, 1, 6, 7, 8, 10 March 2023, 17 April 2023 (in Chambers), 27 April 2023 (for oral submissions), then in Chambers on 28 April, 3, 9, 11, 12 May 2023, 6, 7 June 2023 and 10 July 2023**

Before: **Employment Judge C Lewis**

Members: **Ms T Jansen**
Mr M Wood

Representation
Claimant: Fergus McCombie (Counsel)
Respondent: Safia Tharoo (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the tribunal is as follows:
The Claimant's claims of:-

1. **Failure to make reasonable adjustments;**
2. **S.15 discrimination arising from disability;**
3. **Direct discrimination because of race and/or religion;**
4. **Harassment; and**
5. **Victimisation**

are all dismissed.

REASONS

Procedural background

1 This case was originally listed to be heard over 17 days starting from the 10 January 2023. Unfortunately, shortly before the hearing was due to commence, counsel instructed on behalf of the Claimant sustained an injury (a fractured wrist) and was unable to prepare for and represent the Claimant at the hearing. This resulted in an application to postpone the hearing which was considered at preliminary hearing on the 9 January 2023 before EJ Lewis. Following discussions with the parties' representatives Directions were made for enquires to be made about availability of alternative counsel and for the parties to liaise to provide mutually convenient dates in the listing window in January, February, April and May 2023. At a resumed preliminary hearing on the 10 January 2023, the final hearing was relisted to take place over 20 days as set out in the notice of hearing issued that day. The Tribunal spent the rest of the week from the 10 January that is the 10, 11, 12 and 13 reading into the documents. The Claimant started giving evidence on 17 January 2023. A timetable was agreed that would allow time for the Claimant's new counsel to read into the case and prepare his cross-examination of the Respondent's witnesses.

2 The Respondent made an application for the evidence of one of their witnesses, Mr Amis to be read by the Tribunal. That application was dated the 6 March 2023, it set out why Mr Amis was not available to attend and supported the application with medical evidence. That application was considered on 17 January 2023 when the Claimant was represented by his new counsel, Mr McCombie, who sensibly did not object to that application but asked the Tribunal to take into account the absence of the opportunity to cross-examine that witness when considering weight to be given to his evidence. At the end of the evidence the Respondent also made an application in respect of Mr Fox who was unavailable. Mr McCombie did not accede to that application and asked us to take into account the lack of opportunity to cross-examine that witness. We had already read Mr Fox's witness statement during our reading in but took into account Mr McCombie's submission in respect of what weight that evidence should be given in our deliberations.

3 The timetable of evidence was discussed and a provisional timetable agreed – subject to further discussion between counsel as to witness availably and anticipated length of cross examination.

4 The Claimant has PTSD, anxiety and depression and experienced severe headaches during the hearing, applying the Equal Treatment Bench Book, we made the following adjustments during the hearing.

(1) The Tribunal took a break every hour (after approx. 45-50 mins) and additional breaks as and when the Claimant needed them.

(2) Following the afternoon break from 2.10 to 2.25 on 23 January (the fourth day of the Claimant's evidence) when cross examination resumed the Claimant became upset and was struggling to carry on. He told the Tribunal that he had only taken half his medication that day because he felt the previous week he was not very clear. The Tribunal an adjourned to allow the Claimant to speak to his counsel to discuss whether he would be able to carry on. Before the

adjournment, the Employment Judge reassured the Claimant that we had found his evidence in the previous week to be clear. The parties returned at 3.00pm, it was evident that the Claimant was still unwell and there would need to be an adjournment for the rest of the day and his counsel was to inform the Respondent's counsel and the Tribunal if the Claimant was not able to resume the next day.

(3) On the 24 January, day 9, the Claimant was ready to resume the hearing and his cross-examination continued from 10am with breaks every 45minutes. Again around 3.00pm the Claimant became upset with the questions where the answers touched on his period of absence following his breakdown. Following an adjournment, the Tribunal discussed the timetable with counsel at 3.15pm and then adjourned for the rest of the day.

(4) On 25 January, the Claimant became upset on two occasions, when talking about his mental health breakdown and when the Respondent witness Ms Burton arrived before lunch. During these periods, the Tribunal adjourned and took the opportunity to listen to the audio of the meeting between the Claimant and Mr Bannon which took place on the 6 November 2020 and a later phone call between the Claimant and Ms Kelly Miles in which the events on the 6 November were discussed. After the adjournment the Claimant confirmed that he wished, and was able, to resume giving evidence and his evidence concluded at 3.30pm.

5 The Respondent's evidence started on day 11. The Tribunal heard from the following witnesses for the Respondent: Rebecca Burton, Ben Dewis, Spencer Sutcliff on the remaining dates in January; Martin Freeman on the 1 March, followed by Rasheedat Ogunbambi and Andrew Mobbs, Charlie Pugsley, Maria Apostole, Richard Tapp. There were no questions for Bradley Sprague; Paula Bayley gave evidence by CVP, followed by Matthew Hearne, Catherine Gibbs, Jamie Jenkins. Joanne Baker who all attended the Tribunal to give their evidence. There were no questions for Ruairidh Martin and finally Matthew Bannon gave evidence on the 10 March 2023. At close of the Respondent's evidence, arrangements were discussed for submissions; it was agreed that counsel would exchange written submissions and send their submissions to the Tribunal by 10am on the 17 April 2023. The Tribunal sat in chambers on the 17 April to read those submissions. The parties also agreed and provided the Tribunal with a final amended version of the list of issues on the 17 April 2023 in which the Claimant withdrew a number of his complaints and it was the final version of the list of issues that the Tribunal were addressed on in written and oral submissions and which they considered in their deliberations.

6 The Parties attended in person on the 27 April 2023 for oral submissions, the Tribunal sat in chambers on the 27 and 28 April, with the intention that the parties would return on 10 July 2023 for judgment. The Tribunal then sat in chambers on the remainder of the 27 and 28 April, 3 May, 11 May, 12 May, 6 and 7 June. The partis were due to attend on 10 July 2023 for oral judgment but were informed in advance of that date that the tribunal had reserved its judgment and would meet in Chambers on that date.

Agreed list of issues

7 An agreed List of issues was produced following an earlier preliminary hearing (at a time when the Claimant was represented by counsel) and at the start of this final hearing both counsel confirmed those were the issues to be decided by this Tribunal. On 17 April 2023, after the conclusion of the evidence and before submissions the Tribunal was provided with an agreed amended list of issues which identified a number of complaints that were being withdrawn by the Claimant. That final agreed list of issues is attached at Schedule 1.

Evidence

8 The Tribunal was provided with three bundles. Bundle 1 consisted of 3788 pages of documents related to claim 1; Bundle 2, which consisted of 864 pages, contained the documents relevant to claim 2; a third bundle consisting of some 56 pages contained documents referred to in the Claimant's witness statement which were not in either of the bundles, this included another employment tribunals' decisions, in respect of claims brought by different Claimants against the London Fire Brigade, as it then was, or the London Fire Commissioner as it is now. The Tribunal indicated that it would be deciding the case on the evidence before it and that first-instance decisions from other Employment Tribunals were usually of limited assistance however the Claimant would be able to draw our attention to any particular points that he thought were relevant. The Tribunal were grateful to have the bundles in electronic form. The Tribunal also had a bundle of witness statements. The Claimant's witness statement ran to 169 pages and consisted of 477 paragraphs. The remainder of the bundle of witness statements consisted of the Respondent's witness statements, the entire bundle consisted of 390 pages. The Tribunal spent the first 4 days of the hearing reading into those witness statements and documents referred to in those statements. Due to the need to re-list the hearing at short notice and to accommodate the availability of both counsel and the Tribunal, there were gaps between the dates of the hearing. The Tribunal were able to refresh their memories on statements, previous evidence and their extensive notes during the course of the hearing and in their deliberations in chambers.

9 The evidence before the Tribunal was detailed and extensive as can be seen above. The Tribunal had regard to all the evidence before it. However, we have not recited every detail of the history before us; given the withdrawal of some of the issues and some of the findings set out below it has not be necessary to set out our findings on some matters which appeared in the List of Issues at the start of the hearing, nor has it been necessary to resolve every conflict in the evidence in order to reach our conclusions. What we have set out are the essential facts that we relied upon in reaching our decision, where facts were in dispute, we have made findings on the balance of probabilities.

Structure of the decision

10 Due to the multiplicity of issues and to avoid repetition and duplication in what is already a long judgment we have set out the relevant legal principles below and then set out our findings of fact and conclusions in respect of each of the issues in turn. However, it should be taken from the structure of the judgment that we considered our findings of fact in respect of each allegation in isolation. We were careful not to adopt a fragmented approach to the examination of each allegation but also to stand back and consider the

overall picture. We first considered the totality of the evidence before reaching our findings of fact and then reaching our conclusions.

Relevant law

11 The Claimant has brought claims under s13,15, 20, 21, 26 and 27 of the Equality Act 2010, we had in mind those sections of the Equality Act together with s 23 which applies to claims under s13, s 39, s136 and Schedule 1. We were referred to paragraph 20(1) of Schedule 8 to the Equality Act 2010 ("EqA"), which provides that an employer is not subject to the duty to make reasonable adjustments if it did not know, or could not reasonably be expected to know, that the Claimant was a disabled person.

12 Counsel were largely agreed on the relevant legal principles and we were provided with a joint list of authorities, as follows: *Gallop v. Newport City Council* [2014] IRLR 211; *O'Donoghue v. Redcar and Cleveland Borough Council* [2001] IRLR 615; *Nagarajan v. London Regional Transport* [1999] IRLR 572; *Kirby v. National Probation Service* [2006] IRLR 508; *Waters v. Metropolitan Police Commissioner* [1997] IRLR 589; *Warburton v. Chief Constable of Northamptonshire Police* [2022] ICR 925; [2022] EAT 42; and, *Ishola v. Transport for London* [2020] IRLR 368.

13 We have set out below the relevant authorities on the areas of law on which the parties were not in full agreement as to the relevant principles to applied.

PCPs

14 Both Counsel addressed us in respect of *Ishola v. Transport for London* EWCA Civ. 112 *[2020] IRLR 368* EWCA Civ. 112. Ms Tharoo submitted that "the CA made clear that whilst the words 'provision, criterion or practice' should not be narrowly confined, it was significant that Parliament had chosen to define claims by reference to these specific words, and had not used the words "act" or "decision" either instead of, or in addition to what was included. The CA concluded that *"all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again."* Thus, a one-off decision might be a practice, if it was carried out with the intention that it would be followed in future, similar cases. However, a one-off decision in an individual case where there is nothing to indicate that the decision would apply in future would not be sufficient to amount to a practice".

15 Whereas Mr McCombie submitted that the nature of a PCP was identified as the aspect of the employer's operation or management that causes substantial disadvantage. He accepted that a one-off act or decision may but will not necessarily amount to a PCP, despite the wide and purposive interpretation to be given. The term generally means "some form of continuum in the sense that it is the way in which things are or will generally be done" (para.38)."

16 We are satisfied that there is little between the two submissions other than a difference of emphasis. We had the Court of Appeal's decision in mind when considering the PCPs contended for.

S15 Unfavourable treatment because of something arising in consequence of disability

17 We reminded ourselves of the guidance from Langstaff P in *Basildon & Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305, EAT* explained:

> "The current statute requires two steps. There are two links in the chain, both of which are causal, though the causative relationship is differently expressed in respect of each of them. The Tribunal has first to focus upon the words "because of something", and therefore has to identify "something" – and second upon the fact that that "something" must be "something arising in consequence of B's disability", which constitutes a second causative (consequential) link. These are two separate stages."

18 Section 15 of the Equality Act 2010 provides: - Discrimination arising from disability.

(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

In *Secretary of State for Justice and Anor v Dunn* EAT0234/16 the EAT set out the elements that must be established in a S.15 claim: (i) there must be unfavourable treatment. (ii) there must be something that arises in consequence of the claimant's disability. (iii) the unfavourable treatment must be because of (i.e., caused by) the something that arises in consequence of the disability, and (iv) the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

19 Each of these elements, together with the separate requirement in S.15(2) that the alleged discriminator must (or should) have known of the claimant's disability, must be proven.

20 What must be shown is that the disability is 'a significant influence … or a cause which is not the main or sole cause but is nonetheless an effective cause of the unfavourable treatment as established in *Hall v Chief Constable of West Yorkshire Police* [2015] IRLR893, EAT and also in Pnaiser v NHS England [2016] IRLR170, EAT. 7. 177). In *Pnaiser v NHS England* [2016] IRLR70, EAT, Simler P at [31] gives further guidance on the general approach to be taken by a tribunal under s 15, in order to distinguish it from direct discrimination as follows:

(1) Was there unfavourable treatment?

(2) What caused the unfavourable treatment?

(3) Was the cause 'something' arising in consequence of the claimant's disability?

(4) There can be more than one link in the causation chain, but the more there are the more difficult it may be to establish causation.

(5) The causation test is an objective one.

Burden of proof

21 We were also referred to and had in mind *Igen v Wong [2005] ILRR 258*, *Madarassy v Nomura International plc [2007] ICR 867* [at 56] and *Hewage v Grampian Health Board [2012] ICR 1054* [at 32] in respect of the burden of proof.

Relevant protected characteristics

Race and religion

22 The Claimant is British of Pakistani origin and Muslim. During his time at various fire stations, the Claimant has always been the only Pakistani Muslim at the station. Even when he worked in two boroughs with one of the largest numbers of British Pakistani residents, that is Newham and Waltham Forest. It is not disputed that despite some increase in the numbers of Black and ethnic minority fire fighters over the years, the Respondent's own data [2514] shows that today less than 14% of the Respondent's operational workforce is made up of individuals from a BAME background and of this only 2.2% are of an Asian background. The numbers were even lower when the Claimant first joined the Respondent in 2004.

Disabilities

23 The Claimant has been diagnosed with dyslexia which is a lifelong condition. The Respondent has conceded this amounts to a disability (see list of issues). The Claimant also relies on anxiety/depression as a disability in respect of his second claim. The Claimant told us, and it was not contested, that his anxiety and depression was first formally diagnosed in June 2016 and was then amended to a diagnosis of PTSD in September 2021.

24 The date of knowledge in respect of both disabilities was in issue. The Respondent accepts that it had knowledge of the Claimant's disability of dyslexia from the 14 October 2019 when it received an expert assessment and that it had knowledge in respect of the Claimant's anxiety and depression from July 2019.The Respondent concedes that the Claimant is a disabled person by virtue of his anxiety and or depression from July 2019 which pre-dates the matters relied on in the second claim so we did not need to decide the issue of knowledge for anxiety and depression.

25 The Claimant believes that there were a number of flags in respect of his dyslexia which the Respondent should have picked up on: these included him struggling with written tests from the outset, struggling with written work and having to take work home because he could not complete it in work time - which was noted by his manager in the period up to November 2017; and it being noted that he should have the same reasonable adjustments as were provided to a colleague, Bee Lui, due to her dyslexia in January/February 2017 in a formal timed exam setting.

26 We have tried to follow a chronological sequence in dealing with the events. We therefore deal with the first protected acts before coming on to deal with the Respondent's knowledge of the disability. For the purposes of the complaints raised in claim 1, the Claimant only relies on the disability of dyslexia, in claim two he also relies on his anxiety and depression.

Findings of fact

Career history

27 The Claimant has been employed by the London Fire Commissioner, formerly the London Fire Brigade, since 24 May 2004. The London Fire Commissioner provides fire and emergency cover for London: it operates a shift system consisting of four shifts of operational staff, known as Watches (Red, White, Blue and Green) working two day shifts from 9.30 to 8pm followed by two nights from 8pm to 9.30am, on four rota days. The same watch, e.g. Green is on duty right across the Brigade at any one time.

28 The Claimant began his employment as a Trainee Fire Fighter on Development on the 24 May 2004. He told us that he struggled with the initial training and failed an end of unit assessment but completed his Fire Fighter training on the 30 September 2004. He was posted to East Ham Fire Station as an operational Fire Fighter on Development on the 1 October 2004 and was deemed a competent Fire Fighter on the 1 December 2005. He remained at East Ham Fire Station until the 15 October 2008. The Claimant set out in paragraphs 13, 14, 15, 18, 19 of his witness statement evidence in respect of his treatment and discriminatory remarks. and comments made to him during his time with the Fire Brigade which pre-date the matters to which these claims relate. The treatment he described was of a discriminatory nature, it related to his race and religion, including comments about his having a magic carpet which was a reference to his prayer mat; having Al Queada training, in reference to his holy pilgrimage; and backpack training, a refence to being deemed to be a terrorist. Bacon was put inside his tuna roll by a Fire Fighter and stereotypical comments were made, including hanging his CD on the rear view mirror of the appliance (fire engine) and numerous comments focused on him being of a different race and religion and making fun of him. The Claimant described how one of his colleagues regularly verbally abused him and made discriminatory comments about his holy prophet including making comments about a Dutch cartoon which was topical at the time, and swearing directly at his holy prophet. He witnessed other incidents which were very distressing, including an incident involving his colleagues showing disrespect for an Asian woman who died in a fire and whose clothes had been burnt off.

29 The Claimant voluntarily transferred from East Ham Fire Station to Tottenham Fire Station (Red watch) on the 16 October 2008 and remained there until the 5 December 2011. He told us that the voluntary transfer was his attempt to get away from the bullying and discrimination he had experienced at East Ham Fire Station. However, he told us that he discovered the racism in Tottenham was no different. He was subjected to further acts of discrimination including a pork sausage being put in his pocket; during Ramadan, while he was asleep he was covered with crisps and biscuits; a fridge magnet about how to report terrorism was put on his locker by a fellow Fire Fighter [see photograph in the bundle at page 534]. Reference was made to not offering the Claimant part-time work by a colleague who said he wanted “cowboys not Indians”. The Claimant continued to experience being treated as an outsider and felt unwanted.

30 In 2009 the Claimant discovered that the leather work shoes provided as part of standard uniform were made from pig skin which it was against his religion to wear. He emailed POMs/uniform ordering department as well as the LFB welfare fund asking that this information be more widely shared so that people could ask for an alternative. The only response that he received was that there was an alternative option for uniform, but nothing

more was done to make this more widely known or bring it to other firefighters' attention so that they would not be put in the same position of unwittingly going against their religion.

31 The Claimant successfully passed his second attempt to become a crew manager and was promoted to a Crew Manager on development on 6 December 2011. He was posted to Walthamstow fire station on the Blue watch. He completed his crew manager development and was deemed a competent crew manager around 18 April 2013. He remained at Walthamstow until 11 August 2013. The Claimant told us that when he received this promotion, his colleagues told him that he had only got it because the Brigade had a quota they needed to fill. The Claimant told us about being involved in a recruitment campaign and being selected to represent his employer at a number of prestigious events arranged on behalf of the Mayor of London, then Boris Johnson, at City Hall and at 10 Downing Street by then PM, David Cameron, and being told by colleagues that he was there as a token, At the time he tried to brush this off but he later came to believe that he was indeed being used in that way, i.e. as a token.

32 The Respondent did not dispute the Claimant's evidence about his earlier years at the Fire Service in cross examination because those matters were not material to the claims before us. The Respondent made clear that this stance was not intended to indicate that the evidence was accepted.

33 In August 2013 the Claimant took the opportunity to go on secondment to Babcock International Limited, which is a contracted training provider for the London Fire Commissioner and delivers the majority of its training courses. It was a three-year secondment as a breathing apparatus operative instructor and real fire behaviour trainee instructor at the rank of Watch Manager (development) specialist. This secondment ended on the 31 March 2016. This role involved the Claimant facilitating learning through theoretical and practical training to fire fighters, police officers and London ambulance service personnel to national operational standards and carrying out assessments to determine whether organisational and national standards were being met by delegates. At the end of his secondment, the Claimant received glowing references from Babcock International however, despite requesting an extension to his secondment this was turned down.

34 Towards the end of his secondment, the Claimant became concerned about the prospect of retuning to a front line fire-fighting role and the culture of discrimination he had experienced previously and he considered a move away from the front line. He applied for and was appointed to the role of Fire Safety Inspection Officer (FSIO) under development. This was on a 9-day fortnight shift pattern which was day duties only. He was posted to Hammersmith and Fulham and Kensington and Chelsea Fire Safety team from the 1 May 2016, remaining there until the 18 August 2019. The team was based on the top floor of Paddington fire station.

35 The role of FSIO is to enforce the provisions of the Regulatory Reform Fire Safety Order 2005, primarily through the inspection and audit of premises falling within the scope of the Order to ensure that general fire precautions for the premises complied with the Order. Additional duties involved in this role were carrying out regulatory building consultations, commonly referred to as D jobs, to ensure compliance of proposed alterations or construction of premises that fell under the scope of Fire Safety Order. The role also involved consultation with local authorities for license applications for premises that needed

to be licensed or registered, such as a license for nail bar, hair salons or premises selling alcohol and food, and providing fire safety advice to architects and members of the public throughout London. The Claimant received training in fire safety legislation, including British standards, local government guidance documents and approved documents used to conform to the Regulatory Reform Fire Safety Order 2005 after joining the fire safety department. The Respondent did not provide this basic fire safety regulation training to operational crew at fire stations until mid-2020.

36 On starting his new role as a developing FSIO, the Claimant found the extent of the reading required overwhelming. He told us that this together with an expectation that he would be out and shadowing other experienced FSIOs meant that there was no time for him to take on board or reflect on the information he was being provided with and that he also struggled being back in an environment where he previously suffered so much discrimination. His anxiety returned and he started to have flashbacks about the incidents that had occurred in the past and became anxious that it would all start again. He experienced intrusive distressing images and thoughts and developed significant anxiety. On the 31 May 2016, three weeks after having started in his new role as FSIO, he told us he had a mental breakdown and was off sick because of work-related stress (page 520-523). His GP diagnosed him with depression on the 6 June 2016 (page 527). His sickness period lasted for almost 6 months until the 24 November 2016. The Claimant commenced a further period of sickness absence on or around 18 July 2018.

37 On or around 19 August 2019, the Claimant requested to revert back to his previous role of Crew Manager and this was agreed by the Respondent. The Claimant returned to work on light duties where he remained until the 2 January 2020. The Claimant then returned to operational duties as a Leading Fire Fighter at the Woodford fire station until the 3 April 2020, he then reverted to the role of Fire Fighter based in Walthamstow on the Green watch with effect from 4 April 2020.

38 The Claimant told us that the reason for his depression and anxiety was due in large part to the harassment and discrimination he had been subjected to throughout his career. The Claimant accepted that other than his complaint about his shoes being pig leather, he had not raised a complaint about any discrimination prior to his secondment to Babcock International.

Protected act 2: grievance of 3 June 2016

39 On the 3 June 2016, the Claimant submitted a formal complaint to his line manager, the Fire Safety Team Leader Rebecca Burton (523-526); and on the 15 June 2016 a formal complaint to Area Fire Safety Manager Spencer Sutcliff (533-535). These complaints detailed past incidents of bullying, harassment and discrimination that he had been subjected to by firefighters and senior officers and the lack of support he felt he had received from his employer. The Claimant relies on these complaints as protected acts.

40 The Claimant received a phone call from Deputy Team Leader Robert McTague about two weeks into his period of sickness absence to ask how he was. He told us that he informed Mr McTague during that conversation about some of the incidents relied on and how constant reoccurring nightmares and distressing images of past events had led to his break down and depression. The conversation ended after he became emotional and broke

down crying. The complaints made to Mr McTeague on 15 June 2016 are also relied on as protected acts as part of the same grievance.

41 The Respondent accepts that both of the complaints relied on are protected acts and we are satisfied that that is an appropriate concession for it to have made. In his first complaint addressed to Rebecca Burton, the Claimant refers to being made to feel different and being segregated and feeling isolated. He referred to being a practicing Muslim and the remarks made disparaging him and his religion. He also set out some of the difficult events in his own family personal life and the impact his feelings in respect of his treatment in the fire service had on his mental and physical health and his personal life and relationships. He stated that he had reached out and asked for help because he wanted to continue his career with the Fire Brigade. In his second document headed, "additional statement of incidents," [533], he set out further examples of the bullying he had experienced including, discovering the leather work shoes he was issued contained pig skin, the incidents that took place at East Ham and Tottenham fire stations and included a photograph of the fridge magnet. He included some other specific complaints dating form 2012 prior to his period of secondment with Babcock International which are not relied on as raising complaints under the Equality Act 2010.

42 On the 3 June 2016 Rebecca Burton responded to the Claimant by email. She informed him that she was reading his document and that there was a lot to take in, expressing empathy for his position and told him that she would contact him the next week as he would need some time to recover from the emotions of getting it all down in writing. We find she was genuinely sympathetic and concerned for his wellbeing.

43 The Claimant had copied Spencer Sutcliff into his statement. Mr Sutcliff contacted HR, emailing Andy Hearn and Doug Mortimer on 14 June 2016 [528] with the subject 'investigation', asking them to look at the Claimant's full employment history. He explained that this was to enable him to meet with HR to discuss the allegations which referred to places and watches but with no time scales. Mr Sutcliff spoke to Catherine Gibson, also in the Respondent's HR department and arranged to meet with her. He informed Andy Hearn [529] that her advice was that it' *probably depended very much on time scales'*, noting, '*we suspect many of the allegations would be historical and essentially timed out.'* The Claimant criticises the wording of this email suggesting that it is indicates Mr Sutcliff wishing to shut down his grievance and not wanting to have to investigate it.

44 Mr Sutcliff met with the Claimant on the 21 June 2016 by telephone to discuss his complaints and followed up with an email which he first sent to Andy Hearns for his comments [558]. In the email sent to the Claimant on 24 June 2016 [560] Mr Sutcliff indicated that he wanted to confirm a few points. He started by noting that he was pleased to hear the Claimant felt better compared with the first few days of absence and had benefitted from the two wellbeing sessions he had attended. Mr Sutcliff informed the Claimant that he had met with Rebecca [Burton] and they had discussed ongoing support they could provide to the Claimant on his return to work. He set out some of the support discussed and then went to outline their discussion with HR and his manager on Monday 20 June to discuss the Claimant's statement and the further information he had provided. He set out the following:

> "*The allegations made in your statement are of a very serious nature and equally the Brigade takes them very seriously. Many of the allegations date back several years and involve persons who are no longer employed by the Brigade. However, you have made statements in relation to current employees and if you wish to take this matter further an investigation would need to be carried out that involves interviews with yourselves and those named. It is also important for me to establish if, prior to this period of absence, you were being subjected to unacceptable behaviour whilst at work and also at any other time than those indicated in your statement, particularly since October 2012, the time of your last allegation before moving to Babcocks.*
>
> *As discussed, please consider your involvement with any future investigations, the Brigade will not accept any inappropriate behaviour from its staff and will support anyone who feels they have been subject to such behaviour and wishes to make a formal complaint. Any investigation would likely require further detail in relation to names, date, and any actions taken by yourself or those implicated*."

Mr Sutcliff confirmed the Claimant's statement would remain confidential and noted that it was unfortunate the Claimant found himself in the same building as one of the people referred to in his statement. Mr Sutcliff also suggested if the Claimant was feeling undue stress, he removes himself from any future situations and told the Claimant that his priority was that he was fully supported and able and ready to make a full return to work.

45 Mr Sutcliff met with the Claimant again on 20 July 2016. The agreed note of the meeting was at page 604 in the bundle: it set out a list of allegations about which the Claimant wanted a management investigation completed or a response provided to him. The list started with a complaint about SM Hewett not taking action in response to the Claimant's complaint about an email sent by Station Manager George Vost in 2012; no allegation of discrimination arose from this complaint. The next complaint on the list was about a PDP issued by SM Hewett in December 2012, again no complaint of discrimination arises. It was accepted that of the eight complaints listed only two were relevant complaints of discrimination, those were numbered 7 and 8. Complaint 7 was in respect of shoes (Brigade shoes being made from pig skin): the complaint identified being that these concerns had not been taken seriously. The Claimant explained that POMs had not taken his concerns seriously and that the response to him was that an alternative was available which did he did not think went far enough. Complaint 8 was in respect of Facebook posts: in November 2010 the Claimant had made a complaint against two members of staff that he had found using inappropriate language on Facebook, some of which the Claimant considered to be racist. It was investigated at the time by the then Borough Commander for Harringay with assistance from the then Borough Commander for Enfield, during that investigation the Claimant was asked whether he wanted the matter to be dealt with formally or informally. Following the Claimant's response, the complaint was then dealt with informally. However, the Claimant believed that when an allegation of such a serious nature was made, the complainant should not be asked whether they would like it dealt with formally or informally; he believed that when you are a Fire Fighter, you do not fully appreciate what this means and he did not have this explained to him. He reiterated that this was not a complaint against the now Assistant Commissioner AC Mills, who was then Borough Commander for Harringay, but was about the procedure.

46 The complaints the Claimant makes in these proceedings are that as a result of the complaints raised on the 3 and 15 June 2016, he was subjected to detriments in the

decisions (i) not to uphold his grievance and that there was subsequently a flawed process to avoid upholding the same [issue 4.4.1]; and (ii) in deciding to classify the Claimant's absence from May to November 2016 as 'Not Due to Service' [issue 4.4.3].

Conclusions on relevant detriments

Issue 4.4.1 Deciding not to uphold his grievance and that there was subsequently a flawed process to avoid upholding the same

47 We find that Mr Sutcliff's email of 14 June 2016 was consistent with him trying to support the Claimant. We are satisfied that the wording criticised by the Claimant was used in the context of his earlier discussion in which Mr Sutcliff had discussed that the Claimant's complaints were historical, i.e. dating back to the period of time before his secondment to Babcock, (although one of the matters discussed related to a complaint during his time at Babcock), and that the Claimant was reluctant at the time to put names to his complaints.

48 We were referred to the contents of the grievance policy which states that complaints or grievances should be brought within 3 months when possible. We find that the references to the matters being 'historical' reflected not just the application of the policy that matters should be brought within 3 months when possible but also to the fact that the Claimant was raising matters that had occurred prior to his 3 years' secondment at Babcock International and which were old complaints at the time he raised them with Mr Sutcliff.

49 Mr Sutcliff's outcome letter was dated the 4 October 2016 [page 619 of the bundle 1]. He informed the Claimant that he took all the issues raised very seriously, that the issues all occurred more than a year ago which made it difficult to investigate but that he had endeavoured to do this where possible. He pointed out that it is very important particularly as the Claimant was a manager himself that "*concerns were raised quickly, inappropriate behaviour challenged and issues referred to your manager where appropriate in a timely manner*". He set out the complaints that were discussed on the 20 July 2016. There were four complaints relating to Station Manager Hewett which he grouped together and then dealt separately with the complaints in respect of the due to work sickness grievance hearing, shoes, Facebook comments, and PARC card entry. It was agreed by both the Claimant and Respondent that the two complaints that potentially raised breaches of the Equality legislation were in relation to the fire brigade uniform, the shoes using pig leather, and the Facebook comments. In respect of those complaints Mr Sutcliff responded as follows:

> '***Manufacture of Brigade shoes using pig leather.***
>
> *Thank you for highlighting your concerns regarding the potential use of pig leather in the Brigade shoes. I have referred the matter to the Equalities team and Procurement department for their consideration and any necessary action.*
>
> ***Facebook comments***
>
> *Thank you for your comments. I have referred your concerns to HR and the Equalities team for their consideration and any necessary action*.'

50 In respect of the complaints against Mr Hewett, Mr Sutcliff observed that these would normally be referred to informal resolution by mediation, however Mr Hewett had given notice to retire and so that route was not practicable.

51 We find that Mr Sutcliff, genuinely and with good reason understood the complaints identified as 7 and 8 to be complaints about the process rather than the substance of what happened. The Claimant confirmed in his evidence that in respect of the complaint about the Facebook comments it was the process adopted, i.e. the content of the policy that he was concerned about. In respect of the use of pig leather, it was the fact that his concerns had not resulted in some wider acknowledgement of the potential issues for others, who potentially were unaware that the shoes were manufactured with pig leather, and that this had not been brought to other Fire Fighters attention, together with information about the availability of alternatives should they require them. Having heard from Mr Spencer we are satisfied that he referred those two issues to the relevant departments which he understood would be in a position to address the wider issues, i.e. the Equalities team and the Procurement (POM) team; he concluded based on the information provided to him those were historic matters. The Claimant's stated concerns were that the matters were at policy level and we are satisfied that Mr Sutcliff took that on board when he referred those matters for consideration by the HR and the Equalities team. It was not within his power to make any changes to those policies, but he could and did bring the Claimant's concerns to the attention of the relevant people who might be able to make a change to the relevant policy.

52 We do not find that Mr Sutcliff failed to engage with the substance of those two matters and simply referred them on to a different part of the Respondent. We find that having explored with the Claimant what the basis of his grievances were he dealt with them in the best way open to him, by referring them on to the relevant departments in order that they could be considered at a higher, or wider, level.

53 We are satisfied that Mr Sutcliff took time to listen to the Claimant and to understand as best as he could what it was he wanted investigated which he then confirmed in writing to the Claimant, inviting his comments or amendments. We do not find any evidence that Mr Sutcliff was trying to shut down the Claimant's complaints. We find that he had discussed with Catherine Gibbs what would be considered historical under the policy and had accepted her advice that the matters raised by the Claimant would fall within that definition and would be difficult if not impossible to investigate after such a long period of time.

54 We find no evidence from which we can properly infer that the protected acts, i.e. the discrimination complaints about his earlier treatment, had any negative bearing on Mr Sutcliff's approach or the outcome of the grievance. We find that Mr Sutcliff was sympathetic on being told of the Claimant's previous experiences of discrimination. However, due to the passage of time Mr Sutcliff, was unable to take those complaints further, except in respect the matters of policy which he did progress by referring them on to the appropriate and relevant departments. We are satisfied that the reasons given in his outcome letter are his genuine explanation for dealing with the grievance in the way that he did. We also find that at the same time Mr Sutcliff was trying to reassure the Claimant that he would be supported on his return to work and that was his priority.

Issue 4.4.3 'Not Due to Service' sickness absence May to November 2016

55 The Claimant maintains that his period of sickness absence from May to November 2016 should have been classed as 'Due to Service' because he told his manager that it was the previous discrimination he had suffered which had caused him to become unwell.

56 The Claimant's period of absence began in May 2016. The Claimant informed Ms Burton during a telephone conversation on the 24 June 2016 that he was concerned that his sickness had not been recorded as 'Due to Service' (DTS). Ms Burton queried this with Mr Sutcliff who was her superior. Rebecca Burton emailed Mr Sutcliff on 24 June 2016 [562-563] informing him about her conversation with Mr Hussain that day in which he had said he was not happy that his sickness was classified, "as 'Not Due to Service' when his depression was a direct cause [result] of his treatment within the fire service." She had explained that she would seek clarification from their HR adviser to determine the definition of due to service and see if this should be applied to his record. In his email in reply [562] Mr Sutcliff asked Ms Burton to

> "Please speak to Doug [Mr Mortimer -in HR] regarding the DTS. I don't believe it applies. Update me after your discussion before you change any record please."

The Claimant told us that he believes this comment indicates that Mr Sutcliff was trying to ensure that his absence was not recorded as DTS and this was because of his protected acts.

57 We find that it was Steve Green, not Ms Burton, who had originally booked the Claimant as sick in the StARS system (the Brigade's electronic staff record system). There was no evidence before us that Steve Green was aware of the Claimant's grievance or prior complaints i.e. the protected acts. We find that Ms Burton had not initiated the process for due to service in May because she was not aware of the correct process or that she might be required to do this. When the Claimant raised it, Ms Burton sought advice from Mr Mortimer who was the HR adviser. We do not find any evidence that the initial classification of his absence had any connection with the protected acts.

58 When the Claimant again raised it with Ms Burton in June, she quite properly referred to Spencer Sutcliff. We are satisfied that his comment that he did not think it applied was his genuine view based on what he understood at the time to be the ambit of the DTS policy. We do not find that he was trying to block such consideration. The Claimant has asked us to infer from the comment, "update me … before any records are changed" that Mr Sutcliff wanted to have a veto before the record was changed. We do not find this is an appropriate inference to draw. Having heard the evidence and read the respective emails we find this comment is simply that of a manager wanting to be updated if there is to be any change to its classification and to know what is being decided in respect of that period of absence. We do not find that asking to be updated before the record is changed amounts to a veto or expression of an intention to veto any proposed changes.

59 Ms Burton sought advice from Doug Mortimer who told her that it was not straightforward. Mr Mortimer in turn sought advice from David Amis, we are satisfied that his email of 24 June 2016 to Mr Amis indicates that he was not sure about the process. Mr Mortimer subsequently got back to Ms Burton and told her that she would need to

complete a due to service request and send it to HR who would then arrange for a panel to be convened to consider the application.

60 Ms Burton told us that her understanding was the form should be completed once full details of the Claimant's complaints (about the prior events that he said had caused his ill health and sickness absence) had been received. She understood that Mr Sutcliff was dealing with those complaints and was meeting with the Claimant to obtain all the details, which would be confidential. She did not know what happened to the request for due to service after her email enquiry to Mr Mortimer [573] in which she asked for an explanation of the criteria so she could report back to the Claimant. She had thought that Mr Sutcliff would be dealing with it once he had the relevant information from the Claimant. Ms Burton's understanding was that she, as the immediate line manager, did not have the option to amend the classification in StARS in any event, this was what had led her to the assumption that there was a strict application for when DTS was used.

61 The Claimant alleges that Mr Spencer deliberately gave him wrong information in their meeting and he did this with the intention of blocking his application for due to service as an act of victimisation. We do not find that this is what happened. We were referred to the content of the Classification of Due to Service Sickness Absence policy [3226-3236]. The policy provided that an application for due to service as a result of psychological injuries had to go to a panel or management meeting to make the decision on whether the injury would be classified as a due to service injury (see para 1, page 3227, para 6.6.3. (a) first bullet at page 3231 and para 6.3.4 page 3233.). We are satisfied the Claimant's assertion that a senior officer can make that decision is incorrect. Having read and considered the policy we are satisfied that the provisions under the policy in relation to a physical injury are different to those in relation to psychological injury.

62 We have accepted Rebecca Burton's evidence that she was expecting the historic allegations to be addressed by Mr Spencer. She was not aware that those were not being investigated. She was not at the meeting with the Claimant and Mr Spencer at which they discussed the ambit of the investigation, and she was not privy to the email following that meeting setting out the agreed matters that the Claimant wished to be investigated. She told us, and we accept, that she believed that the outcome of those investigations would be relevant to the application for due to service and that as far as she was aware those investigations were left in Mr Sutcliff's hands.

63 We also find however, that Mr Spencer did not understand, and there was no reason for him understand, that he was being asked to make the application for due to service on behalf of the Claimant. Unfortunately, there was a genuine misunderstanding or lack of communication between Mr Sutcliff and Ms Burton about who was going to progress the DTS application but one which we are satisfied was not influenced by the fact that the Claimant had made complaints of discrimination. We do not find this complaint of victimisation to be made out.

PCPs - Dyslexia and date of knowledge

64 Chronologically the next issue that we have decide is in respect of the claim for failure to make reasonable adjustments. PCP*1: Targets applied from January 2017 to 18 July 2018. [issues 3.1 to 3.6]* Before moving on to the disability discrimination claims we have

set out our findings in respect of issue 2.2 the Respondent's date of knowledge of the relevant disability, namely the Claimant's dyslexia.

65 The Respondent accepts that it had knowledge that the Claimant was disabled (within the meaning of the Equality Act 2010) as a result of dyslexia from 14 October 2019. It denies that it had actual or constructive knowledge of his disability before that date. The Claimant asserts that the Respondent knew or ought to have known that he was a disabled person as a result of his dyslexia much earlier, namely from 6 December 2017 when he completed the British Dyslexia Association (BDA) checklist with his then line manager Ben Dewis.

66 The Claimant relies on his 6 December 2017 email to Rasheedat Ogunbambi [822] in which he confirmed that he had carried out the dyslexia checklist and the result was 47 points, which indicated that he was showing signs consistent to mild dyslexia. The Claimant pointed to a number of other matters which he says ought to have alerted the Respondent to his dyslexia or the effects of his dyslexia. On 29 November 2017 the date that he received confirmation that he had passed his level 3 certificate, his team leader Ben Dewis raised a concern with him that he had noticed the Claimant was taking work home to complete and spending a lot of time during work trying to complete his coursework. The Claimant says that this should have been a flag and that Ben Dewis also noted the Claimant was showing signs of stress. On the 29 November 2017, the Claimant spoke to Rasheedat Ogunbambi on the telephone, she emailed him a link to the learning support policy and asked him to complete the BDA checklist. The Claimant alleges he also provided Ms Ogunbambi with a complete description of his dyslexia-related difficulties and how they were impacting on his role: including that he was having difficulty remembering what he had read, having to re-read pages and realising he missed sentences or paragraphs; the more time he spent reading information, the words would blur and the more stressed he would become; he also found it difficult to transfer his thoughts to paper. Ms Ogunbambi sent him the link to the BDA checklist and policy and asked him to complete it. He completed the checklist with Ben Dewis and returned it to her confirming the results indicated mild dyslexia.

67 According to the Claimant Mr Dewis accepted that the result of the checklist confirmed that he had dyslexia and on the same day emailed a list of reasonable adjustment to the Claimant and to other members of his fire safety team who had already received a diagnosis of dyslexia, [751-752]. The two members of the team who were not dyslexic were not copied into the email. The Claimant recalls Ben Dewis commenting that the result (of completing the checklist) would explain why he had been struggling with development and now hopefully he would get reasonable adjustments to support him. Mr Dewis' belief that the Claimant may be dyslexic was later recorded in an email on the 30 January 2018, see page 820 and in the learning authorisation form as evidence, page 824.

68 On the 7 December 2017, Ms Ogunbambi emailed the Claimant and Ben Dewis the Learning Support Assistance form for completion [765]. On 20 December 2017 the Learning Support Authorisation team emailed the Claimant to inform him that he had not included enough information in the form explaining that it was not sufficient to simply say "self-referral as a result of dyslexia assessment" [765], setting out eight specific areas that needed to be addressed and including a link to the learning support policy for more information. On 30 January 2018 Ms Ogunbambi emailed Ben Dewis to remind him that she was still waiting for the completed form [820], Ben Dewis completed the form for learning support

authorisation and in the response, expressed his concern about the Claimant's ability to complete coursework etc. and referred to the BDA checklist.

69 We find that the email of the 20 December 2017 gave clear advice about was required to complete the form, in consultation with the Claimant, and had included eight bullet points to consider when completing the form as well as including another link to the policy to assist. On 30 January 2018 Ms Ogunbambi responded to Mr Dewis' email of the same date attaching her earlier emails of the 7 and the 20 December reiterating that the completed LSA form was still awaited to progress the application [820]. The Claimant raised concerns about the delay in obtaining the referral with Julie-Anne Steppings in April 2018 and Mr Dewis returned the LSA form on 19 April 2018**,** including the comment 'No under performance registered**'** [870]. This prompted further enquiries about the specific nature of Claimant's difficulties [874] in the following terms:

> 'For example, when you state that he is taking work home, why is he doing so?
>
> Does he have to read and re-read the same information before he gains understanding which then takes him a long time?
>
> Can he only concentrate for a short duration of time?
>
> Does he have challenges remembering what he has read?
>
> Is he having to work longer so there is no underperformance?
>
> What does he find challenging?
>
> Please explain/describe his difficulties and update the attached form.
>
> You may call me to discuss these before completing this form.
>
> I await your response before we can progress.'

70 On 20 April 2018 Mr Freeman sent an email to Ms Ogunbambi [878] stating, '*This issue has been ongoing for some time, Kamran has had some issue with his performance and I would like to get an assessment so that we can consider whether additional support is required.'*

71 On 23 April 2018 Ms Ogunbambi spoke to Martin Freeman by telephone and explained that the information required needed to be specific and link the cause of the difficulty to the effect, he sent an email to Ben Dewis passing on this information [882]. Mr Dewis responded with an email to Mr Freeman on 25 April 2018 [883] the information was then sent on to Ms Ogunbambi who replied on 26 April 2018 [885] to Ben Dewis and Martin Freeman (thanking him for his help in getting the relevant information from Ben) offering four appointment dates in May to see the Claimant [for LATS, Lucid Adult Dyslexia Screening] and asking Ben Dewis to update the LSA form with the information that had been provided by email. On 8 May 2018, Mr Dewis responded asking that she book the Claimant in the Tuesday 15 May 2018 confirming he will bring along the updated and signed learning support authorisation form [890].

72 The appointment made for the 15 May 2018 was not effective because the license for the computer software needed to be reviewed. A number of further dates were offered including 22 May, two days in June and one in July; the Claimant accepted the date in July. The result of the LATS (Lucid Adult Dyslexia Screening) test taken in July 2018 was that

the probability of the Claimant having dyslexia was low [page 938]. Ms Ogunbambi informed Ben Dewis that the outcome meant that the Claimant was not eligible for referral for full dyslexia diagnostic assessment under the policy, [938].

73 We were taken to a chronology of interactions between Ms Ogunbambi/Learning Support and the Claimant between November 2017 and August 2019 [736 -738, see also Management Information at 932-933]. We are satisfied that the chronology was an accurate reflection of the interactions and the advice given by Ms Ogunbambi.

Findings on knowledge of disability

74 We find there was some information available to the Respondent in December 2017 and early 2018 to suggest the Claimant might have dyslexia and it may have an impact on his ability to carry out day to day activities, however, the extent of that impact was not clear. We do not find that his line manager, Ben Dewis, being aware that the Claimant was struggling in December 2017 was itself enough to indicate that the Claimant had dyslexia or that it had a substantial adverse effect on his day-to-day activities. The Claimant had been off work with depression, stress and anxiety which would also be likely to have an impact of his performance; we find that taking work home is not of itself enough to impute knowledge of the condition of dyslexia, although we accept it was enough to put the Respondent on notice that some further enquiry might need to be undertaken.

75 We find that the Respondent's Learning Support team sought further information and once sufficient information was provided to warrant an assessment, it offered the Claimant an initial assessment. We find that the outcome of that assessment did not add to the Respondent's knowledge, in that it suggested the probability of the Claimant having dyslexia was low. We do not find that the Respondent ought to have known either at the time of that assessment or earlier that the Claimant's dyslexia was likely to have had a substantial adverse effect on his day-to-day activities.

Delay in arranging assessment

76 The Claimant complains about the delay from the initial contact with the learning support and his completion of the self-assessment which indicated that he had or may have mild dyslexia. The Claimant told us that he relayed the information set out in paragraph 184 of his witness statement to Ms Ogunbambi in their telephone conversation on 29 November 2017. We are satisfied on the balance of probabilities that the information set out in that paragraph [C's W/S para184] was in fact provided by Mr Dewis to Ms Ogunbambi in April 2018. We find, again on the balance of probabilities, that it is more likely that Ms Ogunbambi completed the management information [932-933] contemporaneously logging her contact with the Claimant, Mr Dewis, Mr Freeman and others in respect of the Claimant. In any event we have not found that this information was enough to confirm a diagnosis of dyslexia or that the adverse effects on day-to-day activities were substantial. We are satisfied that it was reasonable for Ms Ogunbambi to request the further information to investigate whether the Claimant had a condition that amounted to a disability. We also find that Ms Ogunbambi took steps to put in place provision for support once the diagnosis became clear.

77 We are also satisfied that Ms Ogunbambi took appropriate steps to bring the relevant policy to the Claimant and Mr Dewis' attention. When the LATS assessment was completed, the score came back as low, which under the Respondent's policy meant that

he was not eligible for a further assessment. We accept that is the explanation for no further assessment having been carried out at that time.

78 In March 2019 Ms Ogunbambi was made aware by Ben Dewis of the Claimant's continuing dissatisfaction with the lack of a full assessment and she discussed his case with her new manager, Mary-Ann Oates who had a background in psychology. She then spoke to Mr Dewis again with a view to reviewing the Claimant's case. We accept Ms Ogunbambi's evidence as set out at paragraphs 46, 47 and 48 of her witness statement that the full assessment was pursued in response to Mr Dewis contacting her in March 2019 requesting a possible full assessment on the Claimant's return to work from sickness. Mr Dewis himself had recently returned to work having been off sick for four and a half months. The decision was made to review consideration of the Claimant's case and provide a full assessment in light of his exceptional circumstances, including his ongoing challenges and his period of sickness absence: see email to Mr Dewis 1 April 2019 [1302]. It was considered that a holistic approach should be taken to the Claimant and the cause of his stress; this was confirmed to the Claimant by phone. The Claimant contacted Ms Ogunbambi on 15 August 2019, on his return to work after 14 months' absence, to take up the offer of an assessment and an appointment was arranged for October 2019.

79 We find that it was following the assessment by an educational psychologist on the 8 October 2019 that it was confirmed that the Claimant has a profile of dyslexia, and that the effects might be substantial (more than minor or trivial), [1591-16261]. That report was sent to Ms Ogunbambi on the 14 October 2019, [1658]. As a result of the contents of the report Ms Ogunbambi produced a memorandum on the 6 November 2019 [1727 -1734] which she sent to the Claimant and his Borough Commander, Jamie Jenkins, and line manager, Joe Baker, setting out Learning Support management guidance as to how they might best support the Claimant with his dyslexia. That document was headed confidential, we are satisfied that it was comprehensive.

80 We have found that until it received the Educational Psychologist's report on 14 October 2019 the Respondent lacked sufficient information to know, or from which it ought to have known, that the Claimant was a disabled person under the Equality Act 2010. We are satisfied that the Respondent was entitled to take into account the overall picture of the Claimant who had been employed for 14 years by the time he raised the possibility that he might be dyslexic; there had not been any previous indication of any impact on day-to-day activities of any condition such as dyslexia, despite the fact that he had been through assessments on a number of occasions throughout that period. The Claimant referred to the fact that he had to re-sit assessments such as for promotion to Crew Manager earlier on in his career but we accept the Respondent's evidence was that this was not at all unusual and that many firefighters without dyslexia also had to resit exams or assessments.

PCPs

81 The Claimant had brought complaints of breaches of the duty to make reasonable adjustments in respect of 8 PCPs [in claim 1]. As a result of our findings in respect of the date of knowledge of disability, we have found that the allegations of failure to make reasonable adjustments in respect of *PCP 1. Targets applied from January 2017 to 18 July 2018* predate the Respondent's date of knowledge and we make no findings in that respect PCP.

82 *PCP 2 completion of fire safety course assessments* relates to the period 10-11 January 2018, 23-25 January 2018, 6-9 February 2018 which also predate the Respondent's date of knowledge and we have made no findings under PCP 2.

83 *PCP 4, failure to comply with the Respondent's policy on classification of sickness absence* failing to classify the Claimant's absences between 18 July 2018 and 12 August 2019 as "Due to Service" also predates the date of knowledge.

84 *PCP 5, requirement to perform certain tasks or roles before proper training and certification.* The Claimant clarified in submissions that this was relied on as background only, [see C's written submissions at paragraph 35] and we make no findings in respect of the complaints as set out underneath PCP 5 in respect of the failure to make reasonable adjustments.

85 *PCP 6, failing to comply with the Respondent's managing attendance policy by not providing the Claimant with attendance support meetings (ASMs) in order to ensure timely support during the Claimant's sickness period between the 18 July 2018 – 12 August 2019*. We find the PCP contended for also predates the Respondent's date of knowledge and we make no finding in respect of failure to make reasonable adjustments under that PCP.

86 We have found that meetings were held during the relevant period which did not meet the formal requirements of the managing attendance policy and the Claimant disputes that those amounted to attendance support meetings. A meeting was held on the 20 November 2018 with Rebecca Burton; the Claimant disputes that was an attendance support meeting. A meeting was held on the 10 April 2019 between the Claimant and Ben Dewis which the Respondent asserts was an attendance support meeting. The Claimant disputes that this was in fact an attendance support meeting. On 31 July 2019 Ben Dewis invited the Claimant to an attendance support meeting in accordance with the policy.

87 *PCP 7, failure to carry out workplace stress risk assessment.* The Claimant relied on the following dates, 16 August 2017, 25 June 2018, 5 June 2018 and 9 July 2018 on which he said workplace risk assessments should have been conducted. Those dates all predate the Respondent's date of knowledge that he was disabled (within the meaning of the Equality Act 2010).

88 *PCP 3 attendance at an incident command course on short notice and PCP 8 requirement to carry out the full operational and administrative role of a leading fire fighter and sub-officer* both post-date the Respondent's date of knowledge and we set out our findings in respect of those two PCPs below.

PCP 3 *attendance at an incident command course on short notice*

89 This PCP relates to a course fixed for December 2019 after the Claimant returned to work as a Leading Fire Fighter. The Claimant's contention was that he was required to attend at an incident command course on 10 working days' notice and that put him at a substantial disadvantage compared to a non-disabled person in a number of ways (set out in the list of issues and below:

1) C was not able to learn all policies, procedures, equipment and I.T software in the time frame set to attend the incident command course and his return to operational duties;

2) C had to spend time outside of working hours to prepare for the course, impacting on his mental health disability;

3) C felt unable to carry out the role of Leading firefighter or of a Temporary Sub Officer when 'acting up' and was compelled to relinquish his rank from a Leading Firefighter to a firefighter.

90 On 4 December 2019, the Claimant sent an email to Ms Ogunbambi expressing his concern that his dyslexia assessment outcome and reasonable adjustments that she had recommended were not being considered or followed by line management [1797]. He forwarded correspondence from Station Commander Shaun Fox about a course he had been placed on for 19 December 2019. The email had been received on 2 December 2019, but the Claimant had been away at the Fire Fighters' rehabilitation centre, Harcombe House, and had only seen it on his return to work on 4 December 2019. Had he not been away from work on the date that the email arrived the Claimant would have been provided with 17 days' notice of the course (not all of which were working days).

91 The Claimant was concerned about the amount of reading and learning required before he attended the course. He attached to his email the latest up-to-date progress of the policy notes that he was required to read and refamiliarize himself with, which he indicated stood at 14 policy notes still remaining to be learnt. He stated that it would not be possible to read and learn all the material before his course, which would be assessed. He asked Ms Ogunbambi to intervene on his behalf with his line managers. He also complained he had not been consulted about being placed on this course.

92 The course taking place on 19 December 2019 was a one-day Incident Command course. The Claimant had also been booked to attend a multi-day fire safety course from 20 -24 January 2020. On 5 December 2019 the Claimant emailed Shaun Fox to request that he been withdrawn from the 19 December 2019 course and reallocated to the same course on the 6 January 2020 [1804]. On the 5 December 2019, Ms Ogunbambi emailed the Claimant and others setting out the reasonable adjustments recommended for the Claimant in respect of the fire safety course [1806]. On the 7 November 2019, Ms Ogunbambi emailed Sue Naylor requesting as a reasonable adjustment that the Claimant be provided advance online access to electronic copies of the documentation in respect of the Level 4 fire safety to help prepare for the course/assessment. Ms Ogunbambi did not advise that the Claimant's attendance at the earlier course be postponed

93 Mr Fox had provided a witness statement but was not before the Tribunal to be cross-examined. In his statement Mr Fox set out that as the Station Commander, it was his responsibility to devise a training needs analysis for the Claimant to establish any training gaps and ensure that he received the requisite training before being deemed ready to attend operational duties. The Claimant completed a 3-day Immediate Emergency Care course, which is an advanced first aid course, on the 9-11 September 2019 prior to starting at Redbridge: this was considered to be a refresher course, as Mr Hussain would have attended previous first aid courses. On the 17 September 2019 the Claimant emailed Mr Jenkins and Mr Fox with a schedule for his preparation to return to full operational duties, [1507-1508]. On the 18 September 2019 Mr Fox completed a training needs analysis for

the Claimant's return to operational duties, [1662-1687] in which he identified all the policy notes which were necessary and essential or where the Claimant had gaps in his knowledge. He then discussed the document with the Claimant together with Mr Jenkins so that he understood what needed to be learnt. Mr Fox had received a copy of the dyslexia screening report findings and suggested reasonable adjustments on the 15 October 2019 [1692]. Mr Fox did not personally book the Claimant onto the courses but took an overview of the training requirements of his staff. The training was organised by the training team and delivered by Babcocks [Babcock International Ltd].

94 On 4 December 2019, the Claimant emailed Shaun Fox, [2084] requesting that he be removed from the course as he had yet to complete the reading and learning, the list of operational policy notes and that he had not had 20 days' notice to attend the course.

95 Mr Fox's evidence set out in his witness statement, was that the training courses were organised by the training team and the materials for the course were sent out in advance. In his experience most courses were usually sent out a minimum of seven days before the course, unless the staff member was working on a 2-2-4 shift in which case the booking would be sent out 28 days in advance in order to take into account the shift pattern. His understanding was that the policies were available to be viewed centrally on the intranet and had been sent to Mr Hussain on time; that he had notice of course materials and they were discussed during his training needs assessment. Mr Fox replied to the Claimant on the 4 December 2019 [1796]. He included a screen print to show that the Claimant had 9 free working days before the course and he expressed the view that going by the progress the Claimant had made so far, it was apparent that reading the remaining operational policies within the time frame was well within the Claimant's capabilities. He noted that the Claimant was a substantive officer and as such the policies he was required to read were on a refresher basis rather than acquisition; he also told the Claimant that he and the other officers in the borough were there to help and support if he had any questions. Mr Fox's response prompted the Claimant to email Ms Ogunbambi on 4 December (referred to earlier), to express his concern that his dyslexia assessment outcome and reasonable adjustment were not being considered and followed by line management.

96 In his statement Mr Fox stated that he had assessed the number of policies still to be read as four policies whereas the Claimant told us he had 14 policies still to read. Mr Fox was not here to be cross-examined. We prefer the Claimant's evidence in respect of his understanding of the number of outstanding policies he had to read.

97 In considering the PCP, was the attendance on the Incident command on short notice applied? The Claimant's interpretation of short notice was by reference to his expectation, of 28 days' notice. We find that as the Claimant was on a 9-day roster, he was no longer working on a roster including nights and the usual practice was that staff on 9-day roster would be given seven days' notice. We find that the Claimant received 15 days' notice: he received notification on the 4 December that he was due to attend on the 19 December. There was nine working days in which to prepare. The screenshot of the Claimant's diary embedded in Mr Fox's email showed the Claimant had been at Harcombe House up till the 3 December; on the 4 and 5 December the only entries were for lunch breaks and fitness training; 6th December was leave; 7th and 8th were the weekend and were blank; 9, 10, 11, 12 and 13 December 2019, the only entries were lunch break and fitness training for an hour each respectively (lunch from 13:00-14:00 hours and fitness training and 16:00-17:00) on each of those days; Saturday 14th and Sunday 15th December were blank; 16th and

19th had lunch break and fitness training only; on 17 December 2019 the entry for 9-10 am was shown as a TNA progress meeting; and on the 18 December 2019 the entry for 10-am-1pm showed the Claimant as delivering a presentation.

Conclusions on PCP3

98 We accept that being required to complete a substantial amount of reading and learning in a short period of time could put someone with dyslexia at a substantial disadvantage compared to somebody without that disability. A person with dyslexia is likely to take longer to read and absorb that information and may find it harder to retain the information. We have to consider whether the PCP was applied and if so, did it put the Claimant at that disadvantage?

99 We have found that the Claimant was given nine working days to prepare for the course. During that period he also had five informal meetings with Shaun Fox which are evidenced by contemporaneous notes and set out in Mr Fox's email to the Claimant on 18 March 2020 [2110] which recorded that in preparation for the Operational Command Skill Training Maintenance course on the 19 December 2019, Station Commander Fox carried out the following one to one training with the Claimant: on 9 December 2019 Incident Command Training TDE (fire in a warehouse); 11 December 2019 Incident Command Training – TDE (person reported domestic fire); 11 December 2019 PDP progress report – TDE Completed (Person reported domestic fire); 16 December 2019 Incident Command Training TDE (Fire including SSSI and Environmental Agency); 17 March 2019 Incident Command Training – TDE (Fire in a residential high rise / FSG). On the 17 December 2019 during a PDP progress report the Claimant's training needs assessment document was signed off as completed with his agreement.

100 The Claimant complains that he was also required to do a training presentation during the relevant period. The diary entries show that the Claimant was booked in to do a training on the morning before the course. Other than the half day training course the Claimant was not required to do any substantive duties during the relevant period. It was not disputed that the Claimant had spent his secondment with Babcock providing training and that he was an experienced trainer. We were not provided with any evidence as to the content of the training provided by the Claimant or whether it involved any new or additional material.

101 Mr Fox concluded that nine working days was sufficient time for the Claimant to familiarise himself with the relevant policies and also took steps to meet the Claimant to go through and prepare him for the course. It was not disputed that the Claimant was required to complete the course before returning to operational duties (as a Leading Fire Fighter). Mr Fox's evidence, although not present to be challenged, was that he was concerned that if the Claimant was taken off the course he would need to be rebooked on the same course on 6 January 2020 which would mean that in January he would have a considerable extra reading burden; he would have to prepare for the Incident Command course on top of the five-day course he was due to complete later in January. Mr Fox had completed the training needs assessment with the Claimant and had been regularly updated as to his progress and he was satisfied that he had made sufficient progress to indicate that nine working days would be ample time for him to complete these preparations. Written notes were made available to him as per the request from Ms Ogunbambi.

102 The Claimant gave evidence [his witness statement, paragraphs 368,369] that he felt that he was at a disadvantage for not having covered enough of the course material for the Incident Command course and felt that he was playing catch-up. The Claimant attended the course and successfully completed it, although the Claimant states that he did not achieve as high a pass as he would have achieved if he had more time to prepare. The Claimant accepted that not everyone who attended the course passed it first time and that provision is made to allow for retaking the course if necessary.

103 In the Claimant's submission the course booking was described as a PCP on the basis that it was part of the broader requirement that individuals commencing or resuming an operational role should be trained appropriately. We were asked to make a finding of substantial disadvantage based on the Claimant's perception, that he did not feel the timeframe was adequate and he felt stress because of what he was being asked to do [C's written submissions paras 54 and 55]. The Claimant told us that he felt stressed because of his perception that he would not be able to complete the course successfully.

104 The Claimant asserts that he was not able to learn all policies, procedures, equipment, IT software in the time frame set to attend the Incident Command course and return to his operational duties. He acknowledged that he did, however, successfully complete and sign off as complete his training needs assessment plan before attending the course, he then successfully completed and passed the course.

105 The Claimant told us that he had to spend time outside of working hours to prepare for the course, impacting on his mental health. The Respondent contends that the Claimant had adequate time to prepare and that his perception of not being prepared stemmed from his own lack of confidence. We did not have any evidence before us to enable us to disentangle the effects of the Claimant's dyslexia [the disability relied upon] from the impact of his anxiety and depression [not relied upon in this claim] but accept that the effects are likely to overlap. We have given careful consideration to the disadvantage contended for by the Claimant and accept that his perception that he was not prepared for the course caused him to take work home and impacted negatively on his mental health making him feel stressed.

Conclusions on reasonable adjustments

106 We have found that the Claimant was given nine working days' notice of the course instead of the usual seven and was allocated nine working days of preparation time. We find that the Claimant's dyslexia was taken into account by Mr Fox, who arranged five one to one meetings to help the Claimant prepare for the course. We find those were reasonable steps taken to mitigate the effects of the Claimant's dyslexia on his ability to prepare for the course in the time allowed, and also to address his lack of confidence in himself, (his feelings of anxiety about his ability). We do not find that postponing the course until January 2020 would have been a reasonable adjustment in the circumstances, we remind ourselves that the assessment is an objective one for us to make. We are satisfied that the fact that Mr Fox was aware that the Claimant also had a five-day course to prepare for and attend later in January was a relevant consideration to take into account. We are also satisfied, based on the contemporaneous documents including the Training Need Assessment, diary entries and emails confirming meetings, that Mr Fox took into account his own knowledge of the progress the Claimant had already made by the beginning of December and that apart from presenting a course on 18 December (something he had done for a number of years as part

of his role while on secondment to Babcocks) the Claimant was not required to carry out any other work in the period of time before the course.

107 We have found that the adjustment contended for at 3.20- in the list of issues was provided so far as it was reasonable for the Respondent to do so. We have not found the adjustment contended for at 3.21 of withdrawing the Claimant from the 19 December course and rebooking him on the 6 January course to be a reasonable one in the circumstances for the reasons given above.

108 We note that the disadvantage alleged at 3.16 of the list of issues, namely that the Claimant felt unable to carry out the role of leading fire fighter and was compelled to relinquish his rank was not addressed in the Claimant's submissions. The Claimant asked to relinquish his rank on 16 March 2020, almost three months after successfully completing the course.

109 The Claimant in his witness statement at paragraph 290, sets out the reasons for the decision to ask to go back to fire fighter from leading fire fighter; he refers to "*the collective issues that occurred since[his] return to work in August 2019 after having suffering from depression and anxiety* , *including the number of grievances he had to raise because of the Respondent had not followed its own policy for ASM, sickness capability, DTS procedure, grievance procedure, breach of confidentiality, failure to make reasonable adjustment for his dyslexia …*"

110 On 16 March 2020 Shaun Fox emailed the Claimant with confirmation of their discussion in which the Claimant asked to relinquish his rank from leading fire fighter to fire fighter [2081]. The Claimant was feeling extremely anxious and as a result in order to help and support the Claimant Mr Fox placed him on light duties until an occupational health appointment could be arranged.

111 We find that the Claimant's decision had a number of causes, one of which was his perception that there was a failure to make reasonable adjustments in relation to this specific course. However, we find that in respect of the failure to make reasonable adjustments his perception was not well-founded.

PCP 5 the requirement to perform certain task or roles before proper training and certification [relied on as background only].

112 The Claimant alleged that there was a PCP requiring him and others to carry out fire safety inspections and issuing of notices in carrying out the role of Brigade duty officer (BDO) prior to the attainment of a level 3 certificate in fire safety and before being issued with a warrant card to evidence authority to exercise statutory powers. The Claimant undertook the Brigade Duty Officer role in 2017. He received confirmation that he had passed his Level 3 certificate on 29 November 2017 and did not dispute that he would have received his warrant card shortly thereafter. The Respondent's evidence, which was not disputed and we accept, was that fire safety officers on development were required to carry out fire safety inspections but with the support of an experienced fire safety officer and if a warrant card was ever relied upon, it would be the warrant card of the experienced and qualified fire safety officer. During the period of development, the requirement to carry out inspections and issues notices was always under the supervision of an experienced officer and was part of the development of the training of that less experienced officer.

PCP 8 requirement to carry out the full operational and administrative role for Leading Fire Fighter and Sub officer.

113 The Respondent disputes that this PCP was ever applied. The reasonable adjustments contended for under this PCP were providing C with a mentor, an IT refresher course, and additional time to complete learning of operational policies.

114 We have considered the Respondent's submission at paragraph 36 of its written closing submissions and find that it accurately reflects the factual position as follows: when the Claimant returned to work in August 2019, he held the rank of Leading Fire Fighter (LFF). He had not undertaken that role for 6 years and the expectation was that he would spend a period of time with the management team at Ilford Fire Station from 17 September 2019, reacquainting himself with policy and training before commencing his posting as a Crew Manager at Woodford Fire Station. The Claimant's training needs assessment was conducted on the 18 September 2019, this identified the courses he required, which included an information management course, IT system and process, [1671]. On the 17 September 2019, the Claimant emailed Jamie Jenkins and Shaun Fox with an action plan of what he wanted, and he identified the IT training course referred to in the training needs assessment, [1507-1508]. Mr Jenkins also created a personal development plan (PDP) for the Claimant, on 21 October 2019 [1695-1696]. On the 12 November 2019, Shaun Fox updated Mr Jenkins in relation to which of the areas of the training needs, assessment that had been completed, [1749] and Mr Jenkins added the progress report to the PDP to reflect this, [1696]. On the 7 December 2019, Shaun Fox updated Mr Jenkins that the Incident Command Training had been carried out on the 6 December, [1819]. Mr Hussain was given the option of attending the Operational Command Skills training acquisition course or the maintenance course. He opted for the maintenance course and according to Mr Jenkins passed it with flying colours and without any developmental needs identified. Mr Jenkins told the Tribunal that he and Mr Fox were both very proud of the Claimant's achievement as not all staff passed this course, especially without any development needs.

115 On 16 December 2019, the Claimant requested information on arranging a mentor from Ms Ogunbambi and received a response, [1853] with the contact information for the Brigade's coaching and mentoring team. In his email he informed Ms Ogunbambi that he had contacted the training department some time ago to request to be placed on an IT course but was informed that this was cancelled. In her response, Ms Ogunbambi advised the Claimant to discuss his needs with the new manager, to follow up the training department in the new year to find out when the courses would be available. She expressed her belief that a few courses had been put on hold until the new year/ new financial year and suggested in the meantime that he could also request an induction to be returned to the station and ask the new manager to appoint a work buddy to shadow to reintegrate back into the station.

116 In January 2020, the Claimant was placed on light duties at Woodford to assist him in establishing himself before returning to operational duties. His immediate manager was Sub Officer Placey. During this initial period, the Claimant was not sent on 'out duties', which is being sent to other station to provide cover when that station was short of personnel. This was to allow him to settle in and work with the same people, learn the role of leading fire fighter, familiarise himself with the particular equipment and IT systems at the station where he was based, and to ride the same appliance and be under the same officer, Sub Officer

Placey, so that he could learn the process of attending a variety of operational incidents without the pressure of having to manage an incident.

117 Jamie Jenkins gave evidence about his role in mentoring the Claimant. He was given the role to provide support to the Claimant to prepare for operational duties. The Claimant was also given the alternative option of contacting the London Fire Brigade Coaching and Mentoring office for a mentor. We find that both Jamie Jenkins and Shaun Fox provided support to the Claimant. We find that when the Claimant was located at Ilford Fire Station Jamie Jenkins moved out of his normal office to sit closer to the Claimant and also went for lunch with the Claimant most days when they were co-located and their shifts coincided.

118 The Claimant specifically complains that he was not provided with the IT refresher training. Mr Jenkins told us that he and Mr Fox spent time working through all the IT systems with the Claimant while he was in the borough team to ensure that he was able to operate effectively. Mr Jenkins found that the Claimant demonstrated the outcome of this informal training in his daily work, in that he was able to operate across a range of IT platforms, in Mr Jenkins' assessment probably better than he could himself. We accept that Mr Jenkins was satisfied based on the evidence he saw of the Claimant operating the IT systems, that he had been able to familiarise himself with, and master the relevant IT. We accept the Respondent's evidence that it is unusual for a Borough Commander to provide this level of support to an individual Fire Fighter or Leading Fire Fighter.

119 In respect of the time to complete his learning of operational policies, the Claimant's suggested adjustment was to adjourn the course to the 6 January 2020. He accepted that he still had access to the training and course materials after taking and passing the course in December 2019, he was not assigned to Woodford until 3 January 2020 and would have had the opportunity to read and familiarise himself with any parts of the training materials for which he felt he lacked knowledge between 19 December 2019 and the 3 January 2020.

Conclusion in respect of PCP 8

120 We do not find that in fact the Claimant was required to carry out the full operational and administrative duties of a Leading Fire Fighter and Sub-officer during the relevant period. We find that reasonable adjustments were made by the Respondent. The Claimant was provided with mentoring by Jamie Jenkins and Shaun Fox. We have addressed the date of the Incident Command course above. The only missing element was the IT refresher course. We accept that was not provided because no course was available in the relevant time period. In the circumstances, the steps taken by the Respondent, i.e. demonstrating the software and IT systems, showing the Claimant how to operate them and checking that he was operating them successfully, were reasonable ones for the Respondent to take to alleviate any disadvantage to the Claimant. We also accept Mr Jenkins' assessment that the Claimant's perception of his ability was below his actual capability based on his observations of the Claimant.

Victimisation

Issue 4.1 protected act 1

121 The first protected act relied on is the email on the 17 April 2018 referring to a grievance. The Claimant also asserts that the Respondent believed that the Claimant may

have been intending to bring a complaint or grievance from the 14 March 2018. The Respondent accepts that Mr Freeman held a belief that the Claimant would bring a complaint [of failure to make reasonable adjustments] from the email of the 17 April 2018 but does not accept that belief arose as early as the 14 March 2018.

122 On 17 April 208 Martin Freeman sent an email to Ben Dewis [867]. The subject was the workload monthly report for March 2018. The email contained the following wording:

> "*You need to get Kamran's paperwork done and back to Central this threat of grievance needs to be mitigated so we can get on with getting him up to speed.*
>
> *Can you confirm when you have completed the form and forwarded please."*

It was accepted that the form being referred to is the request for learning support assistance, i.e. the dyslexia assessment.

123 The Claimant contends that from the 14 March 2018 the Respondent believed he would bring a grievance related to the failure to provide him with the dyslexia assessment. He told us that he spoke to Mr Freeman on the 14 March and told him that he had no option but to submit a complaint because he was in development and not getting the support that he needed; he specifically complained that he had been unfairly refused dyslexia screening. The Claimant points to the email on the 14 March 2018 from Martin Freeman to Ben Dewis setting out his expectations of the performance against audits in which he referred to the Claimant having been, 'making overtures about dyslexia' [835]. The relevant email was about the performance of the team overall which was considered to be very poor. Mr Freeman specifically referred to the Claimant on the following terms,

> '*Kamran will need a meeting and a letter 1 he has been making overtures about dyslexia, please arrange for him to be assessed, he may need to be returned to ops if he cannot undertake the IO rule effectively. Why after an extended period of development is Kamran still being mentored he should be doing his own audits with a very light touch of mentoring and the TL vetting his work by now.*'

124 We are satisfied that Mr Freeman was aware from the 14 March 2018 of the possibility of a potential grievance in relation to the delay in providing the dyslexia assessment and support, as referenced in his email of that date to Ben Dewis.

Detriments

Two of the detriments relied on in the victimisation complaint are also relied on in the direct discrimination claim as less favourable treatment and as PCPs, those are:

> *4.2.1 Doubling of targets in March 2018, and*
>
> *4.2.3 Unreasonable targets from March to July 2018 by Martin Freeman*

Less favourable treatment

> *7.6 R (through Martin Freeman ~~and Ben Dewis)~~ doubled C's audit targets from August 2017 to July 2018, from five audits per month to 10 audits per month*

(R imposed audit targets of five audits per month in August 2017, then doubled them to 10 audits per month in March 2018); COMPARATORS Tracey Orchard and Bee Lui and Lee Pyke;

PCP 1 *requiring that Fire Safety officers in development carry out 5 fire safety audits per month within a period of 9 to 12 months and 10 fire safety audits per month within a period of 18 to 24 months, whilst in development*; [issue 3.1]

We have set out our findings in respect of the targets below.

125 Whilst we have not made findings in respect of PCP1 and any failure to make reasonable adjustments due to our findings on date of knowledge we note that the Claimant's case in respect of failure to make reasonable adjustments was that the PCP set out above was standard practice and applied to all Fire Safety Officers and that reasonable adjustment ought to have been made in his case. However his case is also that the application of those targets to him amounted to a detriment or les favourable treatment The Respondent's case is that the Claimant's targets were never doubled, that the targets set out in the guidance were simply guidance and were subject to variation for a number of reasons.

126 We were told that the standard expectation was that someone in the Claimant's position would produce a minimum of 0.6 audits per day especially when not undertaking any other work but that any work set was only after consultation with Mr Dewis. [Martin Freeman witness statement paras 23and 24]. Mr Dewis confirmed this in his statement and his oral evidence to the Tribunal.

127 We were referred to the 'Guide for FSR managers - reporting on performance' policy FSIGN 806 [121 to 127]. The policy provides guidance on performance targets (paragraph 5) and sets out benchmark targets for inspecting officers of 120 audits per annum or 10 targets monthly, other jobs 250 or monthly targets of 21 and hours of work 1,100 or 92 per month [124]. Paragraph 5.4 states:

"It is recognised that it is not always possible to measure like for like audits as audits are not all the same and that also applies to other job types. However, managers have to ensure they meet their Area/team targets. There will be IOs who do less complex audits who will be able to achieve more than the monthly target. This will allow for those times when IOs do not meet their monthly targets due to dealing with more complex work that month";

and at 5.5

"FSR also allow a reduction in targets for those officers on development or those who have a specialist reference, such as Fire Engineering or Investigation (prosecution). This would also apply to Deputy Team Leaders. …"

The relevant reduction is set out in another table; for "*Development*", the reduction was 50% reduction on target with a note (comment) in the following terms:

"This is over a 12 month period e.g. in the first 3 months output will be minimal and as their development progresses they should be reaching 50% between 9-12 months. In year 2 for planning purposes this should be 100% as again this is over a 12 month period and competency should be attained at approximately 18 months."

128 At 5.6 the policy states that:

"When completing exception reporting managers should be justifying why the allowance is being used for that month. The quality and detail of exception reporting are key to performance monitoring that can identify trends for the team/Area/department. They can also be used where under performance needs to be managed over a longer period."

129 On the Claimant's return to work in August 2017, Mr Freeman called him into Mr Dewis' office, told him that his performance was poor and that the target that Mr Freeman had in mind was that he should be completing 5 audits per month. The Claimant described this in his grievance on 31 August 2018 (see page 997). The Claimant relies on this conversation as being a setting a target of 5 audits per month in August 2017.

130 Ben Dewis reported to Martin Freeman on performance against targets. The Tribunal were taken to spreadsheets for January to March 2018, setting out the team's performance. The spreadsheet at 3357 was attached to an email on 14 March 2018 at page 3356, the parties accepted the information in the spreadsheet related to February's performance. Mr Dewis told us that Martin Freeman spoke to him about his team's performance as a whole and that it was the team's performance as a whole that was unacceptable. Mr Freeman did identify individual team members who appeared to be under performing in his view and referred to targets and possible Letter 1s. Mr Dewis was clear however, that it was his responsibility as line manager to manage the workload and discuss targets with his reports and also to report any exceptions to the standard expectations; he was satisfied that the Claimant was performing quality work and that the discussions they were having about level of output were bearing fruit and his output was increasing. He did not consider it necessary to raise his targets to the level suggested by Mr Freeman, nor did he see the need to issue a Letter 1; he told us he pushed back against Mr Freeman in respect of both of those matters. We are satisfied that Mr Dewis' evidence is an accurate reflection of what was said and done by him. We find that Mr Ben Dewis took into account the Claimant's dyslexia and did not require him to perform at the level of the standard expectation.

Conclusions in respect of target setting [issues: detriments at 4.2.1. and 4.2.3; and less favourable treatment at 7.6]

131 We are satisfied that whilst there may have been discussion by Mr Freeman of a target of 5 audits per month in August 2017, this expectation was not imposed on the Claimant. Mr Dewis made allowance for the difficulties the Claimant was having with meeting that expectation. Nor were the Claimant's targets then doubled in March 2018 to 10 audits per month. Although Mr Freeman explained to the Claimant on more than one occasion what his expectations were, those expectations were mediated by Mr Dewis' intervention.

132 We accept Mr Dewis' evidence that the targets were not in fact ever doubled from 5 to 10 per month. There had been a discussion with Mr Freeman about the performance

of his team generally, including the Claimant and Mr Brancaccio and Mr Freeman referred to the usual expectation for what they would be completing by that stage in their development but that Mr Dewis had pushed back on the basis that the Claimant and Mr Brancaccio were both dyslexic and needed to have that taken into account in adjusting their targets, and he did not increase their targets. We find that there were discussions about performance and things to improve but no target setting or doubling of targets in March, or through March to July by Mr Freeman.

133 We do not find the alleged detriments at 4.2.1 and 4.2.3 or less favourable treatment contended for [in issue 7.6] to be made out on the facts.

Threat of disciplinary action, Letter 1's, return to operational role

> *Threat of disciplinary action by Martin Freeman from March and July 2018 based on perceived inadequate performance: relied on as a detriment [issues 4.2.2.; 4.6.2]; and less favourable treatment [issue 7.7]*
>
> *R (through Martin Freeman) sought to unfairly remove C from his role by suggesting a meeting, issuing a 'Letter 1' and stating that C may need to be returned to an operational role if he could not undertake the Inspecting Officer (IO) role effectively in his email of 14th March 2018. COMPARATORS: Hypothetical and/or Bee Lui, Tracey Orchard, Siam Kee Yeoh, Lee Pyke [issue 7.10]*

134 The Respondent disputes that the effect of a Letter 1 is a threat of disciplinary action. The Respondent's position is that a Letter 1 is a record of an informal conversation, it is not part of the disciplinary process. We heard evidence to that effect from Rebecca Burton, Ben Dewis and Martin Freeman. We were told that Letter 1's could also be positive and reflect on good work or performance. It is, however, action that was or could be a pre-cursor to the capability process. We find that this is something a reasonable worker is likely to consider to be a detriment. In this context, the reference to a Letter 1 was to reflect less than satisfactory performance. We are satisfied that it meets the threshold of a detriment. We find that in the Claimant's mind the reference to disciplinary action and Letter 1s were one and the same. The Claimant understood a Letter 1 to be a precursor to the performance management procedure. We do not however find that a Letter 1 amounts to a threat of disciplinary action.

135 The Claimant identified comparators whom he says were provided with reasonable adjustments and not threatened with Letter 1's; Tracy Orchard and Bee Lui are people the Claimant identified as having university degrees who started their fire safety training at the same time as him but for whom substantial adjustments were made for their fire safety audit targets and extension of development timeframes. He complains that Ms Orchard was permitted to remain on a 50% reduction for fire safety inspections until she completed stage 2 of her development; the Claimant asserts that after a while Bee Lui was only required to do building consultations and was no longer required to carry out fire safety inspections. The Claimant relies on the fact that Tracy Orchard, Bee Lui and Lee Pyke had no disciplinary action recorded against them and neither Ms Orchard nor Bee Lui had a Letter 1 issued. The comparators' race or religion has not been identified.

136 The Claimant complains that he was singled out by Mr Freeman in his email on 14 March 2018 [835] as being a poor performer despite the whole team's performance being

poor. In his grievance however, the Claimant complained that it was not just him that Mr Freeman singled out in this way, he complained that he also treated Mr Orlando Brancaccio in a similar fashion [997]. It was accepted that Mr Brancaccio did not share the Claimant's race or religion.

137 We are satisfied that Mr Freeman was concerned with the performance of the team as a whole. He sent an email [867] to all the team leaders in his line management and made clear to all of them that he expected a minimum of a performance development plan and note for file for any poor performance. He identified an employee on team C, reporting to Mr Grout, who was already at this level and that this needed to be escalated. We are satisfied that this is consistent with Mr Freeman trying to manage the Areas' performance as a whole. It was not disputed that the spreadsheets we were taken to indicated that the Claimant and Mr Brancaccio were performing at below the level that would normally be expected of someone after the same amount of time on development. We were taken to similar examples, Mr Brancaccio and the individual in team C, where he had raised what he considered to be poor performance issues and asked that the line managers addressed them. We do not find that Mr Freeman setting out his expectations as he did, was in any way influenced by the Claimant's race or religion or by his grievance. We have found that the Claimant was not issued with a letter 1 or disciplinary warning as a result of his performance.

Conclusions

138 We do not find that Mr Freeman unfairly threatened the Claimant with disciplinary action or a Letter 1 because of his race or religion, nor do we find that that was the reason he made reference to the Claimant possibly needing to return to an operational role. The reference to that is taken from page 835 of the bundle. The Claimant himself quotes Mr Freeman's email as follows [paragraph 204 of his witness statement]:

> "... the performance of the team is very poor. I have asked for action to be taken previously and have allowed some flexibility, this has not achieved the desired result. Kamran will need a meeting and a letter 1 he has been making overtures about dyslexia, please arrange for him to be assessed, he may need to be returned to ops if he cannot undertake the IO role effectively."

139 The Claimant disputed making overtures about dyslexia. We have already addressed this above in respect to the grievance complaints where we found that Mr Freeman was concerned that if dyslexia was the cause of the Claimant's failure to meet the expectations that he had for the team, then this did need to be addressed.

140 We find that Mr Freeman was expressing his frank view that if, as a result of dyslexia, the Claimant was unable to undertake the IO role effectively, then he may need to be returned to ops i.e. the IO role may not be where he was best suited given the amount of reading and paperwork and audit work reports that were required. We accept his evidence on this point. We do not find this was in any way influenced by the Claimant's race or his religion.

141 There was no evidence before us to suggest that Mr Freeman had any line management responsibility in respect of the Claimant's comparators Tracey Orchard, Bee

Lui or Lee Pyke, nor were we provided with any evidence upon which we could compare their performance.

Martin Freeman aimed to prevent C from raising a formal grievance [Issue 4.2.4; 4.6.1 detriments; Issue 7.11 less favourable treatment]

142 We are satisfied from the evidence that we heard that Mr Freeman understood the complaint that he was referring to, i.e. the Claimant's 'threat of grievance' would be a complaint against the Learning Support department and the delay in provision of the learning support assessment. We find that Mr Freeman understood that at that point in time, Ben Dewis had been supporting the Claimant, and shared the Claimant's frustration at the delay. We are satisfied that his reference to the 'threat of a grievance' was to the potential for a grievance to be brought. We find however, that his reference to 'mitigating the threat' was to reducing, or taking away, the likelihood of a grievance by reducing or taking away the need for the Claimant to bring such a grievance by removing the cause of his dissatisfaction, i.e. by getting on with providing the dyslexia assessment. We accept Mr Freeman's evidence that he was aware of the threat of grievance and did what he could to try and resolve the underlying issue. We find this is consistent with his email to Mr Dewis, in which he refers to the need to get a referral sorted and his subsequent action in contacting Ms Ogunbambi on 20 April 2018 [878], in which he stated that he would 'like to get this assessment completed to consider whether additional support is required'. He then spoke to Ms Ogunbambi on 23 April 2018 and relayed to Ben Dewis what was needed in order to progress the referral.

143 We have not found that the Claimant was prevented from bringing a formal grievance by Mr Freeman. We do not find that Mr Freeman believed that any grievance, if there was to be one, would be directed at either himself or Ben Dewis but rather at the delay by the Learning Support team. We are satisfied that Mr Freeman did not understand this would have any negative impact for or on him. We accept that Mr Freeman was ultimately content for the Claimant to go down the route of complaining or grieving about the delay because he also wanted the matter to be resolved; when the grievance was brought his response was to contact learning support and ask them to get on with providing the assessment..

The reason for the reference to a Letter 1.

144 We accept that Mr Freeman was looking at the team's performance figures for January to March 2018 (page 868). On 11 April 2018, Mr Freeman was included in an email from Divisional Area Commander, Mr Welch, in respect of under-performers in the area which Mr Freeman then asked Ben Dewis, as his line report, to address. By that time the Claimant had been in the unit since May 2016: he had been off sick from May to December 2016, returning in December 2016 and working throughout January 2017 before going off sick again. The performance figures for the Claimant were based on approximately a year's performance.

145 The Claimant was not the only one in the team who was underperforming, he points to the fact that he was the only one who was singled out in Mr Freeman's email on 14 March 2018 [835] and asks us to infer that it was because of his protected act. The Claimant compared his treatment to that of others in the team who were also underperforming. We are satisfied from the evidence we were taken to that it was the Claimant and Mr Brancaccio who in March 2018 were considered to have been underperforming over a number of

months, although Mr Dewis believed there was evidence of some improvement. Mr Freeman [paragraph 33-39 of his witness statement] acknowledged that Mr Brancaccio was also not performing to the level that he would have liked or expected. He told us that he had a separate case conference with Mr Dewis about Mr Brancaccio. Mr Dewis told us that Mr Brancaccio's performance was also not satisfactory, and consideration was given to whether to issue him with a Letter 1. Mr Brancaccio also has dyslexia.

146 Mr Freeman's evidence [day 12 in his cross-examination] was that he was frustrated that the Claimant was not performing better because he was an experienced Fire Fighter with many years of service and a previous very good work record, whereas Mr Brancaccio did not have the same level of experience. He found both the Claimant and Mr Brancaccio's tally of audits unacceptable and if the explanation was dyslexia, then they required support. He wanted to get that resolved and so improve the performance or make the relevant adjustments supported by evidence. He did not have the same expectations of Mr Brancaccio due to his lesser experience. We accept that Mr Freeman advised the Claimant he could go down the route of bringing a grievance. We find that is consistent with his actions in subsequently contacting Ms Ogunbambi. We do not find that he singled out the Claimant for criticism in his email because of the Claimant's 'threat of grievance' (protect act) we find he did so because he expected him to be performing better because of his level of experience and the amount of time that he had been on development [835].

Allegations of less favourable treatment because of race and/or religion

> *Issue 7.6 R (through Martin Freeman ~~and Ben Dewis)~~ doubled C's audit targets from August 2017 to July 2018, from five audits per month to 10 audits per month (R imposed audit targets of five audits per month in August 2017, then doubled them to 10 audits per month in March 2018); COMPARATORS Tracey Orchard and Bee Lui and Lee Pyke;*
>
> *Issue 7.7 R (through Martin Freeman) unfairly threatened C with disciplinary action in August 2017, in March 2018 and in July 2018 for alleged performance issues; COMPARATORS Hypothetical and/or Tracey Orchard and Bee Lui and Lee Pyke*;
>
> *Issue 7.10 R (through Martin Freeman) sought to unfairly remove C from his role by suggesting a meeting, issuing a 'Letter 1' and stating that C may need to be returned to an operational role if he could not undertake the Inspecting Officer (IO) role effectively in his email of 14th March 2018. COMPARATORS: Hypothetical and/or Bee Lui, Tracey Orchard, Siam Kee Yeoh, Lee Pyke;*
>
> *Issue 7.11 R (through Martin Freeman) attempted to prevent C from raising a grievance on 17th April 2018 and 14th March 2018; hypothetical comparator*

147 ***In respect of Issue 7.6*** We have not found that the number of audits were doubled [see findings set out above]. This allegation is not made out in the facts.

***Allegation 7.7 unfair threat of discipline August 2017, March 2018 and July 2018*.**

148 This allegation is premised on a letter 1 discussion or 'threat of a letter 1' being a threat of disciplinary action. We have not found them to be the same, rather, we accept that

a Letter 1 records a discussion aimed at identifying improvements in performance, where improvements are not made a Letter 1 can be a precursor to the capability process being applied. The reference to August 2017 is also a reference to a discussion about the Claimant's performance (with Martin Freeman): we find on the balance of probabilities that Mr Freeman did not threaten the Claimant with disciplinary proceedings at this meeting. We find that Mr Freeman was well aware that the Respondent's practice was to issue a Letter 1 before going down the formal capability process and at most we find that Mr Freeman may have referred to a possible future Letter 1. We find that the Claimant perceived any mention of his performance and the possibility of a letter 1 as being a threat of disciplinary action. We do not find that this perception was justified.

149 On 7 July 2018 the Claimant had a breakdown at work and contacted the Officer of the day, Station Manager French. Mr French briefed Deputy Assistant Commissioner Charlie Pugsley who in turn informed Martin Freeman that there was a welfare issue. The Claimant was at work on 17 July 2018 and Mr Freeman invited him to a meeting. The Claimant's account of that meeting is set out in his witness statement [paragraph 250 at page 98], he accuses Mr Freeman of threatening him with disciplinary action for performance issues. Mr Freeman's account is at page 957 of the bundle in an email he sent to Ben Dewis on 17 July 2018 and copied to Ian Dunn. In his email Mr Freeman states that he,

> "*spoke with [the Claimant] … about his well being and his general performance and he was very upset about my interest in his output."*

He also states that the Claimant,

> "*does not accept that his performance has not been at an acceptable level for a long period of time*" and that he had *"discussed my performance expectations and he clearly felt my requirement unreasonable*".

Mr Freeman then set out a number of steps he wanted implemented provide support in relation to the Claimant's well-being.

150 We find that the Claimant was upset by Mr Freeman's discussion of his performance expectations, but we do not find that there was a threat of disciplinary action contained in that discussion. The steps Mr Freeman asked to be implemented included an action plan, completion of a stress survey; an OHS appointment, and training and development support; he noted that an appointment at Counselling and Wellbeing had already been arranged. We do not find this reflects a meeting that was intended to lead to any disciplinary action or that it amounted to a threat of disciplinary action

151 We find that the references to issuing a Letter 1, whether in August 2017, or March 2018 were as a result of Mr Freeman's concern at the Claimant's level of performance in terms of output. We are satisfied that Mr Freeman's treatment of the Claimant was not influenced by either the Claimant's race or his religion. We do not find any evidence from which we could properly infer that he was.

7.10. seeking to remove the Claimant from his role *….*

152 We find that Mr Freeman was concerned that after his considerable period in development, the Claimant was still performing at a level which Mr Freeman considered to

be unsatisfactory; the quality of his work was not in question but the number of audits or other jobs completed was substantially below what Mr Freeman would normally expect. Mr Freeman told us that it was the Claimant who first brought up the possibility of a return to an operational role in their discussion in March 2018, and his reference to this in his email was a reflection of that discussion and the recognition that an inspecting role may not be best-suited to the Claimant as it involved a lot of reading and report writing. We do not find that Mr Freeman was seeking to remove the Claimant from his role. We are satisfied that it is more likely that it was the Claimant who raised his concern that he might have to return to an operational role and this was a reflection of his own anxiety and lack of confidence.

153 We are satisfied that the concerns expressed by Mr Freeman had nothing to do with the Claimant's race or his religion but were based on his level of performance.

Issue 7.11: R (through Martin Freeman) attempted to prevent C from raising a grievance on 17th April 2018 and 14th March 2018

154 We have found that this allegation is not made out on the facts. Mr Freeman did not attempt to prevent the Claimant from bringing a grievance. We are satisfied that rather than attempting to prevent the Claimant from raising a grievance Mr Freeman had suggested that it might be an effective way to resolve his issue with the delay in the getting an assessment.

Protected Act 3:11 April 2018 email regarding dyslexia support

155 The Claimant relies on an email at pages 865-866 of the bundle. This was a draft of an email to Sue Naylor which the Claimant sent to Julie-Anne Steppings for her comments. There was no reference to it in the subsequent emails in April or 2018 where the Claimant's dyslexia assessment was discussed. The Claimant's evidence [paragraph 211 of his witness statement] asserts that he sent the email to Sue Naylor. The email at page 869 on 19 April 2018 from Ben Dewis sending a completed request for learning support assessment to Ms Ogunbambi and asking for authorisation, makes no reference to any email from 11 April. The email chain from 11 April 2018 ends with Ms Steppings' request for the Claimant to call her. There is no evidence that the email was in fact sent to Ms Naylor or anyone other than Julie-Anne Steppings.

156 Mr Freeman was not copied into this email but accepted that he became aware of its contents sometime later [witness statement paragraph 8 (page 313)]. We are satisfied that Mr Freeman had not seen the email addressed to Sue Naylor at the time he spoke to Ms Ogunbambi in April 2018.

Detriments 4.6.1-4.6.3

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157 Of the detriments contended for by the Claimant those identified at 4.6.1, 4.6.2. and 4.6.3 of the List of Issues are repetitions of the detriments relied on as issues 4.2.4, 4.2.2 and 4.2.3 respectively, under Protected act 1 and we have set out our findings on those above.

Issue 4.6.4 Failing to initiate the Due to Service Procedure in respect of the Claimant's absence between 18th July and 11th August 2019 without considering the evidence or follow its procedures in accordance with paragraph 6(c) of the Claimant's amended pleadings..

Issue 4.6.5 Attempting to initiate capability proceedings on 22nd July 2019, 31st July 2019, 12th August 2019, and 17th September 2019

Issue 4.6.3 – unreasonable targets from March to July 2018 by Martin Freeman

158 For the sake of completeness, we repeat in summary our findings in respect of target. We are satisfied having heard Mr Freeman's evidence that he thought that the targets set were reasonable based on his knowledge of the Claimant's experience and length of time in development whereas the Claimant thought they were unreasonable. We have found that Mr Freeman was not responsible for setting targets for the Claimant, this was Mr Dewis' responsibility. Mr Dewis 'pushed back' against Mr Freeman as to the level of expectation and continued to make adjustments to the Claimant's workload to take into account the impact of his dyslexia. We find as a fact the Claimant was not at any time required to do 10 audits per month. The Claimant's target was set at approximately 50% of what would normally be expected as he was considered to be on development throughout his time in that department. We also find that it was a target and not a requirement, if he did not achieve the target that would be the subject of a discussion with Ben Dewis rather than a performance management procedure.

Detriment at 4.6.4 of the issues

4.6.4 Failing to initiate Due to Service (DTS) procedure in respect of the Claimant's absence between 18 July 2018 and 11 August 2019 without considering the evidence or following its procedures in according with paragraph 6(c) of the Claimant's amended pleadings.

159 On 18 July 2018 the Claimant was signed off sick. He remained on sickness absence until 11 August 2018. His complaint at 4.6.4 is in relation to the classification of this period of absence. Mr Dewis addresses this complaint at paragraphs 110 to 112 of his witness statement and at 113 he addresses the comparators. The Claimant's absence started on the 18 July 2018. The Claimant emailed Ben Dewis on 18 June 2019, 11 months later, to request that his period of absence be recorded as Due to Service [1378] after receiving advice from his trade union representative, Jason Hunter.

160 The Claimant's evidence, [paragraph 321 of his witness statement] is that it became apparent (to him) from Ben Dewis's reply [1379] that he did not know the correct process for DTS as his response stated: "I can confirm that your StARS record for sickness does state 'stress work related'". The Claimant told us that this was simply what was recorded on his attendance record and not whether it was classed as Due to Service or not.

161 On 20 June 2019 the Claimant responded to Mr Dewis pointing out his error [1380]. On 2 July 2019 Jason Hunter emailed Mr Dewis raising the classification, amongst other matters, and on 3 July 2019, [1388] Mr Dewis responded to Mr Hunter informing him that the Claimant's sickness absence had not been put classified as DTS (due to service) and setting out Para 6.1 of the Due to Service – Sickness Absence Policy as the reason why it had not been put forward to a panel: "…*Applications for a due to service classification*

should be submitted to the line manager within three months of the event which caused the sickness absence or three months of the commencement of the relevant period of sickness if later, unless the employee can demonstrate there are reasonable grounds for a longer period to apply."

162 Before sending his response Mr Dewis sought advice from HR. We accept that his response reflected the advice that he received. Mr Hunter responded on 10 July 2019 [1413] setting out the explanation for the application being more than three months after the period of sickness absence commenced. Paula Bayley, Health & Absence Adviser responded on 22 July 2019 [1412], she acknowledged that Mr Hunter's representations addressed the first three months of sickness but pointed out that there were a further nine months which had not been accounted for.

163 Having heard Mr Dewis' evidence we are satisfied that he completed the application in good faith, based on his understanding of the policy and procedure at the time and on the advice he received from HR. We find that he had no malice or ill-will towards the Claimant and did what he could to support the Claimant throughout his time as his line manager. We find that he was not aware of any grievance being lodged by the Claimant in April 2018. He was aware of the grievance from August 2018, but, we are satisfied, that did not have any bearing on his response to the Claimant's request for his absence to be classified as Due to Service, and nor was he influenced by the Claimant's race or religion.

164 The Sickness absence -Due to Service policy states that at the initial stage of classification, it is up to the line manager to address the classification but that any application in respect of a psychological injury has to go to a management panel. We accept the evidence of both Mr Dewis and Ms Burton that they were not aware at the time of dealing with the Claimant's initial absences that the Due to Service classification could apply. Mr Dewis understood at that time that there was an exceptional category for those officers whose absence was due to the Grenfell Fire and its aftermath, which automatically qualified for Due to Service, but other than that he was not aware that a psychological injury qualified for Due to Service.

165 The Claimant lodged a grievance on 23 September 2019 about Ben Dewis' decision [1515-1517]. In that grievance complaint, he stated that the [DTS] process could and should have been initiated by his line manager under the policy as he had full background knowledge of the long ongoing issues the Claimant had experienced within fire safety due to lack of and insufficient organisational training, development and support which caused him to have a great deal of work-related stress and affected his mental health as a result.

166 However in his grievance appeal, the Claimant clarified that his absence should have been classified as Due to Service because it was in response to the previous discrimination that he had experienced during his time in the Fire Service up to 2016; he did not rely on his absence being caused by his treatment by Mr Freeman in July 2018, the further evidence which was considered by the appeal panel was specific to the earlier period and we find that it was on this basis that his absence's classification was eventually changed to Due to Service.

Conclusion

167 We do not find it to be a fair criticism of Mr Dewis, or indeed any person dealing with this period of the Claimant's sickness absence, that they did not realise until he had explicitly set it out, that he was suggesting that his absence was caused by his past experiences of discrimination dating back to 2016, (before his secondment to Babcocks), and not the events in the immediate period of time before his absence, including those about which he complained in his grievance naming Mr Freeman.

Issue 4.6.5 – detriment: attempting to initiate capability proceedings on 22 July 2019, 31 July 2019, 12 August 2019 and 17 September 2019

The Claimant's return to operational role

168 During his period of sickness absence which started in July 2018 the Claimant attended a number of Occupational Health appointments, including on 15 August 2018, 30 October 2018, 18 December 2018, 27 March 2019 and 28 June 2019. At his appointment on 28 June 2019 the OH practitioner recorded that the Claimant was feeling ready to return to work but that he had found the role in fire safety to be particularly stressful and to avoid recurrence of stress which had contributed to his sickness absence he would like to go back to an operational role as a firefighter. On 1 July 2019 the Claimant emailed Ben Dewis requesting that he be returned to an operational role as a 'reasonable adjustment'. [1386] Mr Dewis responded [1389] confirming that he would raise his request and try to find the best possible outcome for him. He also tells the Claimant will be a great loss to his team. The Claimant had been offered a phased return to work and was told that a workplace stress risk assessment be conducted upon his return.

Invitations to ASMs

169 Under the Respondent's absence management policy, a line manager was required to carry out an attendance support meeting "ASM" before initiating stage 1 of the capability procedure. On 22 July 2019, Ben Dewis invited the Claimant to a first stage capability meeting in respect of long-term sickness [1407] at this date the Claimant had been absent for one year. On 30 July 2019 [1426] the Claimant sent a grievance to Mr Dewis in which he complained that he had not been informed that their meeting held on 6 June 2019 had been recorded as a formal ASM and had understood it to be an informal catch up. Mr Dewis upheld the Claimant's grievance, in his email of 31 July 2109 he accepted the correct policy was not followed [1428]. He invited the Claimant to a first ASM for long-term sickness [page 1424] and acknowledged this was the first such ASM meeting.

170 On 12 August 2019 the Claimant notified Mr Dewis that he was returning to work having booked himself as fit. Mr Dewis sent an email to Mark Reed, Samantha Mealy and Doug Mortimer informing them of the Claimant's return and that he would be moving back to operational department and transferring to light duties based at Stratford. Mr Dewis asked if there was anything he still needed to do with regard to stress risk assessment, return to work, capability and ASM etc [1431] having been informed by the Claimant on the phone that he thought that the light duties team would be dealing with it all. On 13 August 2019, Ben Dewis followed this up with an email to David Flanagan at the Stratford team asking him to confirm that the return to work stress assessment and any ongoing attendance support would now be carried on by the team at Stratford and asking him to confirm that

everything had been done to facilitate the move for the Claimant. [1434] Mr Flanagan response is at 1433, he informed Mr Dewis that he would be expected to complete the return to work interview and liaise with the North East team about what had been done and a plan going forward.

171 Ben Dewis carried out the return to work interview for the Claimant on 15 August 2019. His note of their discussion [1444] records the reason for absence as work related stress/anxiety/depression:

> "*Kamran was absent due to work related stressors that he believes are attributable to a lack of training and support within his role. There was also a disagreement with his former Area Fire Safety Manager which resulted in a formal grievance being raised.*"

172 Mr Dewis noted that he made the Claimant aware that a new ASM was to be scheduled with a view to moving to stage 1 capability as the 6th and 12th monthly attendance triggers had been met, he noted that the Claimant disagreed with this and was consulting his union rep. The Claimant queried the ASM held on 20 November 2018 by Rebecca Burton believing that was only a catch-up meeting

173 On 17 September 2019 the Claimant attended an attendance support meeting (ASM) with Rebecca Burton at which he was accompanied by his union rep, Jason Hunter. The Claimant was informed that he would be invited to a stage 1 capability meeting. The Claimant indicated that he was disappointed and disagreed with the outcome on the basis that policy and processes had not been followed. He queried why he had been taken straight to stage 1, Ms Burton advised it was due to the length of time he had been off and that he could discuss this at the stage 1 meeting.

174 Both the rescinded invitation to a stage 1 capability meeting on 22 July 2019 and the 31 July 2019 invitation to an ASM are relied on by the Claimant as detriments, i.e. attempts to initiate capability proceedings, as is the discussion of stage 1 capability proceedings that took place at the return to work meeting on 15 [not 12th] August 2019 and the meeting with Rebecca Denton on 17 September 2019.

175 The lack of a formal ASM is also relied on as a PCP. PCP 6 failing to comply with the Respondent's managing attendance policy. The Claimant draws a distinction between catch-up meetings and formal ASMs.

176 Mr Dewis explained in his email of 19 June 2019 [1395], to Rebecca Denton and others, that the attempts to hold the ASMs and to initiate the capability process were out of sync with the usual triggers in the policies (in that they were overdue) because he himself had been absent from work on a period of long-term absence since March 2019. Mr Dewis stated that he had carried out an initial ASM on 10 April 2019 and discussed the target return to work date of 10 July which he confirmed in the outcome letter; he informed the Claimant that if he did not return to work by this date then he would be invited to a stage 1 capability meeting. Mr Dewis also explained that he had overlooked that Rebecca Denton had carried out an ASM during the period that he was off.

Conclusion

177 We find that the as a result of the dispute as to whether the meetings with the Claimant had been informal catch ups or ASMs the initiation of the capability procedure was delayed. We are satisfied that in any event the Claimant was treated with greater leniency than would normally be expected under the policy (see emails dated 11 and 17 June 2019 re HR advice at 1396 -1397). Managers would normally be expected to move to stage 1 capability proceedings after six months' absence. The Claimant had been absent for 11 months by the time Mr Dewis attempted to initiate the capability procedure.

178 We are satisfied that Mr Dewis' actions in respect of the ASMs and the commencement of capability procedure were in no way influenced by the protected act, the Claimant's race or his religion.

Protected Act 4 grievance dated 14 May 2018

179 It is not disputed that the Claimant's grievance about the time taken to provide him with a dyslexia assessment, which he sent to Ben Dewis on 14 May 2018, is a protected act. The detriments alleged to have resulted are the failure to hear the formal grievance, not providing an official response and the attempt to initiate capability proceedings on 22 July, 31 July, 12 August and 17 September 2019.

4.8.1 R failed to hear C's formal grievance and has not provided an official response

180 The grievance was addressed to Mr Dewis. In his contemporaneous email to Ms Ogunbambi on 26 June 2018 [922], he tells Ms Ogunbambi that he has received a formal grievance from the Claimant in respect of the time it took the Respondent to provide him with any kind of dyslexia assessment and that he had heard this grievance face-to-face within the stated time period in the policy. Mr Dewis reports that the Claimant did not require a written response from anyone, although he states that he would write to him to confirm that it has been raised. Mr Dewis also informs Ms Ogunbambi that the grievance was not aimed at anyone specific and that the Claimant had used it as a tool to ensure that his thoughts were recorded, to show his dissatisfaction at how long the process can take and that the Claimant hoped that the outcome was that the Respondent as a whole looked at the process to ensure it does not take as long the next time. We accept that this account reflected Mr Dewis' understanding of the Claimant's position following their discussion about his grievance. Mr Dewis had understood the Claimant did not to want any further formal action to be taken but wanted the matter be brought to the attention of the Learning Support team and for the process to be addressed. We accept that Mr Dewis considered that he had dealt with the grievance in accordance with the Claimant's wishes. We find that consistent with the contents of his contemporaneous email to Ms Ogunbambi of 26 June 2018 [922]. We do not find the detriment 4.8.1 to be made out on its facts.

[4.8.2 was withdrawn]
4.8.3 Attempting to initiate capability proceedings on 22nd July 2019, 31st July 2019, 12th August 2019, and 17th September 2019

181 We have already addressed the initiation of capability proceedings in our findings above. We do not find that this protected act had any bearing on the way that Mr Dewis dealt with the Claimant's sickness absence and capability proceedings a year later. We are

also satisfied he did not understand himself to be the target or subject of the grievance and that his understanding was as set out in the email of 26 June 2018.

182 In respect of the application of the capability proceedings, we accept the Respondent's submissions at paragraphs 46 and 47 of the written submissions, that in fact the Claimant benefitted from a very lenient application of the Respondent's sickness absence policy.

Protected Act 5 – grievances dated 31 August 2018

183 There are two grievances dated 31 August. The first is a formal grievance is against Martin Freeman which alleges bullying, harassment and victimisation [994 to 998]. This contains reference to the Claimant's requested dyslexia screening and also asserts that Mr Freeman had an issue with the Claimant due to, amongst other potential reasons, his "cultural or sociological background", which we accept is an indirect reference to the Claimant's race and/or religion and find that is a reasonable interpretation for those words to bear in the circumstances.

184 The second grievance [2994 to 2996] is undated but it was accepted that it was sent on 31 August 2018; it is described as a formal grievance about the lack of ongoing training support and development received by the Claimant in the Fire Safety Inspecting Officer role. The Claimant asked for a structured review of all training and development for Inspecting Officers in the fire safety role and also asks to be allowed to return to operation as a fire fighter so that he can rebuild his confidence. The Claimant cross refers to his separate grievance about bullying and harassment but the grievance itself contains no reference to dyslexia, disability or any other protected characteristic. We are satisfied that the wording of the grievance was deliberately framed in general terms in relation to all fire fighters in development. The Claimant subsequently refers to the second grievance as a "complaint" (see 1416 Claimant's email dated 1 July 2019).

185 We find that the first grievance raises allegations of conduct which would amount to breaches of the Equality Act 2010 and is a protected act; we find that the second grievance does not make any reference to any matters which would potentially amount to breaches of the Equality Act 2010 and it is not a protected act.

Detriments

Issue 4.10.1 that the Respondent failed to hear the Claimant's formal grievance and failed to provide a formal response as required by its policy within a reasonable time.

186 In response to questions in cross-examination [day 7 at around 12:15pm], the Claimant confirmed that this complaint related to the second grievance only. We have not found that second grievance to be a protected act, this complaint therefore fails. We have set out below our findings in respect of the second grievance in so far as it is relevant to the handling of both grievances.

Second grievance dated 31 August 2018

187 On 4 September 2018 Mr Dewis informed the Claimant that he had sent the Claimant's grievance on to a more senior manager [1012]. Mr Dewis did not take any further

steps in relation to the grievance. We are satisfied that although Mr Dewis refers in his evidence [w/s para 89] to this being the complaint about Mr Freeman (at 993-999) (the 'first' grievance) we find that he is mistaken about this, we find this is a genuine and understandable error due to the passage of time and number of grievances involved. We are satisfied that the grievance referred to in Mr Dewis' email of 4 September 2018 is that at 2994-2996 (the 'second' grievance dated 31 August 2018), in his email to the Claimant Mr Dewis refers to the Claimant's request to return to operational duties which is set out in the 'second' grievance at 2994-2996 and not mentioned in the 'first' grievance at 993-998. The email to which the Claimant attached his grievance about Mr Freeman was addressed to Mr Pugsley.

188 When the Claimant met Mr Dewis on 10 April 2019, they discussed the issues that the Claimant had raised in the second grievance. On 18 June 2019 the Claimant raised the lack of response to the second grievance [1378], Mr Dewis responded on 22 July 2019 apologising for the confusion in regard to the grievance [1418]. He had been aware that Mr Pugsley had replied to him in respect of the harassment and bullying, and that he had discussed the matters the Claimant had raised with him about training support and dyslexia, he also confirmed that he had been advised that a formal dyslexia screening should be carried out with the Claimant on his return to work.

Issue 4.10.2, failure to investigate in a timely and appropriate manner,

189 The Claimant clarified this complaint was in respect of the first grievance. The Claimant points to the contents of the respondent's Grievance procedure [233-238] which provides that a line manager should hear the grievance within seven days and the employee should be given a written decision with reasons within seven days.

First grievance

190 The Claimant had spoken to Mr Pugsley on 17 July 2018 and told him that he wanted to complain about Mr Freeman. Mr Pusgley was aware from that conversation that the Claimant was emotional and upset and that he was booking himself off sick as a result of stress and anxiety. He advised the Claimant to consider whether he wished to pursue the matter under the harassment policy. The Claimant then submitted his grievance to Mr Pugsley on 31 August 2018 [993]. This grievance was acknowledged by Mr Pugsley on 3 September 2018 he informed the Claimant he was discussing the matter with HR and would provide an update hopefully within a day or two [1024 and 1028]. On 7 September 2018 Mr Pugsley emailed the Claimant saying that he understood the Claimant had an occupational health appointment the following week and that he would like to consider the medical advice before providing an update regarding his complaint. The Claimant queried this response and Mr Pugsley informed him that the reason for the delay was that he "*need[ed] advice as to whether its appropriate to discuss with you a work related issue when you are off with stress*" [1023 and 1027]. On 10 September 2018 Mr Pugsley emailed the Claimant again, he reminded him that in the last medical report received from the OH advisers on 15 August 2018, Dr Kurzer had advised that the Claimant was not in a position to attend a management meeting; he explained that he would like to meet with the Claimant to discuss his complaint against Mr Freeman, he was aware that the Claimant was meeting Dr Kurzer again the next day and so would be asking his advice on whether the Claimant was fit to attend a meeting to discuss his complaint [1023]. The OH advice received from Dr Kurzer following the appointment on 11 September 2018 was that the Claimant was not

in a frame of mind to be able to meet to discuss his grievance and did not yet have the emotional resilience to discuss this in person [1033].

191 Mr Freeman had been made aware by the Claimant during their meeting that he intended to go on sickness absences and would be speaking to DC Pugsley. Mr Freeman emailed Mr Dewis on 17 July 2018 after his meeting with the Claimant asking Mr Dewis to complete an action plan which included a stress survey and arranging an OH appointment, amongst other things [957]. Mr Pugsley spoke to Mr Freeman after his conversation with the Claimant the same day. Mr Freeman was then made aware on 18 July 2018 that the Claimant had booked sick with stress [965]. Mr Freeman sent an email to his line manager, Richard Welch, confirming that the Claimant had booked sick with work related stress, citing bullying and harassment *"presumably by me"* and giving his account of his meeting with the Claimant; he acknowledged that he "*perhaps should have dealt with the issues in a different way*".[966]. This email was sent on to Mr Pugsley, [1017 to 1018].

192 On 11 September 2018 Mr Pugsley was informed of Dr Kurzer's advice via the Respondent's HR advisers, Mr Mortimer and Mr Johnson, with Mr Johnson giving Mr Pugsley advice as how to proceed [1037-1038]. On 16 September 2108 Mr Pugsley wrote to the Claimant to confirm the HR advice he had received and informed him that he would write to him to advise how he intended to resolve the complaint. Mr Pugsley then wrote to the Claimant with his decision on 20 September 2018 [1100 to1101]. In his decision letter Mr Pugsley informed the Claimant that Mr Freeman had acknowledged that it was inappropriate for him to have continued with the discussion that he had with the Claimant. Mr Pugsley's set out his finding that he did not consider that Mr Freeman's actions amounted to bullying, harassment and/or victimisation but that they were a misplaced assumption of the role of the Claimant's direct line manager in relation to the Claimant's performance.

193 We accept that given the Claimant's absence from work and the advice from OH that he was not able to take part in the process of considering the grievance, even in writing, that it was reasonable for Mr Pugsley to consider the information that he had before him. We accept that at the time that he read the grievance document, Mr Pugsley did not understand from the complaint before him that the allegation was that the treatment was linked to the Claimant's race or religion; we have found that he understood that there was an allegation that Mr Freeman had treated others, including Mr Brancaccio, in a similar way.

Conclusion

194 We do not find that Mr Pugsley understood the complaint to be one of discrimination, even if that was something that he should have understood. We do not find any evidence to suggest that the treatment of the grievance was influenced by the fact that the Claimant had complained that he was being singled out or bullied by Mr Freeman because of his request for a dyslexia assessment or because of his cultural background. We find that Mr Pugsley's explanation for the time taken to deal with the grievance and why he dealt with it without speaking to the Claimant is consistent with his emails sent to the Claimant at the time and with his outcome letter. We do not find that he shut down the complaint either as a result of it being one of discrimination or at all. We are satisfied that he looked at the grievance carefully and upheld the criticism of the way in which Mr Freeman had dealt with the Claimant. We do not find this to be an act of victimisation.

4.10.5 – failure to carry out stress risk assessments on multiple occasions

195 We find that the reason why Mr Dewis did not carry out a stress risk assessment on the Claimant's return to work in August 2019 was because he understood it was meant to be carried out by the department where the Claimant was going to be based; his understanding was that the assessment needed to be specific to the work that the Claimant was going to be asked to carry out. Mr Dewis did carry out a stress risk assessment on 11 September 2017 [719], he did not complete one on the Claimant's return to work in August 2019 [1628]. We find that the responsibility for a further stress risk assessment was passed on to Mr Jenkins by Rebecca Denton following the Claimant's return to work in September 2019 [1627]; this was discussed with the Claimant on 4 October 2019 by Mr Fox and Mr Jenkins [1627] in advance of the Claimant's anticipated return to full operational duties. Mr Fox's evidence is that he vaguely recalled asking the Claimant to complete the stress risk assessment questionnaire and return it to him; although that evidence was not capable of being tested in Mr Fox's absence, we find it consistent with the tasks that Mr Jenkins delegated to Mr Fox in preparing the Claimant's return to work /return to active duties. On 18 September 2019 Mr Fox sent Mr Hearne a training needs assessment to be completed in respect of the Claimant [1662 to 1687]. On 15 October 2019, the Claimant sent Mr Jenkins and Mr Fox a dyslexia screening report which contained detailed recommendations about what he might find difficult or stressful at work and a number of reasonable adjustments [1692]. We are satisfied that the relevant stressors were brought to the attention of the Claimant's mangers by that document.

196 We have not found any evidence that Mr Fox was aware of any of the Claimant's prior grievances or their contents and specifically we find no evidence that he was aware of his grievance dated 31 August 2018 about Mr Freeman.

***Detriment 4.10.6 – attempting to initiate capability proceedings*.**

197 We have addressed this above.

Protected act 6 - Grievance on 23 September 2019 [1515 to 1517]

198 The grievance on 23 September 2019 [1515-1517] was against Mr Dewis for failing to forward the request to a panel to consider whether the absence was due to service and asserting that he ought to have done this because he knew that the Claimant's absence was caused by the lack of training, development and support from the organisation. The Respondent accepts that is a protected act.

Issue 4.12.1 R did not uphold C's request to classify his sickness absence between 18 July 2018 to 11 August 2019 as 'Due to Service';

199 Ultimately the Respondent granted the Claimant's request on 23 June 2020 [2477] and the period of absence was classified as 'due to service'. We find that the description in the list of issues does not entirely reflect the Claimant's case as set out before us. The complaint is in respect of the period of time between the Claimant first going off sick and the successful appeal against the initial decision to not classify his absence as 'due to service'. In the grievance the Claimant complains that Mr Dewis ought to have initiated the policy, of his own volition, and put the absence forward to be considered as due to service. The reason given for this period of sickness absence was anxiety/depression.

200 In his request to Ben Dewis the Claimant states that his absence was related to the '*ongoing issues he had experienced with fire safety due to lack of and insufficient organisational training, development and support which caused him to have a great deal of work-related stress and affected his mental health'*.

201 The Claimant submits [C's written closing submission p. 18, para 67-68] that the decision to reject the due to service classification communicated by David Amis on 17 December 2019 [1863] was influenced by the fact that the Claimant had submitted a grievance to force a decision 'out of time'. The decision to allow the application to go forward to a panel out of time was taken by Paula Bayley and communicated to the Claimant on 9 December 2019 [1824]. The request that the absence treated as 'Due to Service' was then referred to the next management meeting on 11 December 2019.

202 David Amis, who was a member of the panel in his capacity as HR Adviser, communicated the decision of the Management Meeting ("the panel") on 17 December 2019 [1863] : the decision letter stated that the panel noted, "*that as there had not been any findings of Bullying and/or Harassment as set out in [Mr Pugsley's] outcome letter dated 20 September 2019 [the Claimant's] injury is not considered to have arisen in connection with work*".

203 We are satisfied that the panel considered the Claimant's grievance against Mr Freeman to be the relevant grievance to which he had referred in his request for DTS [of 31 August 2018], we find this was a genuine misunderstanding arising from the fact that the Claimant raised two grievances dated 31 August 2018.

204 The Claimant appealed this decision on 30 December 2019 [1913 to 1917] and attached 24 attachments to his appeal citing lack of support and development, dyslexia not being identified sooner and the reasonable adjustments not in place leading to his period of sickness [1917]; the Claimant asserted: *"because I did not receive the correct support I developed a mental health illness"*

205 We are satisfied that is not the same basis as that on which the original panel had considered the application, (albeit erroneously in the Claimant's view). The appeal panel had further information available to it which was not before the original panel [2005-2006] and reached a different decision.

Conclusion

206 The reason provided by the Respondent for not allowing the original application for due to service in its decision on 17 December 2019 [1863 to 1864] was that there had not been any findings of bullying and harassment. We find that the reason given to the Claimant by Mr Amis is the genuine explanation for the panel's decision. We are satisfied that it only became clear on appeal that the Claimant's application was based on lack of support for his dyslexia and not on bullying and harassment by Mr Freeman and that is what led to a different decision on 17 February 2020 when the panel accepted that it would reconsider based on miscommunications about the basis of the application and what the Claimant was relying on as the cause of the absence.

207 We are satisfied that the information submitted by the Claimant in support of his appeal against the finding on due to service was much more detailed and specific than that provided to Mr Dewis, or on the initial application of the grievance; it went into detail as to the link between the Claimant's dyslexia and how that had caused his stress and mental health breakdown and the breach of the duties under the Equality Act in respect of dyslexia, which were not referred to at all in his grievance dated 31 August 2018. We are satisfied that the Claimant's assertion that the panel considering his due to service application had all the information all along is factually incorrect.

208 We find that David Amis was involved in both decisions. We accept the panel's reasons for changing their view were those given to the Claimant. Once it became clear that there had been a misunderstanding Mr Amis was part of the decision-making panel that reversed the decision. We do not find any evidence from which we could infer that Mr Amis's or the panels' decision was negatively influenced by the grievance from 23 September 2019, nor was there any reason put forward as to why he might be.

209 We do not find that the protected act had any influence on the outcome. Rather, once the panel understood that the Claimant was making an allegation that there had been failures under the Equality Act to make provision for support and reasonable adjustments for the Claimant's dyslexia, they reassessed their decision and allowed the Claimant's request that the absence be treated as due to service.

Protected act 7 - Issue 4.13

210 The Claimant relies on the grievances dated 16 October 2019 and 24 March 2020. The Respondent accepts that the grievance dated 23 March 2020 sent by email on 24 March was a protected act. The Respondent does not accept that the grievance of 16 October 2019 was a protected act.

211 The grievance dated 16 October 2019 [1660], is in respect of inaccuracies recorded on the ASM. The grievance contained no reference to any protected characteristics. The Claimant relies on the reference to "work related stress". The Claimant's submissions [at paragraph 88], submit that the complaint of a failure to record work related stress as the cause of the Claimant's sickness absence taken in the context of the Claimant's particular history was a reference to the disability-related stressors. We prefer the Respondent's submission on this point and are satisfied that there is nothing in the grievance which points to or suggests that the Claimant is making an allegation that would amount to a breach of the Equality Act. We find that the complaint raised by the Claimant on 16 October 2019 was a protected act.

212 Each of the detriments relied on, except 4.14.3 failing to properly investigate or deal with the Claimant's grievance of 24 March 2020, flow from the complaint raised on 16 October 2019.

Issue 4.14.1 Rebecca Denton and Maria Apostle prevented C's formal grievances from being heard.

Issue 14.4.2 Failing (through Rebecca Denton and Maria Apostle) to properly investigate or deal with the Claimant's grievance of 16th October 2019,

213 In submissions these allegations were put as Maria Apostole and Rebecca Denton seeking to avoid having to deal with the grievance. It was acknowledged, however, that Mr Pugsley suggested that no dispute remained on the wording of the relevant ASM.

214 Although we have not found that to have been a protected act, we have considered whether Rebecca Denton and Maria Apostole prevented the Claimant's grievances from being heard, or sought to prevent them from being heard, or failed to properly investigate the same. We have found that on the face of the documents they were making efforts to arrange a mutually convenient date to hold a discussion with the Claimant to discuss his grievance [1764 and 1788]; Rebecca Denton sent the Claimant an amended version of the ASM letter which we accept was an attempt to resolve his complaint. She stated that she hoped the letter answered the points he had raised in his grievance in her email to him [1789 and 1794]. Ms Denton told the Claimant that if he was unhappy with her suggested resolution that he was able to communicate with Ms Apostole directly [1873]. The Claimant then involved his union representative who contacted Rebecca Denton's line manager. The Claimant's ASM letter was ultimately re-issued to his satisfaction [2033].

Conclusion

215 We do not find this to be evidence that either Ms Denton or Ms Apostole prevented the grievance from being heard or failed to deal with it. We accept the Respondent's submission that they took a pragmatic approach to dealing with it when it became difficult to arrange a meeting with the Claimant.

Issue 4.14.4 Rebecca Denton and Deputy Assistant Commissioner Alan Perez disclosing to Station Commander Matthew Hearne and Borough Commander Jamie Jenkins details of the Claimant's grievances in breach of confidentiality

216 The Respondent accepted that Rebecca Denton made Matthew Hearne aware of the grievance. Mr Hearne explained it was not unusual for him to be advised of grievances affecting people he managed whether by the direct manager or DAC. We accept the Respondent's evidence and find this would have applied to grievances raised in complaints of discrimination in the same way it would to any other grievance.

Conclusion

217 We do not find that the fact that the Claimant's grievance included allegations of discrimination had any bearing on Rebecca Denton's actions or those of DAC Perez.

Issue 4.14.5 Station Commander Matthew Hearne (on 21 November 2019) and Borough Commander Jamie Jenkins (on 25 November 2019) putting the Claimant under pressure to withdraw the same.

218 We do not find that Mr Hearne put the Claimant under pressure to withdraw the grievance. The Claimant's own account of the conversation which he set out at the time to his union rep [1779] states that Mr Hearne wanted to help him resolve the issue and get Rebecca Denton to agree to make the amendments. We do not find that this amounts to a detriment.

219 The Respondent accepted that Jamie Jenkins was also made aware of the Claimant's grievance for the same reasons as Mr Hearne. Mr Jenkins gave evidence that in his understanding line managers can support resolutions for a range of issues; he also denied putting pressure on the Claimant to withdraw the grievance.

220 We were referred to the Claimant's notes of his discussion with Mr Jenkins, which is at page 1821 of the bundle, dated 19 December 2019. He records Mr Jenkins as telling him that if the Claimant had come to him first, he [Mr Jenkins] would have been able to have it resolved. He also records Mr Jenkins as saying it was unfair on Rebecca Denton because she was a really nice person and she unfortunately had been passed on to deal with the problem that had been caused by another area and unfortunately it ended up with a formal grievance against her.

221 Although we have not found the complaint to be a protected act we considered whether this could amount to an attempt to put pressure on the Claimant to withdraw the grievance or to interfere with the process and have concluded that it in the context of the overall conversation it falls short of either.

Conclusion

222 We do not find this complaint is made out

Issue 4.14.6 – This allegation was withdrawn.

Issue 4.14.7 –Ignoring the Claimant's request of 5 December 2019 for an additional two weeks to read and learn the relevant policies before he was required to attend an assessable Incident Command course.

223 We do not find that this was as a result of the Claimant having brought the grievance on 16 October 2019. We have accepted the explanation given by the Respondent as set out in our findings above.

Grievance dated 23 March 2020, sent by email on 24 March 2020

Issue 4.14.3 – Failing through Station Commander Matthew Hearne and Catherine Gibbs to properly investigate or deal with the Claimant grievance of 24 March 2020.

224 The grievance relied on was in respect of alleged failure to follow the managing stress policy and that the Claimant had not been provided with a stress risk assessment. The Claimant in his submissions, points to defects in Mr Hearne's reply in respect of this grievance. It is not suggested that he did not deal with it at all but that he dealt with it informally and incompletely.

225 On 31 March 2020, Mr Hearne emailed to the Claimant [2166] informing him that:

> "*A large part of your grievance letter pertains to a period of your employment that I am unable to comment on and certainly not suggest a rationale for. I would suggest that not only has the informal stage been exhausted but the formal stage too, as per the timeframe and requirements of the LFB grievance policy.*"

226 Mr Hearne was referring to the grievance policy [236] which states that grievances should be raised within 3 months of the management decision causing the grievance, unless otherwise agreed. The Claimant was raising complaints about matters back to August 2019. We accept Mr Hearne's evidence that his understanding of the policy was that matters should be raised within three months. We also find that the matters the Claimant was complaining about largely predated anything that Mr Hearne himself had any responsibility for or could explain the rationale for.

227 We find that Mr Hearne would have adopted the same approach to any grievance which raised matters that were deemed to be historical i.e. in respect of matters older than three months, or in relation to which a different department or division was a relevant decision-maker. We do not find that the fact the complaints were raising a failure to make reasonable adjustments (matters falling under the Equality Act) had any bearing on this aspect of Mr Hearne's response.

228 On 6 April 2020 Mr Hearne provided a response in relation to matters about which he considered he could comment [2204 to 2208]. We find that this was a detailed reply in relation to those matters. He had set out in detail the support that had been provided to the Claimant, and that the Claimant had not raised any mental health related concerns since joining the light duties team. He noted that the Claimant's most recent occupational health referral confirmed that he was psychologically stable and not experiencing any symptoms.

229 The Claimant's submission at paragraph 93 is that Mr Hearne got the basic facts wrong and the cause was the fact the Claimant had made a grievance out of it, but we find no evidence to support this contention or from which we could refer that this was the cause of Mr Hearne's error.

Conclusion

230 We do not find any evidence that Mr Hearne deliberately or subconsciously altered his approach to dealing with the grievance due to it containing complaints of failure to make reasonable adjustments, or any allegation that could be seen as allegations of discrimination. We are satisfied that he dealt with the grievance in the same way that he would have dealt with any other type of grievance. This does not mean that he is required to deal with it perfectly, and errors and mistakes sometimes creep into considerations. For instance, his assertion that the Claimant had been referred to occupational health after his return when the meeting had in fact been on 28 June 2019, we find is a genuine error. We do not find that the reason that he got any facts wrong or made any such errors was because or in any way influenced by the nature of the grievance and that it might be a protected act.

231 We have not found that any of the alleged detriments relied upon under protected act 7 have been made out.

Protected act 8 – 4 December 2019 – Concerns regarding dyslexia adjustments

232 The Claimant relies on his email to Ms Ogunbambi of 4 December 2019 stating, "*I am very concerned that my Dyslexia assessment outcome and the reasonable adjustments*

that you have recommend are not being considered or followed by my line management". as a protected act [1797]. The Respondent accepts that this email amounted to a protected act.

***Issue 4.17* '*Station Commander Sean Fox and Learning Support Advisor, Rasheedat Ogunbambi failed to provide C with reasonable adjustments, adequate training and time to learn a vast number of policies before attending an assessable Incident Command course in preparation for my return to operational duties following six-and-a-half~years*'.**

233 This allegation relates to the Incident Command course in December 2019. We have accepted Mr Fox's explanation that his assessment was the Claimant would have time to prepare and the delay would simply add more pressure on to him as he had a four-day course due in January. We also accept that he genuinely believed that the Claimant's lack of confidence was not justified and note that his belief that the Claimant was ready to take and would be able to pass the course was borne out. We have found that Mr Fox believed that it would be better for the Claimant to attend the course which he knew to be a refresher course, and that he felt the longer the Claimant left it the harder it would be for him. He felt the Claimant was prepared and had been provided with one-on-one support and sufficient time to prepare for that course.

234 The Claimant's case [C's closing submissions at paragraph 95] is that Mr Fox urging him to attend the course and Ms Ogunbambi's failure to intervene to prevent the pressure being put on him by managers to attend in December were a reaction to the complaint the Claimant had made about reasonable adjustments not being put in place and that they were defensive in the face of the criticism and did not wish to bend to accommodate the Claimant's preference.

235 The Respondent denies that Ms Ogunbambi had the capacity or capability to require Mr Fox to act in any particular way.

236 We considered Ms Ogunbambi's evidence on this point which is at paragraphs 67 to 71 of her statement and her file note at page 1799 in respect of her conversation with Mr Fox on 5 December 2019 in which she mentions the dyslexia and its impact but she does not mention to Mr Fox that the Claimant had complained or that he said managers were failing to make reasonable adjustments. We find that Ms Ogunbambi told the Claimant that her role was to be advisory and that she remained independent. She pointed out that it was not her place to tell the Claimant's manager how to manage his development [1799]. We accept that was her genuine understanding of her role and it was not influenced by the Claimant's allegation of a failure by managers to make reasonable adjustments. There was no evidence that she told Mr Fox the Claimant had raised concerns about the volume of reading and his ability to absorb information.

Conclusion

237 We do not find that Mr Fox was either aware that a complaint of a failure to make reasonable adjustments had been made nor that he was influenced by any prior complaint that he may have been told about. We accept that the explanation given was the genuine reason for his treatment of the Claimant.

Allegations of less favourable treatment on the grounds of race and/or religion

238 The majority of the allegations of less favourable treatment that is were withdrawn by the Claimant before final submissions and appear with strike through lines in the final agreed list of issues i.e. the allegations at 7.1, 7.2, 7.3, 7.4, 7.5, 7.8, 7.9, 7.12, 7.13, 7.16, 7.17, 7.18, 7.19, 7.20, 7.21, 7.22, 7.23). We deal with the remaining allegations of direct discrimination arising in claim 1 below.

Issue 7.6, 7.7,7.10 and 7.11

Issue 7.6: R (through Martin Freeman ~~and Ben Dewis)~~ doubled C's audit targets from August 2017 to July 2018, from five audits per month to 10 audits per month (R imposed audit targets of five audits per month in August 2017, then doubled them to 10 audits per month in March 2018); COMPARATORS Tracey Orchard and Bee Lui and Lee Pyke;

Issue 7.7: R (through Martin Freeman) unfairly threatened C with disciplinary action in August 2017, in March 2018 and in July 2018 for alleged performance issues; COMPARATORS Hypothetical and/or Tracey Orchard and Bee Lui and Lee Pyke;

Issue 7.10: R (through Martin Freeman) sought to unfairly remove C from his role by suggesting a meeting, issuing a 'Letter 1' and stating that C may need to be returned to an operational role if he could not undertake the Inspecting Officer (IO) role effectively in his email of 14th March 2018. COMPARATORS: Hypothetical and/or Bee Lui, Tracey Orchard, Siam Kee Yeoh, Lee Pyke;

Issue 7.11: R (through Martin Freeman) attempted to prevent C from raising a grievance on 17th April 2018 and 14th March 2018; COMPARATOR: Hypothetical;

239 We have addressed our findings on these allegations above. We considered the content of the email of 14 March 2018 and have not found this to be Martin Freeman attempting to prevent the Claimant from lodging a grievance.

240 The reference to 17 April is to the reference in Mr Freeman's email to mitigating the threat of grievance in respect of the delay to the dyslexia assessment. We have our findings about that above, we do not find that this was influenced by the Claimant's race or religion.

Allegation 7.14 – The Respondent, through Charlie Pugsley and its HR department, failed to investigate the Claimant's complaint against Martin Freeman after 31 August 2018 in a fair and reasonable manner – hypothetical comparator

241 It was alleged that Charlie Pugsley failed to engage with the substance of the grievance against Mr Freeman, that he did not show the grievance to Mr Freeman, did not engage with the Claimant and failed to deal with any of the complaints appearing in the documents after the events of 17 July 2018. The Claimant's case was that these failures must have been because of his race or religion.

242 We have set out our findings in relation to Mr Pugsley's investigation of the Claimant's grievance above. The grievance is at page 993 and was raised following the Claimant's

conversation with Mr Freeman on 17 July 2018. He raised complaints of bullying, harassment and victimisation. Mr Pugsley told us that on 17 July he had a conversation with the Claimant who was clearly upset, and he referred the Claimant to the Fire Brigade's Harassment Complaints Procedure, a copy of which was in the bundle at 252. Mr Pugsley followed up that conversation with an email, subject 'Welfare discussion', confirming some of the points that had been discussed. He sets out several matters relating to the Claimant's welfare. The Claimant had been put in touch with the counselling and trauma service, that Mr Dewis was due to conduct a stress survey with the Claimant that week, if possible, that Ben Dewis would be discussing a visit to occupational health with the Claimant that week if possible and that Ben Dewis would be discussing training support and development with him. Mr Pugsley confirmed that he discussed those matters with Mr Freeman and asked him to ensure that the Claimant and Ben Dewis would be given the time to address those joint actions over the next few days.

243 Mr Pugsley then set out the concerns that the Claimant had raised about Mr Freeman and their discussion about the harassment complaints procedure and confirmed that he had not discussed this aspect of what he had spoken to the Claimant about with Mr Freeman. The Claimant sent his formal complaint against Mr Freeman to Mr Pugsley on 31 August 2018 (see pages 1062 to 1083). Mr Freeman confirmed that the Claimant was not in a frame of mind to discuss the grievance on 16 September 2018 (see 1060) and had sought advice as to whether it would be appropriate to discuss the matters he raised whilst he was off sick, seeking advice from HR. In his outcome letter, page 1082, sent on 20 September 2018, Mr Pugsley explained that he had followed the advice received from the occupational health on 11 September that the Claimant was not in a frame of mind to attend a meeting with management to discuss the complaint that he believed it was in the interest of all parties the complaint was resolved as soon as practicable and he believed he had sufficient information to enable him to do this. He went on to state that he had carefully considered the complaint and believed it could be resolved locally and informally in line with the Brigade's harassment complaints procedure section 4. The procedure states at 4.1 [254]:

> *"Unless the matter is considered serious enough to merit formal disciplinary action, it will be dealt with locally and informally in accordance with the requirements of this policy*".

244 We accept that Mr Pugsley considered it appropriate to deal with the complaint under the harassment policy. He explained why he did not consider the matters raised were serious harassment that would result in disciplinary action. He took into account that Mr Freeman had acknowledged that he had handled the matter inappropriately and that Area Commander Welch had issued a letter to Mr Freeman addressing the inappropriate management action he had taken; he had considered the discussion of performance and targets was appropriate management action and the other matters in respect of lack of support raised with Ben Dewis fell outside of the harassment policy.

Conclusion

245 We find that the matter was dealt with by Mr Pugsley in line with the HR advice he had received. He understood that Mr Freeman had apologised for the manner in which he dealt with the Claimant and accepted that it was inappropriate that the discussion took place in the way that it did. Mr Pugsley considered that the discussions complained about by the Claimant were in respect of performance and targets which were management action and

that it was up to Mr Dewis to line manage; he considered that this was suitable for local resolution. We do not find that Mr Pugsley failed to deal with the Claimant's complaint in a fair and reasonable manner, nor have we found evidence from which we could conclude that the Claimant's race or religion played any part in the way in which Mr Pugsley dealt with the complaint.

Issue 7.15 – R failed to initiate (through Martin Freeman, ~~Ben Dewis and Robert McTague~~) the 'due to service' procedure in respect of C's absence between 18th July 2018 to 11th August 2019 as per the classification of Due to Service Sickness Absence Guidance Note, and Managing Attendance Policy and R failed to classify this sickness period as Due to Service Absence; COMPARATORS: Pamela Jones, Daniel Alie and Colin Parker

246 We were taken to the due to service sickness absence policy [3228]. The introduction to that document sets out as follows:

> *"This document provides information and guidance on determining whether sickness absence, as a result of a work-related injury, is classified as 'Due to Service' or 'Not Due to Service'.*
>
> *This document also sets out the process for making this determination.*
>
> *The process set out within this document should only be followed for musculo-skeletal sickness.*
>
> *(Where there is sickness absence which is not musculo-skeletal sickness [e.g. sickness absence arising from psychological conditions] which the line manager and/or the employee consider should be classified as 'due to service', the line manager should notify the Wellbeing team (giving their email address) providing a summary report, and the case will be fast-tracked to the management meeting process set out at paragraph 6.3.4.)"*

247 At 4.4 the policy defines due to service injury as an injury which occurred whilst on duty having arisen out of or in connection with work as a result of an authorised duty. And at 4.5 it defines due to service sickness absence as sickness absence arising as a result of a due to service injury.

248 Under Arrangements at 6.1 – Determination of due to service sickness absence:

> The process for determining due to service sickness absence will be initiated where an employee has reported, or been placed, sick following an accident on duty (workplace injury) or following an illness arising out of authorised duty. The process may be initiated by line management, or it may be initiated where an employee requests that a period of sickness absence is recorded as due to service. Applications for a due to service classification should be submitted to the line manager within three months of the event which caused the sickness absence, or three months of the commencement of the relevant period of sickness if later, unless the employee can demonstrate there are reasonable grounds for a longer period to apply.

At 6.3.4 – Management meeting, the policy provides that:

> "Where it is agreed that the case is referred to a management meeting, the line manager will notify the Wellbeing team enclosing the completed Sickness Absence Classification Form and SERD form. The Wellbeing team shall convene the meeting as soon as is reasonably practicable. Management meetings shall include senior management representation from the employee's Directorate/Area, Health and Safety, Wellbeing, and, where appropriate, Occupational Health and/or the General Counsel's Department.
>
> The purpose of the management meeting is to consider all related information and reach a decision on whether or not the event will be classified by LFB as a due to service injury. Management meetings will aim to reach a decision within six weeks of referral from the line manager. If a decision cannot be reached within this timescale, the employee will be updated within the six-week timeframe.
>
> The Wellbeing team will record the conclusion on the Sickness Absence Classification Form (Part 4), and update the relevant sickness record on StARS."

249 At 8 the Appeals Process set out grounds for appeal as follows:

> "1. The correct procedure was not followed by LFB when considering the event
>
> 2. The employee is able to establish that further information regarding the event is available but has not yet been considered."

250 By the end of the hearing the allegation before the Tribunal was that Martin Freeman failed to initiate the due to service procedure. The allegation made against Ben Dewis and Robert McTague was withdrawn before closing submissions. The Claimant contended that it was for the line manager, Mr Dewis, to initiate the procedure. Mr Dewis himself was absent at the time that the Claimant went off in July 2018 and it fell to Rebecca Denton to enter the Claimant's absence onto the StAR record. The Claimant's application for his absence to be considered as due to service was made on his behalf by his trade union representative.

251 In his grievance at the time, 23 September 2019, following his return to work, [1515] the Claimant's grievance was against his line manager Ben Dewis' decision not to forward his request for his period of sickness to be put before a panel to determine if it could be regarded as due to service.

252 The Claimant's trade union representative set out the explanation for the delay in making a request and the matter was considered and went forward to a management panel. The initial decision of the panel was to reject the application for due to service, however, on appeal the Claimant submitted further information and his appeal was allowed and the period of absence was deemed to be due to service.

253 We are satisfied that Mr Freeman did not have any involvement in this process. He was not the Claimant's line manager nor was he responsible for recording or applying the classification to the Claimant's absence on StARS. We were not provided with any submissions by the Claimant in respect of this element of the claim. The Respondent submitted that the claim as it remained following the amendments withdrawing complaints against named managers made no sense because Martin Freeman was not the Claimant's line manager nor was he responsible for management of his absence.

Conclusion

254 Having carefully considered the evidence put forward by the Claimant, we do not find any evidence of any involvement or any influence by Mr Freeman in this due to service application or how it was treated.

255 We were not provided with any evidence as to how Pamela Jones, Daniel Alie or Colin Parker were treated or why they would be suitable comparators, who their line managers were and what their circumstances were, other than we were told that two of those named individuals were classified as due to service through their involvement in the Grenfell Fire response and there was a policy that applications arising from involvement in the Grenfell Fire response were deemed to be automatically eligible for due to service classification. We do not find any evidence from which we could infer that the difference in treatment between the comparators named and the Claimant, was due to his race or religion.

256 This allegation is not made out.

CASE 2 (3201568/2021)

[The page references below are to bundle 2 unless otherwise specified]

257 The Claimant presented his ET1 in claim 1 on 25 December 2019. On 3 January 202 he started a new posting at Woodford Fire Station as a Leading Firefighter. On 4 April 2020 the Claimant reverted back to the role of Firefighter and was posted to Walthamstow Fire Station as a member of Green Watch. The events about which he complains in claim 2 relate to his periods of time at Woodford and then Walthamstow Fire Stations.

258 In the second claim before the Tribunal the Claimant relied on his disabilities of dyslexia and also anxiety and depression. As set out above, we have found the Respondent's date of knowledge in respect of dyslexia as a disability to be 14 October 2019.

259 In the period May to November 2016, the Claimant was absent for stress, anxiety and depression for 178 days. His sickness absence record [3047] shows that in the period July 2018 to August 2019, he was absent for 390 days with stress, anxiety and depression. The Respondent concedes it had knowledge of the Claimant's depression and anxiety amounting to a disability from July 2019. All the allegations in claim 2 postdate July 2019. We therefore do not need to consider issue 9.2 other than to record the Respondent had knowledge from July 2019 which covers all of the relevant events about which this claim is concerned.

Issue 10 *– Discrimination because of something arising in consequence of a disability (namely depression/anxiety and dyslexia) [section 15 Equality Act 2010]*

10.2. Did the following thing(s) arise in consequence of the claimant's disability:

10.2.1. Taking longer to complete and/or review paperwork (disability – dyslexia/anxiety/depression).
R accepts that this arose in consequence of the disability.

10.2.2. Finding it more difficult and time consuming to take notes during training and complete coursework (dyslexia/anxiety/depression);
R accepts that this arose in consequence of the disability.

10.2.3. Lack of confidence (dyslexia/anxiety/depression);

10.2.4. Grievances of disability discrimination;

10.2.5. Being demoted from a Leading Firefighter (Dyslexia/-anxiety/depression);

10.2.6. Perceived 'failing' in Fire Safety Role and move to operational duties (Dyslexia/anxiety/depression);

10.2.7. Refusing to give a statement due to his mental health (disability – anxiety/depression);

10.2.8. Tiredness and irregular sleep patterns (disability: anxiety/depression);

10.2.9. Absence (anxiety/depression).
R accepts that this arose in consequence of the disability.

260 The Tribunal had to consider whether the effects contended for by the Claimant at 10.2.3 through to 10.2.8 arose in consequence of his disability. The Respondent submitted (in writing and orally) that of the matters set out in the list of issues under 10.2 as being the consequences arising from his disabilities relied on by the Claimant, when cross-referred to 10.3 the unfavourable treatment complained of, there are only three consequences which are both disputed and relied upon, namely those set out in the List of Issues at 10.2.6, 10.2.7 and 10.2.8 [R's written submissions paragraph 79]. The Claimant did not demur, or contest that submission, we also cross referenced the allegations in the list of issues and are satisfied that Ms Tharoo's submission is correct.

261 *At 10.2.3 of the list of issues* the Claimant also relies on lack of confidence as something arising from his disabilities however this has not been linked to any specific allegation of unfavourable treatment [see final agreed list of issues]. We are satisfied having heard the Claimant's evidence as a whole, that in the relevant time period he felt a lack of confidence in his abilities which arose, at least in part, from a combination of his dyslexia and his anxiety and depression.

262 *10.2.4: Grievances of disability discrimination*: we do not understand the Claimant's case to be that as a consequence of his dyslexia and/or anxiety and depression he brought grievances when he would otherwise not have brought them i.e. unwarranted grievances. Rather we understand him to be saying that as a consequence of his disabilities he was subjected to discriminatory treatment and brought the grievances as a result.

263 *10.2.5*: being demoted from a Leading Firefighter has **not** been relied on as the 'something arising' in respect of any of the acts relied on as unfavourable treatment.

Issue at 10.2.6*: *Perceived failing in fire safety

264 The Respondent does not accept that a perceived failing in Fire Safety and a move to operational duties arose as a consequence of the Claimant's disabilities. The Respondent's case is that it did not consider the Claimant was failing or perceived to be failing in his Fire Safety Officer role, the work that he undertook was consistently praised and noted to be of a good standard.

265 We have accepted Ben Dewis's evidence that he did not consider the Claimant to be failing, he considered the Claimant's work to be of a high standard and was disappointed that the Claimant was seeking to move away from fire safety.

266 Mr Bannon told us that he considered the Claimant's qualifications to be an asset to the extent that he previously asked the Claimant for his advice on fire safety issues and that he respected his fire safety knowledge. We considered our findings in respect of Mr Bannon's credibility in respect of what was said at that or immediately after the meeting of 6 November 2020 (which we address below). We also considered the workplace stress questionnaire completed with Mr Bannon [MB witness statement para 8] on 4 April 2020 [168-175], which was sent to the Claimant by Mr O'Neill on 6 May 2020 [167]:

> Under any other comments it was recorded: "*Kamran has settled into the Green Watch and is happy with his role within the team*" and
>
> "*I am happy to have his knowledge and experience to assist the younger and newer members of the watch and feel that he is an asset to the watch*."[175]

267 The Claimant accepted in cross-examination that he had been contacted by Mr Bannon on an occasion when he was not on shift to provide some specialist advice on fire safety. We find that Mr Bannon asked the Claimant for advice on fire safety and find this is consistent with his comments on the stress risk assessment welcoming his knowledge [175]. We find that had Mr Bannon perceived the Claimant to have failed, he would not have sought him out for advice. Looking at the evidence in the round we do not find that Mr Bannon considered that the Claimant had failed in Fire Safety. There are many possible reasons why the Claimant might have asked to move to operational duties which would not mean, or imply, that his time at fire safety was a failure.

Conclusion

268 We do not find that there was a perception that the Claimant had 'failed' in Fire Safety and that was why he had moved to operational duties.

10.2.7 – refusing to give a statement due to his mental health

269 The Claimant's explanation for not wanting to give a statement about his colleague's conduct was that he did not want to be seen as "squealing" or "grassing on" colleagues, particularly where he was new to the unit and the thought of doing so increased his anxiety levels in the circumstances. In his written closing submissions Claimant's Counsel described the as being as a result of the Claimant's poor mental health. [paras 109 and 110]. The mental health conditions relied upon being anxiety and depression.

Issue 10.2.8 tiredness and irregular sleep patterns

270 Whilst the Tribunal accepts that it is common for individuals with depression and anxiety to have feelings of tiredness and the condition will often impact on their sleep, the Respondent submits that there is no direct evidence of the impact on the Claimant's sleep patterns.

271 We considered the workplace stress questionnaire completed with Mr Bannon [MB witness statement para 8] on 4 April 2020 [168-175], in response to question 40 [174]

> "*Do you generally manage to have an adequate restful pattern?"* the Claimant answered "*Yes. Since reverting to role of FF (fire fighter)*".

272 The Claimant's occupational health report on 7 November 2020 records that the Claimant was then on extended sickness absence with a sick certificate due to expire on January 2021. The reason for absence was debilitating mental health symptoms and his sleep mood and appetite was severely affected on a daily basis. The report dated 24 November 2020, 9 December 2020 [493] and the 9 November 2020 [491] confirm his symptoms were ongoing.

Finding

273 We find that the evidence set out in the contemporaneous documents points to the Claimant stating that tiredness and difficulty sleeping was not an issue in May 2020 but that he was experiencing difficulties by 7 November 2020.

Unfavourable treatment because of something arising in consequence of the Claimant's disabilities

10.3.1 ***Being told by Mr Bannon twice between April and November 2020 that the Claimant would take longer than his colleagues to complete the inventory form (relates to [10].2.1);*** [The Final List of Issues states 'relates to 12.2.1" – there is no paragraph 12.2.1 in the list of issues, the amended paragraph numbering has not been reflected in the updated list of issues – we have substituted the relevant sub-paragraphs under 10. 2 for those referred to as 12.2 sub-paragraphs].

Issue 10.3.2: ***Mr Bannon having warned the Claimant for" taking too long to complete and sign of the inventories" around June 2020 told the Claimant on a second occasions around July/August 2020, "Kam you need to hurry up you are taking too long to complete and sign of the inventories" (relates to [10.2.1]).***

274 The Claimant told the Tribunal that Mr Bannon would regularly accuse him of taking longer than his colleagues to sign off or complete the inventories. According to the Claimant the task would take an hour to an hour and a half if done properly. The Claimant also told us that he was one of the few people who took the time to complete the inventories properly by checking every item and not just assuming it was the same as the last inventory. It was not suggested that this practice of his was something that arose in consequence of his disabilities. The Claimant would observe that the inventories were regularly left unfinished on people's desks for the entire shift and referred to his note in the bundle [page 232]

created on 6 October 2020 where the Claimant pointed out to Mr Bannon that he had printed off all the inventories for individuals to complete but they were still sitting there untouched at approximately 10:45 hours and that when he returned to the station from stand by duty at Tottenham Fire Station at approximately 19:00hrs, the inventory papers were still sitting on the desk untouched and unmarked.

275 Mr Bannon's told us that the inventory was not something that was completed individually, it was completed as a watch but with one member of the watch being given responsibility for ensuring that it was done. If the Claimant had overall responsible for its completion on a particular day, then he would have reminded the Claimant that it needed to be done as soon as possible, in line with the policy, [LFB policy number 724 at 808-821] and prompted him to get it done if there was a significant delay, as he would with any other Fire Fighter. Mr Bannon told us he would normally expect it to be done within an hour to an hour and a half of the start of the shift. We were referred to page 769 which it was not disputed recorded three occasions on which the Claimant had overall responsibility for signing off the inventories. On 19 July 2020 the inventory had not been signed off until two and a half hours into the shift and on 16 and 23 June 2020 they were respectively signed off almost 4 hours and 4 and half hours into the shift. Mr Bannon told us that he factored in an additional 25% of time for the Claimant to make allowance for his dyslexia. He did recall prompting the Claimant to complete the inventories on one particular occasion when he found the Claimant outside playing basketball and the inventory had not been completed.

276 The Claimant's written submissions did not specifically address issues 10.3.1 or 10.3.2. We accept that it might take the Claimant longer to complete the inventory as a result of his dyslexia. The Claimant did not put forward evidence of a link between his anxiety and depression and any delay in completing the inventories.

277 On his own account the Claimant would have been able to complete the inventory within an hour and half of the start of the shift, subject to being called out to an incident or other interruption. There were occasions when Mr Bannon reminded the Claimant that the inventories were outstanding, we accept that on one of those occasions Mr Bannon found the Claimant in the yard playing basketball. We also accept that Mr Bannon allowed the Claimant 25% additional leeway in terms of time. Each of the occasions we were referred to were in excess of that leeway. We have not been able to find on the balance of probabilities that the other occasions any 'delay' was in fact related to the Claimant's dyslexia or his anxiety and depression.

278 The Respondent submitted that in any event the Claimant was not being criticised or disciplined, that it was entirely proportionate to remind someone that an important task needed to be done. The Claimant agreed that he was not pressured to complete the inventory but was prompted by Mr Bannon asking him why it had not been done. We find that Mr Bannon took account of the Claimant's dyslexia by allowing the Claimant more time but reminded him, as he did with anyone else, when he found him undertaking other tasks when the inventory was still outstanding.

Conclusion

279 We do not find that this is evidence that the Claimant was accused of being slower than his colleagues. We have not found that this amounts to unfavourable treatment as a result of something arising from the Claimant's disabilities.

***Issue 10.3.3 The Claimant was required to learn and complete over a short period of time a number of new Brigade policies and being told he had not provided information on 18 October 2020 as a result by email*.**

280 The Claimant addresses this complaint in paragraph 398 of his witness statement, [page 152 of the witness statement bundle]. The unfavourable treatment complained of is the receipt of the email on 18 October 2020 which the Claimant described as 'acerbic'. The email was chasing further information in support of a request for a period of absence resulting from of an injury to the Claimant's arm to be classified as due to service. The Claimant had competed a report on 24 May 2020 the day after the incident. His report was detailed and consisted of over a page of typed description of the incident [193-194]. He submitted the relevant form on 25 May 2020 [197]. He made a formal application for it to be classified as due to service on 18 July 2020 [210]. He chased this on 3 September [218] the application was being dealt with by Station Commander Knight and on 28 September 2020 he asked Mr Bannon to obtain statements from the Claimant and Mr Shelley covering 4 specific areas [224].

281 The email dated 28 September [234] was sent to both the Claimant and Duncan Shelley, and states:

> *"I can appreciate you have already submitted form 10s regarding this however we required some more additional information." and sets out four points that needed to be covered 'in as much detail as possible':*
>
> *(1) Weather condition/scene description;*
>
> *(2) What actions were they undertaking and equipment being used individually at the time the injury occurred;*
>
> *(3) Approximate size of the section of ceiling that fell and struck firefighter Hussain;*
>
> *(4) Specific individual location in relation to equipment being used when the section of ceiling fell.*

282 The 18 October 2020 email about which the Claimant complains about is at page 234, it is addressed to the Claimant and Duncan Shelley. It stated:

> "*Duncan, Kam*
>
> *Further to this email sent to you both on 28 September 2020 nearly three weeks ago. I would like you to complete it and sent to me by the end of the first day shift please (21 October 20:00)."*

283 The Claimant provided the additional information on 21 October 2020 [236] the attachment is at p195 and sets out the Claimant's response to SC Knight's questions. Firefighter Shelley also provided a memorandum on 21 October 2020 [235].

284 The Claimant says he was struggling to provide the information requested because he was also at that time completing a large amount of new mandatory training, such as high-rise firefighting, mass rescue/emergency evacuation and FSGCBT training. In addition to

the day-to-day DAMOP training, and his dyslexia meant that he struggled to complete all of those tasks at the same time. He prioritised the mandatory training as he did not want to give Mr Bannon any opportunity to discipline him; so when he received an email from Mr Bannon on 18 October referring to having asked him nearly three weeks ago for the additional information in support of his due to service application, the Claimant felt this was unjust in the light of the fact that the information had been originally provided to the Brigade months previously and in the context of his dyslexia and the amount of training he was trying to complete at that time.

285 It was submitted [at paragraph 107 of the Claimant's written submissions] that the cause of Mr Bannon's impatience was the Claimant's delay in learning what was required of him. There was no evidence that the Claimant was behind on any of the required training, the Claimant's own evidence was to the opposite effect. The Claimant completed his module 4 training on 15 October 2020 (see Bundle 2 page 781 diary entry) together with undertaking the other training referred to. We understood from the Claimant's evidence that the complaint was the impatient tone of Mr Bannon's email, which the Claimant complains failed to take into account the amount of training that the Claimant was having to complete, and which he considered to be unfair when he compared the three-week timescale which Mr Bannon mentioned, to the fact the Claimant had already been waiting some four months.

Conclusion

286 We find that whilst the email provided a short timescale Mr Bannon was aware that the information being requested was likely to be limited; the Claimant's response was less than one side of A4, the information provided by Mr Shelley consisted of 18 lines, and that the Claimant had provided his original account within a day of the incident. The Claimant did not raise with Mr Bannon, or refer to, any link between the number of policies that he was having to learn at the time and his ability to provide the information requested about the incident. We do not find Mr Bannon's response, or the timescale allotted by him, was as a result of, or influenced by, any perceived delay in the Claimant learning what was required of him. We do not find this request was unfavourable treatment because of something arising in consequence of the Claimant's disability.

Issue 10.3.4 Matt Bannon regularly ridiculing the Claimant in the period May 2020 onwards regarding his perceived failure in the fire safety role as a result of his dyslexia, including 10.3.4.1 through to 10.3.4.5

10.3.4.1.– the Claimant's first day in Green Watch April 2020, Mr Bannon stating the Claimant had been hung out to dry,

10.3.4.2 – 11 August 2020, Mr Bannon stating to other firefighters: "*did you know Kam has done a stint in fire safety".*

10.3.4.3 – on 11 August 2020, whilst undertaking mandatory fire safety training in the main lecture room, the Claimant was participating when Mr Bannon interrupted stating: "*have you done time in fire safety? bore off*" and then continuing to laugh loudly.

10.3.4.4 – Mr Bannon would deliberately ignore the Claimant's advice and continuously make fun out of the Claimant by asking him if he had ever been a fire safety officer or that he should consider going into fire safety.

10.3.4.5 – On 21 October 2020, asked to undertake fire safety checks training in the lecture room Mr Bannon again made a joke in front of his colleagues stating: "have you done a stint in fire safety Kam, you should think about going into it" then continued to laugh loudly.

287 The Claimant's submissions in respect of these allegations in particular and claim 2 generally, centred on the credibility of the witnesses: there being a direct conflict between the Claimant's and Mr Bannon accounts. We were asked to take into account the content of the recording of the meeting on 6 November 2020, a Letter 1 meeting in respect of the Claimant not wearing his seatbelt. For that reason, we address our findings in relation to what was said in the 6 November meeting below, out of chronological order.

6 November 2020 'Letter 1' meeting

288 In July 2021, during the investigation into the Claimant's complaint about him, Mr Bannon alleged that the Claimant had sworn at him and become threatening and aggressive (see page 608 saying that he was going to 'get him' and had sworn at him) during their meeting on 6 November 2020.

289 The Tribunal had a transcript of that meeting [page 731 onwards] and heard the audio recording. We find that the audio recording does not support Mr Bannon's version of events, there is no swearing or threatening by the Claimant throughout the entirety of the recording. At the end of the meeting the Claimant was heard leaving the room, going down the corridor and pressing the security code to access the yard. The transcript was disclosed by the Claimant before the witness statements were prepared. In his witness statement Mr Bannon describes the Claimant's aggression as being expressed in clenching his fists (see paragraph 23).

290 During cross-examination Mr Bannon first suggested that the Claimant had turned off the recording before he became aggressive and swore and then sought to further clarify his answer by suggesting that the Claimant had threatened and sworn at him after the meeting outside in the yard. The last words heard being spoken by Mr Bannon in the audio recording are him asking the Claimant to show Firefighter Miles into the room, he could not explain why he had followed the Claimant into the yard or how this was possible when he was in a meeting with Firefighter Miles immediately after his meeting with the Claimant.

291 Mr Bannon did not explain why, if the Claimant had threatened him as he alleges, he had not raised this at the time with Mr Beecham or anyone else. Nor did he explain why he does not mention this until July 2021 despite raising his initial complaint about the Claimant in February 2021.

292 We have come to the conclusion, on the balance of probabilities, that Mr Bannon was not telling the truth about the Claimant swearing at him and becoming aggressive towards him, and that when he made the allegations in July about the Claimant's conduct towards him in the meeting in November 2020, he had not known that the Claimant had recorded the meeting. We have been invited to take into account Mr Bannon's credibility in

determining whether the remarks were made by him as the Claimant alleges in April 2020 onwards. We have also had it in mind when we considered the issue of whether the Claimant was perceived to have failed in fire safety. We reminded ourselves however, that credibility can be divisible and that the best approach is, where possible, to base factual findings on inferences drawn from documentary evidence and known or probable facts.

Perceived failing in fire safety and alleged comments by Mr Bannon

293 In his grievance dated 23 November 2020, the Claimant set out what he described as inappropriate and degrading remarks about him having been in fire safety. Under heading (iv) on page 275 of the bundle he sets out those incidents on which he relies in this claim, those remarks are alleged to have been made between the Claimant first starting at Walthamstow in April 2020 and October 2020.

294 Mr Bannon told the Tribunal that he was aware when the Claimant arrived at Walthamstow Fire Station that he had held the role of sub-officer in the Fire Safety team but that he had requested to return to his Firefighter role. The Claimant sent him a copy of the list of adjustments recommended by Ms Ogunbambi and they went through the contents of the stress risk questionnaire. Mr Bannon denied ever mocking the Claimant or making jokes about his role in the Fire Safety team as the Claimant alleged or at all and denied specifically having said "bore off" to the Claimant or that he had been "hung out to dry".

295 We were referred to the content of the stress questionnaire completed on 6 May 2020 [p172] question 21

> *"Are there any significant concerns about bullying or harassment within the workplace",* answer *"No" "Not currently at station level, however this does not include previous incidents which LFB are already aware of."*
>
> And q 25 *"Is there a culture of respect and trust?"* answer *"y[es] Currently only at station/watch level"*

We are satisfied that the "*previous incidents"* were those matters which the Claimant had raised in his grievances before moving to Walthamstow and that on arriving at Walthamstow he stated he found the culture to be one of respect and trust.

296 In response to the Claimant's subsequent grievance, Mr Bannon sent an email to Mr Newman on 4 February 2021, [388] which confirms that Mr Bannon was aware that the Claimant had had a long period of time off work with work related stress before his transfer to Walthamstow. On 18 February 2021 he sent a further email [402] which was a complaint about the Claimant on the basis that the Claimant's accusations against him were spurious and vexatious, and direct retaliation for his having applied LFB policies and procedures by recording an informal discussion [in a Letter 1]. In his complaint Mr Bannon states that the Claimant had opened up to him in October 2020 about a number of issues including his mental health, which he suggested showed they had a good relationship at that point in time. He also asked that the Claimant's employment history and previous cases be taken into consideration as he felt there was a common narrative throughout; that the Claimant had made it clear to him that he had issues before, regarding disagreements with managerial processes and decisions, and made him aware of previous cases/tribunals that were ongoing.

297 The Claimant accepted in cross-examination that he had been contacted by Mr Bannon on an occasion when he was not on shift to provide some specialist advice on fire safety. We find this is consistent with Mr Bannon's evidence that he asked the Claimant for advice on fire safety and his comments on the stress risk assessment welcoming his knowledge [175]. We accept that Mr Bannon considered the Claimant's qualifications to be an asset to the extent that he asked the Claimant for his advice on fire safety issues and that if the Claimant had provided fire safety advice then Mr Bannon would have considered it, in addition to any other information that he had, in order to arrive at his decision.

298 We do not find that Mr Bannon perceived or considered the Claimant to have failed in Fire Safety.

10.3.4.1 – April 2020, on the Claimant's first day saying he had been "hung out to dry"

299 The Respondent submitted that the comment being "hung out to dry", while not being admitted, was not a suggestion that the Claimant himself had failed, rather that something unfair had happened to him, which does not support the Claimant being ridiculed. We find that the ordinary meaning of this remark is that someone has been scapegoated or abandoned. The Claimant understood it to be a reference to him having 'failed' at Fire Safety. We did not find that the phrase 'hung out to dry' makes sense in this context as ridiculing him or implying the Claimant had failed in the Fire Safety department. We have accepted Mr Bannon's evidence that he considered the Claimant's time in fire safety to be an asset. We find that he was aware, however, that immediately before the Claimant's transfer he had been off for a long period of work-related stress, which might reasonably indicate that the Claimant himself had not considered that time to be successful.

300 We find that the Claimant's account is more reliable than Mr Bannon's, in reaching our decision we have taken into account that we have rejected Mr Bannon's account of the 6 November meeting as being untruthful but also remind ourselves that credibility can be divisible. We reminded ourselves that the best approach is where possible to base factual findings on inferences drawn from documentary evidence and known or probable facts.

Conclusion

301 We find on the balance of probabilities that the remark was said. We do not find that it was made as a result of or for reasons connected to the Claimant's perceived failure in Fire Safety. For the reasons set out above, we have not found that Mr Bannon had that perception.

10.3.4.2 – On 11 August – did you know Kam has done a stint in fire safety?
10.3.4.3 On 11 August 2020, whilst undertaking Mandatory Fire Safety training in the main lecture room, the Claimant was participating and giving insight into the subject matter, when Mr Bannon interrupted stating "Have you done time in fire safety? Bore off" and then continued to laugh loudly

302 This statement is alleged to have been made at a training event for fire safety. Mr Bannon recalled that the Claimant contributed to the discussion at length. The Claimant accepted that he had things that he could and wished to contribute to that discussion due to his experience. The Claimant alleged Mr Bannon interrupted him whilst he was sharing

his knowledge. We accept that he may well have done so; it is possible that he did do this to move things on or to allow others to participate, something which is quite usual in a training event, this is not necessarily a negative reflection on the speaker.

Conclusion

303 We do not find this to be unfavourable treatment because of something arising in consequence of the Claimant's disabilities. We do not find that Mr Bannon was ridiculing the Claimant as he alleges, nor do we find any link between the Claimant's disabilities or any perceived failure in Fire Safety and this remark.

10.3.4.4 – Deliberately ignoring the Claimant's advice and continuously make fun out of the Claimant by asking him if he had ever been a fire safety officer or that he should consider going into fire safety

304 We are satisfied the remarks referred to are repeats of the ones we have addressed already and at 10.3.4.5 below, we do not find that Mr Bannon deliberately ignored the Claimant's advice. We find that on occasions he had sought out the Claimant's advice, this was accepted by the Claimant. We accept Mr Bannon's evidence that he would weigh the Claimant's advice along with other information available to him. We do not find that any occasion in which he may not have acted on the Claimant's advice was in any way related to the Claimant's dyslexia, anxiety or depression or any perceived failing in in Fire Safety.

10.3.4.5 – On 21 October, again making a joke in front of colleagues in a training session on fire safety checks

305 We find it was more likely than not that this was said: the Claimant refers to it in his earlier complaint as he does with the other comments. We accept that the Claimant felt, as he explained to us, he had a considerable amount of knowledge to contribute. However, we do not find that the comment was in reference to his perceived failure in Fire Safety, Mr Bannon not having that perception We find it more likely that it was a reflection of the fact that the Claimant had a considerable amount of knowledge to share and to move the discussion on to allow someone else to contribute.

10.3.5 – ***6 November Mr Bannon comment "I bet Kam has been sleeping for the past three hours***"

306 The Claimant alleges that this remark was reported to him by Kelly Miles. Mr Bannon denies saying it. We accept that the Claimant was told about this remark by Kelly Miles. We find that is consistent with his reference to it in their subsequent phone conversation, which the Claimant was recording, in the hope that she would confirm or repeat the remark. We find that it is unlikely Ms Miles would have told the Claimant this had been said if it had not. We are unable to rely on Mr Bannon's bare denial given our findings as to his credibility in respect of the 6 November meeting. We are satisfied on the balance of probability that it was likely that the remark was made. We also find that it was reported by Ms Miles in the context of Mr Bannon "having a go" at herself in particular [269 C's grievance; transcript of call between C and Kelly Miles pp787, 788,789].

307 The Claimant told the Tribunal that he believed this reference to sleeping was linked to an unfair perception of him as being lazy because he took longer to do things. It was not

suggested that the Claimant had ever been asleep inappropriately at work or had linked this to his dyslexia, anxiety or depression. The Claimant had reported in May 2020 that he was not having any issues with his sleep [see above: Stress risk assessment]. If, as the Claimant suggests, there was any link between this remark and the occasions in June and July where the Claimant had not been getting on with the task of completing inventories, we have not found that there was any link between those and the Claimant disabilities.

Conclusion

308 We are satisfied on the basis of our earlier findings that the link in Mr Bannon's mind was to the Claimant not prioritising the inventories, for instance having found him playing basketball instead of completing the inventories; we do not find this was something that he linked to the Claimant's dyslexia or anxiety or depression in any way.

Issue 10.3.6 **Mr Bannon enticed C to make a statement twice after the initial refusal from the Claimant, to which C again refused, after which Mr Bannon became aggressive and threatened C on 24 May 2020 when he raised his voice and stated "*you should give a statement otherwise imagine what will happen if Duncan goes into a job with one of the 'bucks' and they can injured or worse, it will be on your conscience*."**

10.3.*7 In or around July 2020 Mr Bannon stated the Respondent was not able to fully discipline Mr Shelley as a result of the Claimant not providing a statement and further stated that had Mr Shelley been disciplined and removed, then the Claimant would not have sustained the injury on 23 May.*

309 These issues relate to an incident on 23 May 2020 when Mr Shelley, against operational policy, entered a premises without waiting for his breathing apparatus partner. The Claimant spoke about this to Mr O'Neill on the same day and Mr O'Neill asked him to provide a statement setting out what had occurred. This was in line with the standard procedure. It was possible that this would have led to some sort of action being taken against Mr Shelley. Under the London Fire Brigade Health & Safety Policy [745], employees are under a duty to report safety related incidents and employees may be asked to assist with investigation of a safety related incident.

310 Mr Bannon was not on duty at the time of the incident but was told about it and the next evening. The Claimant stated that he was called in to the office by Mr Bannon and Mr O'Neill with Mr Bannon being insistent that the Claimant should provide a detailed statement about Firefighter Shelley's actions at the incident stating it was not the first time he had done something like this and it needed to be taken to discipline. The Claimant told us that he felt sick at the prospect and began to panic. The Claimant stated that he told them both he would not be comfortable giving a statement as someone who had just come back from long-term sick for mental illness and that the scrutiny from his watch members for giving such a statement would have a detrimental effect on his mental health. The Claimant told us that Station Officer O'Neill was understanding and sympathetic. However, he says Mr Bannon was more aggressive and on two subsequent occasions told him that he should make a statement saying, "imagine what would happen if Duncan Shelley goes on to a job with one of the bucks and they get injured or worse, it would be on your conscience". This he believed was unfair and discriminatory because he had explained the reason why he did not want to give a statement related to his mental health.

311 According to the Claimant Mr Bannon brought the matter up again in July 2020 and told him that if he had given a statement, he could have dealt with Firefighter Shelley through discipline and people would not now be looking into it asking questions. The Claimant believes that in fact Mr Shelley received a PDP and was put on a breathing apparatus refresher course. He asked why questions were being asked and Mr Bannon told him that questions were being asked from the outside and about why nothing was done immediately after FF Shelley's actions, otherwise, he would not have stayed on the run and later gone on another job where the Claimant got injured. The Claimant suggested these questions did not make sense as the incident in which he was injured occurred immediately after the breathing apparatus incident and there was no opportunity for FF Shelly to have been taken off the run in between the two. We find that if those questions were being raised, it was by third parties who were not aware of the actual timeframe involved and the proximity of the two runs.

312 Mr Bannon told us that he was not present during the initial conversation with Mr O'Neill on 23 May 2020. He denied putting pressure on the Claimant to give a statement or becoming angry and threatening when he refused. However, he did consider it was entirely appropriate to ask the Claimant to provide a statement but that he understood that the Claimant did not want to put anything in writing.

313 We are satisfied on the balance of probabilities that it was likely that Mr Bannon was present at a meeting with the Claimant and Mr O'Neill on 24 May 2020, the night after the incident. We find it likely that he did say the words to the effect of 'it was not the first time he had done something like this and it needed to be taken to discipline'. We find that it is consistent with Mr Bannon's belief that it was reasonable for the Claimant to be asked to give a statement for the reason he referred to, namely, to allow for performance issues to be monitored and addressed, as provided for in the health and safety policy in order to protect the health and safety of other colleagues. We do not find that to be an unreasonable expectation. It is likely that a manager would wish to encourage his line reports to provide such a statement in similar circumstances. Having carefully considered the evidence, we do not find that Mr Bannon was aggressive or threatening towards the Claimant in May 2020. The alleged conversation took place at a time when the Claimant had reported a supportive and respectful work environment at Walthamstow and was also taking place in front of Mr O'Neill.

314 Mr Bannon also denied telling the Claimant in July 2020 that the Brigade had not been able to fully discipline FF Shelley because he had failed to provide a statement or saying that the Claimant 's injury would not have occurred if FF Shelley had been removed from duty. Mr Bannon did recall explaining to the Claimant that a safety related incident had occurred and that the Brigade was obliged to investigate the matter to find out what had happened and if any recommendations needed to be learned which was why the Claimant's assistance had been requested.

315 We accept that Mr Bannon raised the provision of a statement again in July 2020, we find he encouraged the Claimant to provide one but do not find that the words he is alleged to have used were objectively aggressive or threatening or put the Claimant under unreasonable pressure.

Conclusion

316 We are satisfied that the something arising contended for in this instance is in the Claimant's mind and not in the alleged discriminator's (i.e. Mr Bannon). We do not find that his treatment of the Claimant (in so far as he requested or repeated the request for a statement, or pointed out the repercussions of not providing one) was consciously or unconsciously influenced by the something arising relied upon, namely the Claimant's mental health [see C's closing submissions paras 109 and 110]. We have considered that there may be several links in the chain of causation but are satisfied that the something arising relied upon by the Claimant was not a factor in Mr Bannon's treatment of him.

317 The Claimant relies on his explanation given in May for not providing a statement as a protected act and alleges that Mr Bannon's attitude towards him and treatment of him changed after he refused to give the statement, we address our findings on this below under issue 13 victimisation.

318 For the sake of completeness, we went on to consider the issue at 10.5 – *has R shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim.*

319 The Respondent contended that the allegation as it understood it at the time the list of issues was drafted, the legitimate aim pursued in respect of 10.3.1 to 10.3.3 was the need to provide appropriate feedback in order to monitor and review performance.

320 In respect of 10.3.6 and 10.3 .7 we are satisfied that Mr Bannon was pursuing the aim of ensuring that employees comply with their duties under the health and safety policy by providing appropriate feedback on their performance and find that this falls within the compass of the legitimate relied upon. We accept that a statement from another officer involved at a relevant incident would allow any shortcomings in Firefighter Shelley's performance to be investigated and reviewed. We find that when the Claimant explained that it made him anxious, Mr O'Neill did not pursue it any further. We find that Mr Bannon subsequently pointed out the consequences of not being able to investigate Mr Shelley's conduct but did not put unreasonable pressure on the Claimant to provide a statement. The Claimant was not required to provide a statement. Mr Bannon informed the Claimant that Mr Shelley had been placed on a PDP, he also placed Mr Shelly on a breathing apparatus course. We find that the Respondent acted proportionately in the circumstances.

Issue 11 – Harassment related to disability.

Issue 11.2.1 Applying unreasonable pressure to the Claimant following his disclosure that he could not take part in a disciplinary process against a colleague due to his disability in May 2020 and July 2020.

This arises from the same facts that we have dealt with above. The sub issues 11.2.1.2 and 11.2.1.2 being the same allegations against Mr Bannon for May and July 2020 and our findings of fact are set out above.

321 In considering whether this amounted to harassment, we found that it was not Mr Bannon's purpose or intention to violate the Claimant's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for him. We asked ourselves whether that was the reasonable effect of his words and actions. In considering

this question we took into account the Claimant's perception; he told us that it made him feel anxious and he found the actions of Mr Bannon to be hostile and/or intimidating.

Conclusion

322 We accept that someone in the Claimant's position would be anxious to some degree if, having recently joined the team, they were being asked to provide a statement in respect of one of their new colleagues. We have found that Mr Bannon did not pursue the matter beyond July when he told the Claimant that he had placed Mr Shelley on a PDP. We do not find that it was objectively reasonable for the Claimant to find his conduct to cross the threshold of being hostile and/or intimidating in the circumstances.

323 We also considered whether Mr Bannon's treatment of the Claimant in this respect was related to his disabilities, and we have not found that it was. We bear in mind that "related to" is potentially a very broad test. We are satisfied that there is no proper basis upon which we could infer that either the making of the request or the manner in which it was made (referring the Claimant to the potential consequences of Mr Shelley's conduct) were related to the Claimant's disabilities.

Issue 11.2.2 – Being told by Mr Bannon twice between April and November 2020 that he would take longer than his colleagues to complete the inventory form

324 We rely on our previous findings of fact that this was not related to the Claimant's disabilities and in respect of 11.2.3, 11.2.4 which we have not found to be related to Claimant's disabilities and nor do we find it to be objectively reasonable for the Claimant to find Mr Bannon's actions to be harassment.

Issue 11.2.4.5 – On 6 October 2020, the Claimant was invited to an informal meeting with Mr Bannon and Mr Beecham. During this meeting the Claimant alleges Mr Bannon repeatedly used profanities to intimidate and harass him

325 On 6 October 2020 Mr Bannon invited the Claimant to a meeting to discuss an incident that had occurred a few days earlier; Rob Hearne, a station officer on White Watch who was on overtime covering Green Watch at the time, told Mr Bannon that the Claimant had asked Justina Olowo if she would mind doing the inventory for him. Station Officer Hearne did not feel this was good practice and so brought it to Mr Bannon's attention. Justina Olowo had completed a night shift and was 'hanging on' (i.e. doing overtime, staying on past the end of her shift to provide cover) and it was customary not to ask someone who was hanging on to carry out inventory; it was expected that a member of the relevant Watch currently on duty should do it.

326 Following the meeting on 6 October 2020 the Claimant sent himself a note on his iPhone [page 232] setting out his account of the meeting and added a subsequent note on 7 October 2020 with additional information about the meeting. The account he gave at the time was that there was a meeting with Mr Bannon and Dave Beecham in the Station Officer's room and that Matt Bannon spoke to him rudely and swore whilst in discussions and indirectly threatened to discipline him for not signing off the tracked items when Justina was hanging on from last tour. The Claimant explained that he did not ask her to sign it off and asked her why she had done it and she told him that she done the tracked items the night before and they had not gone out during the night, so she signed it off. The Claimant

says he took her signing off the inventory at face value and did not double check it. He understood that he would not have any good reason for doubting her and he had to take her signing it off at face value.

327 In his grievance dated 23 November 2020, [pages 272 to 273], the Claimant described Mr Bannon "constantly using profanity". Mr Bannon denies using swear words. He told us he tried to be professional during meetings with staff and he did not recall swearing in this meeting nor being rude or threatening him with disciplinary action as the Claimant claimed. We have heard an audio recording (in relation to separate events) in which Shelley Miles described Mr Bannon as swearing and being angry at the station. We accept it is likely that he did use swear words on occasion. As far as the Claimant makes a general complaint about the use of profanities in the station, we find, on the balance of probabilities, that they were likely to be used.

328 The allegation before us is that the use of swear words in that meeting was in order to intimidate and harass the Claimant for a reason related to his disability. The Claimant's account of the meeting on 6 October 2020 was that he was told that visitors, or those hanging on, should not be required to carry out substantive work when there are members of the scheduled watch who can do it; and that he was told he should "f--- them off to the watch room".

329 We considered whether this was related to the Claimant's disabilities, we do not find that it was. We accept that the Claimant found the meeting to be uncomfortable, but we find no evidence from which we could infer any link between the use of swear words and the Claimant's disabilities.

Conclusion

330 We do not find the use of a swear word by Mr Bannon was related to the Claimant's (or anyone's) disabilities. We therefore have not upheld this complaint

Issue 11.2.4.6 and 11.2.4.7

331 We rely on our earlier findings of fact in relation to the comments made on 21 October 2020, "have you done a stint in fire safety Kam?" and 6 November 2020, that" Kam has been sleeping for the past three hours". We have not found there to be any link between those remarks and the Claimant's disabilities or that they were related to his disabilities.

Breach of the duty to make reasonable adjustments.

PCP1: requiring employees to learn policies in a short timescale

332 This complaint relates to the period in September and October 2020 during which the Claimant was learning new policies and which overlaps with his explanation for not providing the further information in support of his Due to Service application in respect of the incident in May 2020 in which he was injured. The Respondent submits that the Claimant has not identified any policies and any timescales period. It was not disputed that the Claimant and others were required to undertake mandatory training and regular update training during that period. We were referred to the diary entries which show a number of entries for training and mandatory training. The Claimant did not provide any evidence on the specific policies

or timeframes or any difficulties that he was put to by those other than his complaint about the timeframe for the Respondent to the request for further information in support of his application for Due to Service.

333 Mr Bannon accepted that new policies came out during this period and that all staff would have been required to make themselves familiar with policies relating to fire safety checks [w/s paragraph 41(c)]. He states that he did not give the Claimant any deadline for doing this. He acknowledged that audits were undertaken from time to time to check that staff were aware of certain policies, but he did not carry out the audits and that at no time did the Claimant let him know that he was having any difficulty with learning any new policy or policies. The new fire safety training package was sent to all staff around the time of October 2020; it was an online training package consisting of four modules and staff were required to read the modules and take a test to confirm their understanding of the training. The Claimant completed module 4 on 15 October [see page 781] and Mr Bannon believes he passed the test. If the Claimant had not passed Mr Bannon would have received a notification email.

334 The Claimant did not provide any evidence of being under pressure to complete the learning of policies within a short timeframe or of having been chased to do so. He did provide evidence of being chased for the information in support of his due to service application [236]. We have addressed that above. The disadvantage contended for appears to be an amalgamation of this PCP contended for and a separate matter, i.e. being chased for a response to Mr Bannon's email.

335 We find there was a PCP of learning and updating on new policies. However, we have not been presented with evidence to support the contention that the PCP included that it be done within a short timescale. We do not find the PCP contended for was applied.

336 If he had been required to complete the training within a short timescale it is possible that the Claimant could have found this placed him at a substantial disadvantage however the evidence before us is that the Claimant successfully completed each of the training modules and did not request or require more time for those. The disadvantage the Claimant points to is being chased for a response to Mr Bannon's email requesting more information about his DTS application.

337 The reasonable adjustments contended for are providing the Claimant with more time and providing hm with assistance. However, the more time is a reference to the response to the DTS application. We are satisfied that this PCP is not made out on the facts. It is an amalgamation of two separate matters. We have set out our findings about the time given to the Claimant to provide the information and the chasing email above. We find that the Claimant was able to provide a one and a half page account of the incident with in one day of the incident [193-194] and was given 3 and half weeks to respond to the request for further information and then a further 3 days and provided the further information within the timeframe provided.

338 We find that the task itself was to provide some additional details about the event which had caused the Claimant's injury. There was no suggestion from the Claimant that he required more time to complete that task. We have been invited to infer a substantial disadvantage to the Claimant because he had dyslexia however, we find no evidence that on this occasion he was put to a substantial disadvantage. He provided the information as

requested by the deadline given in the email chasing him for it. We find that the Claimant was upset that a reference had been made to him having been given three weeks already, when he had not had a response to his original application for four months and he felt that this was unfair. We do not find that his sense of unfairness is evidence of the Claimant having being placed at substantial disadvantage compared to someone without his disability.

Conclusion

339 We do not find that this complaint has been made out.

PCP2: requiring employees to provide a witness statement and participate in disciplinary proceedings against colleagues

340 We are satisfied that there was a general expectation that employees would provide a statement and participate in disciplinary proceedings against colleagues in accordance with the health and safety policy which we have referred to above. However, we found as a fact the Claimant was not required to provide a witness statement, nor was he required to take part in a disciplinary on this or any occasion. We have found that the request for a statement was not pursued. If there was a PCP applied generally, it was not applied on this occasion to the Claimant. The reasonable adjustment contended for at 12.11.1 was not to seek to force employees to provide a witness statement and participate in disciplinary proceedings against a colleague. We are satisfied that the Claimant was not forced to provide a witness statement and nor was he forced to participate in disciplinary proceedings against a colleague. We find that the reason that the request for a witness statement was not pursued was because he informed his managers that to do so was causing him anxiety.

Victimisation

Protected act 1: declining to provide a statement against Mr Shelley

341 We have found that the Claimant told Mr O'Neill that the reason he did not want to provide a statement was related to his mental health. We do not find that he said to either Mr Bannon or Mr O'Neill that being required to provide a statement was or would constitute an act of discrimination in the circumstances, or that he made any reference to a potential breach or contravention of the Equality Act 2010. We find that what the Claimant was saying at the time was that being asked to give a statement would put him in a vulnerable position and make him feel anxious, pointing out that he already felt vulnerable having returned from ill-health absence due to mental health difficulties. Having heard Mr Bannon's evidence we are satisfied that at the relevant time he did not understand the Claimant to be raising a complaint of or making an allegation that requiring him to provide a statement would amount to a contravention of the Equality Act 2010. We do not find that declining to provide a statement for the reason he gave amounts to a protected act.

342 In any event, we have found that in respect of the detriments relied on at 13.2.1 and 13.2.2, Mr Bannon acted in pursuance of his belief that it would be, in the ordinary course of events, an employee's duty to provide such a statement under the Health & Safety Policy. We do not find those acts were done because of, or were influenced by, any complaint that

it might have been perceived the Claimant was making by reference to or under the Equality Act.

Protected act 2 – Grievance dated 23 March 2020

343 The Claimant relies on his grievance dated 23 March 2020 [bundle 1 at 2113] sent to the Respondent on 24 March 2020 [1/2114] in respect of a failure to provide a workplace stress risk assessment and to provide appropriate support as per the agreed reasonable adjustments. We are that the Respondent has rightly conceded this is a protected act. The grievance was sent to Station Commander Hearne who was based at Woodford Fire Station.

344 The Claimant asserts that Mr Bannon knew about this grievance because he had informed him about it when he joined the Green Watch in Walthamstow in April 2020. Mr Bannon says he did not know about the grievance or the contents of the grievance because it related to a period of time before he had any involvement with the Claimant. Mr Bannon accepted that he knew the Claimant had dyslexia and mental health issues having had a long period off work related stress absence and had been provided with a list of recommended reasonable adjustments for him. There is a direct conflict of evidence as to whether Mr Bannon knew about the content of the grievance.

345 The Respondent submitted that it would be wholly at odds with the Claimant's behaviour and apparent beliefs before April 2020 about being marked and victimised if people knew about his grievances and not wanting them referred to the Respondent for instance if he had told Mr Bannon about his grievance and many more of his other complaints at the outset of their working relationship.

346 Mr Bannon's denial of knowledge about the Claimant's previous complaints is not consistent with his email on 18 February 2021 in which he complains about the Claimant to Nicholas or Nick Newman at the top of page 413 he states:

> *"I would like to request that FF Hussain's employment history and previous cases to be taken into consideration as I feel there is a common motif throughout. He has made it clear to me that he has had issues before regarding disagreements with managerial processes and decisions and made me aware of previous cases/tribunals that are ongoing."*

347 Mr Bannon accepts [paragraphs 6 to 8 of his witness statement] that on the Claimant's posting to Walthamstow Fire Station, they had a meeting on 4 April 2020 at which his reasonable adjustments were discussed. We have referred above to the workplace stress risk assessment completed following the Claimant's transfer to Walthamstow, in which he refers to prior issues (albeit not specifying what those were). The workplace stress questionnaire was completed on 4 April 2020 and on 6 May 2020 Matthew Bannon was copied into the email from Station Officer O'Neill to the Claimant attaching the questionnaire. Reference was made to the delay in providing support by Learning Support. We are satisfied that given that his grievance on 23 March 2020 was a complaint in relation to the failure to carry out a workplace stress risk assessment on his return to work on 12 August 2019 (following a long-term sickness absence from anxiety and depression caused by work-related stress) and that this resulted in a failure to provide appropriate support as per the agreed reasonable adjustments to return to operational role, that it is likely that the complaint

of a previous failure to provide reasonable adjustments and also carry out a workplace risk assessment was discussed by the Claimant with Mr Bannon.

348 We have found that the Claimant had a good working relationship with Mr Bannon at the outset of his posting at Walthamstow and we find that it is likely that the Claimant told Mr Bannon about his complaint raised as a result of the failure to provide a workplace stress risk assessment.

Detriments

349 The detriments relied on are the incidents in April, August and October which have already been addressed and further incidents in June and July, those at 13.4.1.2, 13.4.1.3. The Respondent submits that the Claimant had failed to provide any details of the allegations in June and July and those claims must fail. We had no direct written submissions on this point from the Claimant. The Claimant had acknowledged no detail had been provided in respect of those.

350 The overarching allegation at 13.4.1 is that Matt Bannon regularly ridiculed the Claimant in the period from May 2020 onwards regarding his perceived failure in the fire safety role as a result of his disability.

351 We have set out above our findings in relation to the comments that were made by Mr Bannon and the motive behind those comments. We do not find that those were related in Mr Bannon's mind to the Claimant's disabilities nor that he perceived the Claimant to have failed in the Fire Safety role.

352 We considered whether we could infer that Mr Bannon had in mind consciously or subconsciously the Claimant's protected act when he made those remarks. We find that on the Claimant's transfer to Walthamstow Mr Bannon and Mr O'Neill took steps to carry out a workplace stress risk assessment [167-175] and referred to the need to sort out with HR the access to work support and equipment the Calin needed for his dyslexia [175]. The Claimant copied both Mr O'Neill and Mr Bannon into his request for his C-Pen and Dictaphone which he sent to Learning Support on 6 May 2020 [184] the same day he received a copy of the completed questionnaire. Mr Bannon considered hat he had a positive working relationship with the Claimant up until November 2020 and points to his contention that the Claimant opened up to him in October 2020 when he saw the Claimant was distressed at work [p448] in support of this. We find this account is consistent with Mr Bannon's actions on 22 October 2020 in referring the Claimant to the Counselling and trauma team and in contacting the duty counsellor asking her to contact the Claimant , which he confirmed in his email to Claimant [243], he concludes his email with the following sentence:

> *"I want you to be reassured that you have my full support with your recovery. If you ever do need to talk my door is always open."*

353 We do not find that the fact that the Claimant had made a prior complaint about either Learning Support or another line manager in a different division not having carried out a stress risk assessment influenced Mr Bannon's treatment of the Claimant in the relevant period, that is up to 21 October 2020. We do not find any cogent evidence from which we

can infer that he was in any way influenced by the protected act [protected act 2], when making those remarks.

Conclusion

354 We do not find the victimisation complaint to be made out.

Direct discrimination and race and religion

355 The acts of less favourable treatment relied on are the same for the allegations of race discrimination and discrimination on grounds of religious belief and are those are set out at issue 16 in the updated list of issues.

16.1 On 6 November 2020, Mr Bannon informed the Claimant during a one-to-one meeting that a letter 1 was to be issued to him retrospectively due to him not wearing a seatbelt on 2 November 2020. The Claimant compared himself to Mr Bannon to Dave Beecham, Lee Baker, Ciara Breen and Rooney Martin.

356 The letter 1 to which this issue relates is in respect of failing to wear a seatbelt whilst on the appliance. We find that in October 2020 Mr Bannon received a request from Station Commander Martin Knight, via the Watch Officer to ensure that Firefighters were wearing their seatbelts correctly. The *London Fire Brigade policy 2110 on Crew Safety on Appliances and Other Vehicles*, states at section 3 [81]

> "*staff are to wear seatbelts at all times when travelling in a moving vehicle and seatbelts must be worn by all personnel travelling in Brigade vehicles when attending or returning from operational incidents and when using Brigade vehicles for non-operational purposes."*

It had become clear that staff on Green Watch and other watches were not complying with this policy and were travelling in vehicles without their seatbelts on.

357 As a result of the request from Station Commander Knight, Mr Bannon held an informal meeting in or around mid-October 2020 with Green Watch and explained that this practice was unacceptable; we accept that he told the watch that he was not going to be taking action retrospectively in respect of incidents that had occurred prior to the meeting, but in future appropriate action would be taken against any member of staff who did not comply with regard to wearing seatbelts. Mr Bannon told us that unfortunately there were further instances from staff on Green Watch not wearing their seatbelts correctly. He held a second informal meeting with Green Watch around the end of October, at which he recalls the Claimant being present. At that that meeting Mr Bannon says he made it clear that a line was being drawn in the sand and the behaviour must stop and informed those present that a Letter 1 would be given to individuals who failed to comply with the requirement to wear their seatbelts correctly in future.

358 A letter 1 is a record of an informal conversation. The purpose of the letter 1 is deemed to be to assist with the individual's development in their role by setting out the standard that is expected of them. It has been the consistent evidence of the Respondent's

witnesses that this is not a disciplinary warning and does not form part of their disciplinary record although it is saved to the electronic personal record, the EPR.

359 The Claimant gave evidence that on 5 October, a crew member had been seated in the appliance with the seatbelt plugged in i.e. not wearing the seatbelt and that he was informed by Firefighter Joslin that Station Commander Knight had noted the seatbelt was done up, although the seat was empty, and that from the position of the seat they had thought it was the Claimant. The Claimant told us that it was not in fact him on that occasion, it was Lee Baker, who had not been wearing his seatbelt but had left it plugged in on the return to the station. The appliance had required some repairs and an engineer had been called and carried out the repairs. Station Commander Knight had carried out a spot check the following morning and concluded that since the appliance had not been called out during the night, the seatbelt had been left plugged in by a Green Watch member. The Claimant says that when Station Commander Martin brought this to Mr Bannon's attention, Mr Bannon made up a weak excuse to cover for Firefighter Baker to avoid any consequences for him by saying that the engineer must have plugged it in the night before. The Claimant's view was that there was no reason why the engineer would have plugged in one seatbelt so Mr Bannon then wrongly informed Station Commander Knight there had been a defect reported on the seatbelt which is why the engineer then plugged it in. The Claimant believed this to be incorrect as there had been no defect reported regarding the seatbelt and believed that Mr Bannon had made that up to cover for Lee Baker. The Claimant believed that this was capable of verification very simply by checking the defect register or the CCTV in the vehicle. The Claimant says that it was after this incident on 5 October 2020 that Mr Bannon first spoke about seatbelts with the Claimant being present.

360 The Claimant also told the Tribunal that Firefighters Caira Breen, Lee Baker and Rooney Martin were all picked up in respect of seatbelts around that time, but all avoided a Letter 1 being issued even though, for Lee Baker, he believed it was twice in two shifts.

361 On the 2 November 2020, Mr Bannon was informed by Station Commander Knight that the Claimant had not worn his seatbelt correctly whilst in an appliance when the appliance was reversing into the bay. The seatbelt was plugged in, but the Claimant sat on the belt instead of wearing it. Mr Bannon was aware that some crew members plugged the seatbelt in rather than wear them. Plugging it in meant that the seatbelt warning alarm did not go off.

362 The Claimant accepted that he had not been wearing his seatbelt and he had apologised to Station Commander Knight. The Claimant also contacted Mr Bannon and apologised for not wearing his seatbelt. Mr Bannon says he noted the Claimant's apology but told him that he was not happy because he had made it clear in the informal meetings that staff were required to wear their seatbelts correctly and had made clear the consequences of not wearing a seatbelt would be a Letter 1. Mr Bannon told us that he did not pursue this further on that day because it was at the end of a duty before a four-day break and he decided to speak to the Claimant again about the incident when he returned to duty on 6 November 2020. Mr Bannon denies saying to the Claimant that he was not going to take any action when he spoke to him about it on 2 November. He believed had made it very clear in the informal meeting in October that any further contraventions of the policy would lead to action and he would not have told the Claimant no action would be taken, as that would completely undermine what he had said to the whole Green Watch i.e. that he had drawn a line in the sand and staff were not to contravene the policy in future.

363 Mr Bannon met with the Claimant on 6 November 2020. He told us he felt that there was little option but to issue the Claimant with a Letter 1 recording the discussion. He had drafted the Letter 1 in advance of the meeting to give himself a template as to what he needed to say. He described the Claimant as becoming defensive and agitated, asking for a formal meeting and asking why he had been singled out for a Letter 1. Mr Bannon explained that the Claimant was the only person who had been caught not wearing his seatbelt since the date of the second informal meeting with Green Watch. Mr Bannon proceeded to discuss the Letter 1 with the Claimant. The Claimant was clearly unhappy about Mr Bannon's approach.

364 The Claimant accepts that on 2 November 2020, Station Commander Knight found a seatbelt plugged in and realised that it was his. He accepts that had then approached Station Commander Knight straightaway to apologise and then also apologised to Matt Bannon. The Claimant told us that he informed Mr Bannon that he had spoken to Station Commander Knight who had told him not to let it happen again, and that Mr Bannon had responded:

> "*Ok that's fine don't let it happen again. I don't like to be pulled up by the Station Commander for these things. What did the Station Commander say*?"

In response to which the Claimant told Mr Bannon that the Station Commander had said: "*Don't let it happen again*", after which nothing further was said.

365 On 6 November, the Claimant recalls all members of the Green Watch were sat around the mess table at about 10:30 and Matt Bannon addressed the Watch about people either not wearing seatbelts on the way to shouts or not wearing them on the way back and referred to members plugging the seatbelts in to silence the seatbelts alarm; he stated that he had had to speak to the Watch a number of time and that if this happened again he would have to take formal action. He referred to, amongst other incidents, the incident on 2 November when it had been the Claimant, but he did not mention the Claimant or anyone else by name. They were shortly thereafter joined by Station Commander Knight and the conversation about the seatbelts arose once again. Station Commander Knight stated he had brought the issue to the attention of all the Watch Officers on all Watches about having found seatbelts plugged in whilst the appliance was at a station a number of times now. He explained how it is policy, and he would like to avoid having to tell members of family or loved ones that they had died because the appliance was involved in an accident and they were not wearing a seatbelt. The Claimant says that he took this on board and that at the end of this conversation Station Commander Knight stated that because the issue had been discussed before, anyone now found not to be wearing a seatbelt or wearing one incorrectly would be dealt with formally. The Claimant told us that this meant the entire Watch, including himself, understood that a line had now been drawn and this would not be tolerated moving forward from that day.

366 Later on, that day, at about 18:15, the Claimant was summoned by Mr Bannon to his office. The Claimant took his digital recorder with him because one of the adjustments that had been outlined in the long list of adjustments provided by Ms Ogunbambi was that he be allowed to record meetings with a digital recorder; he did not remind or inform Mr Bannon that he was using a recorder.

367 The Claimant disputed that he should receive a Letter 1 on that occasion. He believed the line in the sand had been drawn by Station Commander Knight at the meeting earlier that day, i.e. 6 November, and that because he had transgressed the policy prior to that meeting, it was unfair and unwarranted to provide him with a Letter 1 retrospectively.

368 The transcript of the Claimant's recording of that meeting was in the bundle at pages 731 to 734. We have carefully considered the evidence of Mr Bannon and the Claimant about what took place at that meeting and also the transcript of the recording which has been put before us, the contents of the transcript have not been disputed. We have also listened to the audio file of the recording. Having done so we are satisfied, that the transcript is an accurate transcription of what was said at the meeting.

369 During the course of the discussion the Claimant challenged whether anyone else on their watch had been issued with a letter 1, Mr Bannon accepted they had not. The Claimant again asked whether anyone else had been given a letter 1 when the Station Commander had seen seatbelts were plugged in. Mr Bannon reiterated that the Station Commander had not come down to spot check since he had had that previous discussion, the only time he had done that was the last tour and he was acting on what happened on the last tour. Mr Bannon says to the Claimant: "*You are the first person that has been caught by Martin*" which the Claimant disputed. The Claimant pointed out that Lee had also been caught out. Mr Bannon came back to the conversations he was having with Mr Knight and how it was his job to take action, that he was basically having Mr Knight telling him it was a problem.

370 We find that it is clear that the Claimant made plain that he did not agree with the Letter 1 and considered that he should not have received one when others had not. We find that Mr Bannon reiterated that he had spoken to the watch before, he said to the watch that he had a big discussion about it and that people were still contravening the policy, and it was the Claimant who had been caught. Mr Bannon told the Claimant that he understood the Claimant was apologetic, but he also needed to cover himself and a line had [already] been drawn.

371 We are satisfied that Mr Bannon did not know that he was being recorded. We find from the content of his conversation with the Claimant that Mr Bannon considered that the Claimant had been given the same warning as the rest of the members of the Green Watch; we find that he pointed to the fact that the Station Commander had found the Claimant's seatbelt plugged in, and that Mr Bannon was expected to take action and clamp down on that behaviour to ensure that it did not continue. He explained that the Claimant was the first one who had been caught after the conversation [with the Watch] which was unfortunate, but that Station Commander Knight had made plain to not only Mr Bannon, but to the Watch, that he expected action to be taken if it carried on happening. The difference between the Claimant's situation and the other members of the Watch was that they had not been caught by the Station Commander after a clear line had been drawn.

372 The Claimant disputes when the line was drawn and whether he had contravened the rule after the line had been drawn, or should be given another chance. However, we are satisfied that Mr Bannon genuinely believed that the Claimant had been told by him and by Mr Knight before 2 November that the policy had to be observed. We accept that he believed a clear instruction had been given that the practice of not wearing seatbelts had to cease. We also accept that what he stated was consistent with him holding a genuine belief that should he fail to take action his authority and the line being drawn in respect of the

practice would be undermined. The action he was taking was to record an informal discussion, in a Letter 1, to make clear that this would not be allowed to continue.

373 Having heard the content of the recording and considered the transcript and Mr Bannon's evidence we are satisfied that the reason Mr Bannon decided to issue the Claimant with a Letter 1 was because the Claimant's seatbelt had been found to have been plugged in when the Station Commander carried out a spot check; and that this was after the Station Commander had made plain and Mr Bannon had communicated to the Watch that this should not continue. We are satisfied that Mr Bannon genuinely considered that the line being drawn had been discussed in October and that this was a further incident in November, he considered this was a repeat of previous discussions at which the Claimant had been present for at least one, where it had been made plain that this practice should not continue.

374 We find that Mr Bannon believed that the Claimant should have understood that a line had been drawn in October. The Claimant was found to have contravened the policy as a result of the check by the Station Commander. We accept that Mr Bannon believed the Claimant had had the same opportunity as the rest of Watch to know that this would not be tolerated any longer. We do not find that he was singling him out unfairly,

375 The Claimant pointed to a number of comparators. We were told, and it was not disputed, that two of those comparators were on a different Watch and Mr Bannon had no managerial responsibility for those firefighters. We note that the Claimant's own evidence is that those comparators contravened the policy in or before October and that is the same with Mr Baker. The Claimant points to Mr Bannon making excuses for Mr Baker which he did not do for the Claimant.

376 We find that the material circumstances of the Claimant and Mr Baker are not the same. Mr Bannon did not issue either Mr Baker or the Claimant a Letter 1 in October. He did not take any informal action either against the Claimant or Mr Baker or any other firefighters until November. We are satisfied that the reason for the difference in treatment is that Mr Bannon believed that he had made clear to the entire watch that a line had been drawn at the second meeting in October and that at the 2 November meeting he was reiterating that was the position. We accept that his view was that if he did not take any action in respect of the contravention that occurred in November, he would then be at risk of criticism from Mr Knight and of losing his authority with the Watch who would no longer believe that he would be serious about enforcing the policy on that issue. We do not find the Claimant to be correct to say the line was drawn in the sand on 2 November.

Conclusion

377 We are satisfied Mr Bannon believed that the watch was aware the line had been drawn in October and that is the reason for his treatment being different in November to how he had treated the people on his Watch, including the Claimant who had been found to contravene the policy prior to November. We do not find that the Claimant's race or his religion had any influence on Mr Bannon's decision.

Issue 16.2 – In July 2020, the Claimant was verbally threatened by Mr Bannon with disciplinary action for not sterilising his face mask. The comparator again is leading firefighter Dave Beecham

378 The Claimant accepted that all firefighters were required to sterilise their breathing apparatus after each use. The Respondent considered this was particularly important in May 2020, given the COVID 19 pandemic was by then underway. The Respondent's case was that all staff were therefore routinely reminded of the importance of sterilising their apparatus.

379 The Claimant describes there being an isolated incident in July 2020 of him forgetting to sterilise his facemask. He said this was due to him feeling down on that day, which was the anniversary of his son's death, as he was remembering his son's death a few years before. Mr Bannon came on to the fire appliance and asked*: "Have you sterilised your facemask?"* to which the Claimant replied: *"No sorry I forgot*" and then says he broke down crying. Mr Bannon, he says, took him to his office and the Claimant explained to him the situation about his son's passing.

380 The Claimant alleges that later that day Mr Bannon called him into his office and threatened him with disciplinary action if he did not sterilise his facemask in future; even though it was only one occasion and he had made him aware of the circumstances that had led him to forget on this one occasion. Mr Bannon denies threatening the Claimant with disciplinary action in respect of sterilising facemasks.

381 The Claimant compares himself to other members of the Watch who he says were repeatedly failing to sterilise their facemasks. He points to the transcript of the meeting of 6 November which he says confirms Mr Bannon was aware of this.

382 In the meeting [733] Mr Bannon compared the situation with seatbelts to the situation with the facemasks saying:

> *"it's the same as the face mask coz no-one's listening about the face masks. It'll get to a point where Martin will come in and do a check and that's it."*

383 We find that on around 19 May 2020, Mr Bannon received an email from the London Fire Brigade's communication team, which was sent to all operational employees and contain guidance relating to the pandemic. It specifically required staff to sterilise their breathing apparatus facemasks after each use. Mr Bannon recalls the Claimant telling him that he thought this was a waste of time and Mr Bannon impressed on him the importance of complying with the guidelines. He did not issue the Claimant with a warning or threaten him with disciplinary action. Mr Bannon says that he also spoke to Leading Firefighter Beecham about the importance of him complying with the guidance relating to sterilising facemasks as he had done with the Claimant.

384 Mr Bannon told us that he did prompt Mr Beecham to sterilise his breathing apparatus when he observed that he had not done so, but he did not do this in front of the Claimant. He told us it is not his practice to have that type of conversation in front of the Watch but rather to have it in private. He was aware that it was new guidance and he did consider it appropriate to give people an opportunity to comply, by speaking to them about non-compliance, in the same way that he had spoken to the Claimant. We accept that

Mr Bannon's practice was to speak to Firefighters individually if he saw them contravening the policy, and not to discuss that in front of the whole Watch. This is consistent with what he did with the Claimant. We accept that it is likely he would have done the same with Mr Beecham if he saw him contravening the breathing apparatus policy, that is speak to him about it in private.

385 The Claimant told us that on 6 November 2020, after his meeting with Mr Bannon about the seatbelt and Letter 1, they emerged from the meeting to see Mr Beecham in circumstances where it must have been obvious to Mr Bannon that Mr Beecham had not washed or sterilise his breathing apparatus. Mr Bannon told us that he was not directly aware on 6 November whether Mr Beecham had or had not sterilised his facemask. We have found, based on the recording that at the end of their meeting Mr Bannon asked the Claimant to show Kelly Miles into his office. We accept that he had just left a tense meeting in which the Claimant had become upset and his focus may not have been on Mr Beecham at the time in question. On the evidence before us we find that the Claimant has made an assumption about what Mr Bannon saw or was aware of in respect of what Mr Beecham had or had not done on 6 November 2020 and also about what he may or may not have done on other occasions.

Conclusion

386 We do not find this to be evidence of Mr Bannon singling the Claimant out for less favourable treatment or treating Mr Beecham more favourably. We do not find this allegation is made out on the evidence.

Issue 16.3 – Failing to properly investigate the Claimant's complaints on 23 November 2020 and 16 March 2021 about Mr Bannon breaching the Respondent's policy [252] between April to 6 November 2020 when relieving other officers early and himself from duty after the latest cut-off time that the policy permits and not carrying out safety checks immediately and allocated breathing apparatus set on a regular basis – hypothetical comparator

Issue 16.5 – Failure to address the Claimant's grievance adequately or in a timely manner

387 These two allegations are linked and we deal with them together below.

388 On 23 November 2020, the Claimant submitted a grievance via an email to Catherine Gibbs, Head of HR Advice & Employee Relations. He described the grievance as being about the ongoing direct discrimination that he had been subjected to and was in respect of two members of his line management, Mr Bannon and Station Commander Knight. In his email the Claimant said that he would leave it to Ms Gibbs to allocate it to the appropriate person for investigating [the grievance is at pages 266 to 280].

389 On 25 November 2020, Ms Gibbs wrote to the Claimant to advise that his complaint did not constitute a grievance but that it would be forwarded to Group Commander Nick Newman for review. This was because the complaint raised issues of direct discrimination, harassment and unlawful discrimination. Under the Respondent's policies the grievance process would not be able to conclude with these findings and Ms Gibbs therefore

considered the matter would be best dealt with via a review to determine if they warranted further investigation under the harassment complaints procedure.

390 On 5 February 2021, Mr Newman sent the Claimant his review of the grievance complaint. He set out that his review was to determine the extent of the submission in terms of what, if any, Brigade procedures may be relevant, and all further action required. He informed the Claimant that he had read the contents and divided it into eight separate issues and set those out with his views on each issue in turn. The Claimant was not satisfied with this response and replied with his comments to Mr Newman on 22 February 2021 [406 and the attached document 408 to 414].

391 The allegation in respect of Mr Bannon breaching LFB policies is at item number 5 in the Claimant's complaint/grievance where he complains (see page 278) that Mr Bannon has gone outside of policy 251 when relieving an officer early or being relieved from duty early. The policy states that early relief should not take place in the last 30 minutes of a shift ending. The Claimant alleges that if an analysis was conducted from the data on StARS, it would show what times the relief took place on the electronic roll board and this would show that Mr Bannon had relieved officers from duty less than 30 minutes before the end of a shift. He also alleged that if the data was downloaded from the breathing apparatus sets, which must be tested as soon as you come on duty, they would show that the breathing apparatus set was not always being tested by Mr Bannon immediately after having relieved another officer, it was only being done some considerable time after.

392 On 9 March 2021, Ms Gibbs emailed the Claimant to confirm that his complaint had been reviewed by Group Commander Newman and that the complaints did not amount to bullying, and/or harassment in Mr Newman's view and the matter would not be proceeding to a formal investigation and there was no further right of appeal.

393 Ms Gibbs received a further email from the Claimant on 9 March 2021, indicating he wished to proceed with the grievance [455]. On 16 March 2021, the Claimant's trade union representative forwarded a grievance to Ms Gibbs, and Rumbi Mutopo HR Advisor, about the management of his 23 November 2020 complaint [457].

394 This second grievance was considered by Group Commander Richard Tapp on 30 April 2021. The basis of the grievance was that the Claimant did not feel his original grievance complaint had been handled correctly and no other people or evidence had been looked at, other than to speak to the person he was accusing of direct discrimination, ongoing harassment and unlawful behaviour towards him: i.e. Mr Bannon had been spoken to, but no other investigation had been conducted. Group Commander Richard Tapp decided that a local management investigation (LMI) should be carried out and that several individuals should be interviewed. The LMI was carried out on 5 July 2021 and Matthew Bannon, Michael Wright, Conor McWeeney and Kelly Miles, as well as Station Commander Knight, were all interviewed [590]. The local management investigation concluded that none of the original allegations could be substantiated, that there was insufficient evidence/grounds for pursuing the matter further under any of the Brigade's policies and procedures and it would appear there was a clash of personalities between the Claimant and Mr Bannon [592]. In respect of the fifth complaint of breaching LFB policies it was concluded:

> *"From the questions asked/answered during this LMI the allegation/s of LFF Bannon breaching LFB policies could not be substantiated."*

395 Attached as appendix 2 to that local management investigation report into Leading Firefighter Bannon was a record of the interview with Mr Bannon, conducted by Station Commander Green in July 2021 [608 to 612]. The interview appears to have lasted 45 minutes. We are satisfied that the questions recorded in that document are directed at the complaints the Claimant made in respect of discrimination and harassment and other complaints about his interactions with Mr Bannon. There do not appear to be any questions directed at Mr Bannon's compliance with the procedure known as policy 251.

396 The Claimant relied on a hypothetical comparator. We did not receive specific submissions on this point. The submissions made on behalf of the Claimant being more generally aimed at the process.

397 We were referred to the contents of the Respondent's harassment complaints procedure [252]. The definition of harassment in the policy is at pages 253 to 254 of bundle 1.

398 We accept Ms Gibbs' evidence that when she received the complaint from the Claimant, she looked at it and considered that it fell under the bullying and harassment policy. The Respondent's procedure for dealing with harassment complaints starts with local informal action [page 254 at 4 of the policy], 4.1 provides:

> *"Unless the matter is considered serious enough to merit formal disciplinary action, it will be dealt with locally and informally in accordance with the requirements of this policy without recourse to a managerial or discipline investigation.*
>
> *4.2 If a manager considers the complaint to be of a serious nature, that is one which if substantiated might warrant a formal discipline hearing, the complaint will be forwarded to their group commander/FRS F or above (see section 5).*
>
> *4.3 Once a manager has had preliminary discussions with both parties, and is again satisfied the complaint does not merit formal disciplinary action, then in order to minimise stress and avoid polarising positions, the manager is required to resolve the harassment complaint quickly. For these purposes quickly means a matter of days not weeks."*

399 We find that having considered the matter fell under the bullying and harassment policy, this led to the procedure followed by Mr Newman. The Claimant complains that he did not get a hearing as part of the investigation.

400 Mr Newman emailed the Claimant on 6 January 2021 to suggest they catch up by telephone (the Claimant having contracted COVID) [337] but the Claimant replied the same day to suggest that they instead catch up following his occupational health appointment as he was not in a good state of mental health. Mr Newman told us that he did not consider a meeting with the Claimant was necessary because he had full information in the Claimant's detailed complaint. Mr Newman did speak to Mr Bannon. We are satisfied that this is in accordance with his understanding of the process set out in the policy at 4.3 *'preliminary discussion with both parties'*.

401 The Claimant was not satisfied with the process or the outcome and this led to his grievance which was considered by Mr Tapp. On 16 March 2021 Mr Tapp was appointed to respond the second grievance. We accept Mr Tapp's evidence, the substance of which was unchallenged.

402 Mr Tapp held a hearing on 30 April 2021 in accordance with the grievance procedure, at which the Claimant was represented by his trade union representative. Mr Tapp decided to partially uphold the Claimant's grievance. Firstly, he did not recognise the term 'review', which was the process that Mr Newman had undertaken; and secondly, Mr Tapp did not consider that by only speaking to the Claimant and Mr Bannon a complete fact find had been undertaken to allow an informed conclusion to be reached. Mr Tapp subsequently had the harassment complaints procedure drawn to his attention. However, he felt in the circumstances, when he was dealing with the grievance that just speaking to the two persons concerned was not adequate, and that other staff members should be interviewed. He recommended a local management investigation be carried out. He wrote the conclusion to his report after that investigation had been carried out [589-592] He conveyed the outcome to Mr Hussain's trade union representative by telephone.

403 Mr Tapp denied that the Claimant's race and/or religion played any part in his decision-making. He told us that he considered Mr Hussain's grievance carefully and took into account the points he considered to be valid: which is why he partially upheld his grievance and commissioned an LMI in response. He conducted what he considered to be a fair and reasonable investigation whilst accepting there was a delay in a written outcome being conveyed. His understanding was that it was not the normal practice to send an outcome in writing and he would not have sent it in writing had he not been specifically asked to do so.

404 We find that Mr Newman was following the procedure under the harassment policy as indicated to him on HR advice, but that Mr Tapp took a different view as to what was required in terms of an investigation and he took the route under the grievance procedure.

Delay

405 Mr Tapp's evidence as to his understanding of the timing of the overall sequence of events, including the initial consideration by Mr Newman, his own consideration of the grievance, the investigation and his report was not challenged. The time period included a period of Covid isolation by the Claimant and also absence by Mr Newman. We find that Mr Tapp proceeded in a reasonably timely manner in the circumstances.

406 The Claimant relies on a hypothetical compactor.

407 We also had evidence before us in respect of Mr Bannon's treatment: he lodged a grievance on 7 March 2021 [447 to 450]. Mr Bannon complained about the Claimant's complaints against him, which he believed were malicious and false having been brought in response to him taking management action. Mr Bannon stated that he felt the Claimant's actions are contradictory and inconsistent [449]. He complained that the Claimant's feelings of anger at Mr Bannon's actions did not mean that they are harassment and he complained about the delays in dealing with the Claimant's complaint which he stated had an impact on

him not just on the Claimant. Mr Bannon also raised allegations that his complaints of harassment and bullying were ignored on 27 January 2021 [page 448].

408 Mr Bannon's original complaint was received by Ms Gibbs on 7 March 2021. She informed Mr Bannon that she would forward the complaint to Station Commander Parkin for review in the first instance to determine what, if any, further investigation may be required in accordance with the LFB harassment complaints procedure or other relevant policy or procedure (see page 548).

409 On 2 May Mr Bannon sent an email expressing concern that his original formal grievance had not been reviewed, there was no progress nearly eight weeks later and that his concerns and worries had not even been heard. Mr Parkin had replied on 4 May setting out that he had carried out a review of the complaint and spoken to him about the complaint in mid-March and that he had understood no further action was required.

410 On 6 May 2021, Mr Bannon received a response from Anthony Parkin informing him that after speaking with HR his complaint did not come under their remit at this stage and asking if he would consider a meeting with Mr Parkin, Fire Commander Newman and station Officer Jackson to resolve any outstanding issues and concerns. Mr Bannon responded the same day expressing his concern that there may have been some misunderstanding at the overall outcome; although he had stated, or understood, that some parts of the grievance would not require any action, he was under the impression that other parts would still be heard and he said he would like the opportunity to have a meeting with Mr Parkin, Mr Newman and a representative from HR as well as Tony Jackson to discuss his concerns.

Conclusions

411 On the evidence before us, we find that Mr Bannon's complaint was treated in a similar manner by the Respondent to that of the Claimant. Ms Gibbs conducted the same role in forwarding it for review to a senior officer for consideration under the harassment procedure as being the relevant policy. Mr Bannon also complained about lack of clarity in the response and outcome, and the delay in providing him with, what he considered to be, a proper outcome. Whilst the subject of his grievance was not the same, he did not raise complaints of discrimination or harassment on the basis of a protected characteristic, he did make complaints that actions of the Claimant were harassing of him. We are satisfied that the treatment of his grievance complaint was very similar. Both grievances were treated as falling under the harassment procedure as set out above.

412 We have not found that the Claimant's race or religion had any influence on the treatment of his grievances or on their outcomes; we have sense checked that conclusion by comparing the Claimant's treatment to that of Mr Bannon. We do not find that that this complaint is made out.

Issue 16.4 – Divulging personal sensitive information to colleagues such that Mr Bannon initially divulged it to all the Claimant's watch colleagues on the evening after the Claimant left the station after booking sick on 6 November 2020 and firefighter Lee Baker told the blue watch members the next evening about the letter 1 meeting

413 The confidential information referred to was the reason for the Claimant's sickness absence and the issuing of a Letter 1. The Claimant alleges that Mr Bannon disclosed the reason for his sickness absence to the Watch and openly discussed it as well as the fact that he had received a Letter 1, and that this was breach of his confidentiality and that he did so as an act of direct discrimination because of his race and/or religion.

414 Mr Newman, in response to the Claimant's grievance complaint about Mr Bannon's conduct, set out the following (see page 411):

> *"The nature of sickness absence is confidential and should not be discussed in an open forum. Although in this instance the sudden disappearance and the removal of a front line appliance from service would quite reasonably have prompted enquiries from watch members. This should be limited to the basic facts and no more. It is not appropriate to discuss the details of sickness or absence and this will be brought to the attention of Sub O Bannon."*

The Claimant notes:

> *"I am glad that you accept Sub O Bannon discussing mv sickness/absence with mv watch members was inappropriate."*

The Claimant has taken this response as a concession that the events he complained about took place.

415 The Claimant alleged that in fact Mr Bannon held a meeting of the entire Green Watch in the conference room after the Claimant had left, having booked "incomplete", (a reference to not finishing his duty) due to anxiety and stress and that Mr Bannon disclosed his personal information to the watch by informing them what had transpired between them in his office and that he would be receiving a Letter 1 stating:

> *"Kam should have just accepted it as its only an informal record of discussion but now that Kam has decided to take this course of action there will have to be a formal investigation."*

416 Mr Bannon denies having any such discussion with the Green Watch. He denies telling anyone that the Claimant had been issued with a Letter 1 and specifically denies telling Firefighter Baker about the Letter 1. Mr Bannon told us that he understood the Claimant had openly discussed that he had received a Letter 1. He raised his own concerns about this in his email to Group Commander Newman on 20 January 2021 [pages 366 to 367]. Mr Bannon was concerned the Claimant had made several attempts to contact Station Officer O'Neill to discuss the matter and that Mr O'Neill said he felt harassed by the Claimant. Mr Bannon was also informed by Kelly Miles that the Claimant had contacted her by phone on 26 December 2020 saying that he had withdrawn his complaint against Mr Bannon.

417 The Claimant recorded a phone conversation between himself and Kelly Miles which occurred on 7 November 2020 on their mobile phones. He only recorded part of that conversation. The transcript is at pages 787 to 788. We were reminded that Ms Miles did not know that she was being recorded whereas the Claimant was aware the recording was taking place. There was some discussion about the events of the previous day, 6 November, and that members of Blue Watch had been asking what had happened with

the Claimant. According to Ms Miles account Mr Bannon referred to having to enforce the policy as instructed by Mr Knight. There was no clear account as to what was said by whom apart from Ms Miles telling the Claimant that she had told a colleague, Xeno, how she understood it had played out, giving him the Claimant's side of events. The account of the discussion between Mr Bannon and Xeno given by Ms Miles in the telephone conversation does not specifically refer to any Letter 1 having been issued. She refers to overhearing a conversation of Mr Bannon's about Mr Knight: with Mr Bannon telling Xeno that he is under pressure to deliver and that the pressure is coming from Mr Knight. Ms Miles goes on to tell the Claimant that Mr Bannon was not happy with the way things went down. Ms Miles explicitly told the Claimant that Mr Bannon was not saying anything bad about him rather he was saying:

> *"You know I didn't want to go down this route but you know I've had to and I don't want it to be awkward with everybody but what not".*

Ms Miles also goes on to refer to Mr Bannon taking her to task for not competing her BARIE [Breathing Apparatus Radio Interface Equipment] checks and that he was having a go at everyone i.e. the entire watch.

418 Other than this recorded conversation with Ms Miles the Claimant did not give any direct evidence in respect of alleged disclosures of confidential information, he does not address this in his witness statement.

419 Bradley Sprague of Blue Watch provided a statement about a conversation the Claimant alleged took place on around 17 November 2020 and 20 November 2020, during the period when the Claimant was off sick. Mr Sprague's evidence was that the roll call board displayed at the station would show if a firefighter on any of the four watches was off sick but not the reason. He stated that he did not know the reason for the Claimant's absence. His evidence was not contested by the Claimant. We do not find this takes this any further.

420 Mr Ruairidh Martin gave evidence in response to the Claimant's allegation that they had had a conversation on 20 November 2020 at Walthamstow Fire Station whilst the Claimant was off sick in which he had asked the Claimant why he was off work with stress. Mr Martin denied asking the Claimant why he was off from work sick. He was aware the Claimant was off sick; he cannot remember how he knew that but there was a roll board with absence recorded which was visible for every employee. He stated that he was not aware of any health conditions suffered by the Claimant and did not ask him about work related stress. He was simply asking him how he was doing. Again, we do not find that this is evidence of any confidential information having been disclosed to Mr Martin.

421 We do not find any direct evidence that Mr Bannon told any members of the Watch that the Claimant had gone home with stress after he had given him a Letter 1. The Claimant left the station before the end of his watch which we find was likely to be a matter that people would comment on or ask about. It was not disputed that at the time he left the station he was distressed. The Claimant had booked in to say that he was going home. A number of people were aware that the Claimant had left early as well as knowing that Mr Bannon had called him into a meeting just before he left. That left Mr Bannon in a position where people were looking to him for an explanation; from the description given by Ms Miles in her conversation with the Claimant we are satisfied that he sought to explain his own actions but there is no evince that in doing so he went into specific details about what had occurred.

422 We are satisfied that the fact the Claimant had left and gone home before completing his shift was the subject of discussion and speculation amongst members not only of the Green Watch but also the Blue Watch. We do not find any evidence that Mr Bannon started the speculation or tried to feed into the speculation. There is simply no evidence before us on which we can find that he held a meeting of the entire watch and told them that the Claimant had gone off with stress after he had been given a Letter 1.

Conclusion

423 We do not find this allegation to have been made out on the facts. Even if Mr Bannon had said the remarks ascribed to him by the Claimant, we do not find there to be any basis for concluding that he would have acted any differently to someone who did not share the Claimant's race and/or religion.

Time limits

424 We have not upheld any of the complaint and therefore have not needed to address the question of whether those complaints were in time or not.

In conclusion

425 We have not upheld any of the Claimant's claims.

426 We find that it is deeply unfortunate that the Claimant's interactions with his colleagues and line managers has been so tainted by his earlier experiences (which were not themselves the subject of these claims), which have left a deep and lasting impact upon him. We also find that the way in which complaints of harassment and discrimination are dealt with by the Respondent has done little to assuage the Claimant's concerns. Whilst we have found they were dealt with in accordance with the Respondent's harassment procedure we note that the procedure does not usually include an investigation of complaints and there is no right of appeal in respect of the outcome. We find in the Claimant's circumstances that this has contributed to the mistrust and lack of faith in the process that the Claimant has clearly felt, which is unfortunate for all concerned, but most of all for the Claimant, given his poor mental health.

427 The Employment Judge apologises for the length of time taken to produce this written judgment which has been as a result of a combination of the numerous issues and large amounts of evidence involved in the claims and the lack of available judicial time.

Employment Judge C Lewis
Date: 3 October 2023

SCHEDULE 1

IN THE LONDON EAST EMPLOYMENT TRIBUNAL **Case nos: 3203125/2019 & 3201568/2021**

BETWEEN:

MR KAMRAN HUSSAIN

Claimant

-and-

LONDON FIRE COMMISSIONER

Respondent

FINAL AGREED LIST OF ISSUES (17/4/23)

The numbering of the list at p.3512 in the bundle has been maintained for ease of reference.
The issues which are no longer pursued by C have been struck through in the list below.
The concessions by R have been underlined.
All other matters remain in dispute.

I. Case Number 3203125/2019

1. Jurisdiction

1.1. C gave Acas notice of EC on 25 November 2019. An EC certificate was issued on 26 November 2019. C's ET1 was filed on 25 December 2019. Any allegations which took place prior to 26 August 2019 are, potentially, out of time.
1.2. Are any of C's allegations potentially out of time.
1.3. Has C shown that there was conduct extending over a period of time, ending on or after 26 August 2019.
1.4. If allegations are out of time, should the Tribunal extend time on a '*just and equitable*' basis pursuant to section 123(1)(b) of the EqA 2010.

2. Disability

2.1. R accepts that C is a disabled person by virtue of his dyslexia.
2.2. From when did R know, or ought it to have known, that C was a disabled person by virtue of his dyslexia? C's case is that from 6 December 2017, when C completed the British Dyslexia Association (BDA) checklist with his line manager, Ben Dewis, R had

constructive knowledge that C was disabled because of dyslexia. R's case is that it had knowledge of C's disability from 14 October 2019 when it received the assessment.

3. Breaches of the duty to make reasonable adjustments

PCP1: targets applied from January 2017 to 18 July 2018

3.1. Did R apply a PCP to C of requiring that Fire Safety officers in development carry out 5 fire safety audits per month within a period of 9 to 12 months and 10 fire safety audits per month within a period of 18 to 24 months, whilst in development;

3.2. If so, was C put at a substantial disadvantage compared to non-disabled persons? In particular, C asserts that:

- 3.2.1. he was not able to achieve his targets and was required to achieve these targets sooner than the prescribed timeframes;
- 3.2.2. he was subject to threats of disciplinary actions and attempts to remove him from his role for not meeting targets.

3.3. If so, did the PCP put C at a substantial disadvantage because of his disability, namely, dyslexia?

3.4. Did R know or ought it reasonably to have known that:

- 3.4.1. C had a disability, namely, dyslexia;
- 3.4.2. C was put at a substantial disadvantage by the PCP?

3.5. If so, did R make adjustment/s that it would have been reasonable for it to make? C contends that R should have taken to following steps:

- 3.5.1. Not increasing Cs targets within the usual timeframes from April 2017 (up to 5 p/m by month 9 to 12) and (up to 10 p/m by month 18 to 24) (C's comparators are Tracey Orchard, Bee Lui and Lee Pyke);
- 3.5.2. Reducing C's targets to a maximum of 3 p/m from 6th December 2017 (C's comparator Bee Lui and Tracey Orchard);
- 3.5.3. Extending C's period of development by an extra 25% (C's comparators are Bee Lui, Tracey Orchard and Lee Pyke).

PCP2: completion of fire safety course assessments

3.6. Did R apply a PCP to C of requiring fire safety course assessments to be completed in a specified time period. In particular, C relies on three fire safety courses that C attended as part of his development, 10-11 January 2018- 23-25 January 2018 and 6-9 February 2018.

3.7. If so, was C put at a substantial disadvantage compared to non-disabled persons? In particular, C asserts that:

- 3.7.1. C could not complete the fire safety course assignments within the time allocated;
- 3.7.2. C had to work additional working days above his core hours, evenings and weekends to complete each course assignment to meet the deadlines, which impacted on fire safety audit targets and outputs.

3.8. If so, did the PCP put C at a substantial disadvantage because of his disability, namely, dyslexia?

3.9. Did R know or ought it reasonably to have known that:

- 3.9.1. C had a disability, namely, dyslexia;
- 3.9.2. C was put at a substantial disadvantage by the PCP?

3.10. If so, did R make adjustment/s that it would have been reasonable for it to make?
3.11. The adjustment/s that C asserts would have been reasonable for R to make are:
  3.11.1. Providing C with 25% additional time to complete the fire safety course assessments in January and February 2018. (C's comparators are Tracey Orchard, Bee Lui, Orlando Brancaccio and Daniel Pyett);
  3.11.2. Reduction of C's monthly fire safety inspection targets based on the reduced amount of days he was available to carry them out as per R's FSIGN 806 policy. (C's comparators are Tracey Orchard and Bee Lui).

PCP3: attendance at an Incident Command course on short notice

3.12. Did R apply a PCP to C of requiring attendance at an Incident Command course upon 10 working days' notice;
3.13. If so, was C put at a substantial disadvantage compared to non-disabled persons? In particular, C asserts that:
3.14. C was not able to learn all policies, procedures, equipment and I.T software in the time frame set to attend the incident command course and his return to operational duties;
3.15. C had to spend time outside of working hours to prepare for the course, impacting on his mental health disability;
3.16. C felt unable to carry out the role of Leading firefighter or of a Temporary Sub Officer when '*acting up*' and was compelled to relinquish his rank from a Leading Firefighter to a firefighter.
3.17. If so, did the PCP put C at a substantial disadvantage because of his disability, namely, dyslexia?
3.18. Did R know or ought it reasonably to have known that:
  3.18.1. C had a disability, namely, dyslexia;
  3.18.2. C was put at a substantial disadvantage by the PCP?
3.19. If so, did R make adjustment/s that it would have been reasonable for it to make? C contends that R should have taken to following steps:
3.20. Provide C with additional training and time to learn the relevant policies before attending assessable Incident Command course including advance written notes and strategies for learning and understanding information;
3.21. Withdrawing C from the Incident Command course commencing on 19/12/19 and reallocating him to a later course for example the one commencing on 6/1/20.

PCP4: failure to comply with R's policies on classification of sickness absence

3.22. Did R apply a PCP to C of failing to comply with its own policies, resulting in not classifying C's sickness period between 18 July 2018 and 12 August 2019 as 'Due to Service' and/or taking into account irrelevant information;
3.23. If so, was C put at a substantial disadvantage compared to non-disabled persons? In particular, C asserts that:
  3.23.1. C was more likely to be absent from work and/or to suffer adverse health implications;
3.24. If so, did the PCP put C at a substantial disadvantage because of his disability, namely, dyslexia?
3.25. Did R know or ought it reasonably to have known that:
  3.25.1. C had a disability, namely, dyslexia;
  3.25.2. C was put at a substantial disadvantage by the PCP?
3.26. If so, did R make adjustment/s that it would have been reasonable for it to make? C contends that R should have taken to following steps:
  3.26.1. Accept medical and occupational advice as to the reasons for the absence;
  3.26.2. Extending C's full sick pay.

PCP5: requirement to perform certain tasks or roles before proper training and certification

3.27. Did R apply a PCP to C of requiring the carrying out of fire safety inspections, issuing of notices and carrying out the role of a Brigade Duty Officer ('BDO') during this period, prior to the attainment of a Level 3 Certificate in fire safety and before being issued with a warrant card to evidence authority to exercise statutory powers;

R accepts that it applied such a PCP

3.28. If so, was C put at a substantial disadvantage compared to non-disabled persons? In particular, C asserts that:
  3.28.1. He was less able to respond quickly regarding matters he was not experienced or fully trained on;
  3.28.2. His confidence was undermined.
3.29. If so, did the PCP put C at a substantial disadvantage because of his disability, namely, dyslexia?
3.30. Did R know or ought it reasonably to have known that:
  3.30.1. C had a disability, namely, dyslexia;
  3.30.2. C was put at a substantial disadvantage by the PCP?
3.31. If so, did R make adjustment/s that it would have been reasonable for it to make? C contends that R should have taken to following steps:
  3.31.1. Not requiring the carrying out of fire safety inspections, issuing of notices and/or carrying out the role of BDO prior to Level 3 Certification and 6 months experience and 'shadowing' shifts.

PCP6: failing to comply with R's Managing Attendance Policy

3.32. Did R apply a PCP to C of failing to comply with its Managing Attendance Policy, by not providing C with Attendance Support meetings in order to ensure timely support during C's sickness period between 18 July 2018 and 12 August 2019;
3.33. If so, was C put at a substantial disadvantage compared to non-disabled persons? In particular, C asserts that:

3.33.1. He was more likely to have difficulties in a new role and require additional support as there were no formal review mechanism in place;
3.33.2. concerns raised by C were ignored.

3.34. If so, did the PCP put C at a substantial disadvantage because of his disability, namely, dyslexia?

3.35. Did R know or ought it reasonably to have known that:
3.35.1. C had a disability, namely, dyslexia;
3.35.2. C was put at a substantial disadvantage by the PCP?

3.36. If so, did R make adjustment/s that it would have been reasonable for it to make? C contends that R should have taken to following steps:
3.36.1. Accept medical and occupational advice as to the reasons for the absence;
3.36.2. Extending C's full pay.

PCP7: failure to carry out workplace stress risk assessment/s

3.37. Did R apply a PCP to C of failing to carry out workplace risk assessment/s. In particular, C relies on failures following incidents or issues as follows:
  3.37.1. 16 August 2017: C collapsed at work and was removed to hospital;
  3.37.2. 25 June 2018: C informed R he had work-related stress;
  3.37.3. 5 June 2018: After highlighting C's stress levels in his Personal Development Log;
  3.37.4. 9 July 2018: when C had an emotional breakdown at work and spoke to the Officer of the Day.

3.38. If so, was C put at a substantial disadvantage compared to non-disabled persons? In particular, C asserts that:
  3.38.1. He was more likely to require additional support which was not provided as there was no formal mechanism in place to identify this and concerns raised by C were ignored.

3.39. If so, did the PCP put C at a substantial disadvantage because of his disability, namely, dyslexia?

3.40. Did R know or ought it reasonably to have known that:
  3.40.1. C had a disability, namely, dyslexia;
  3.40.2. C was put at a substantial disadvantage by the PCP?

3.41. If so, did R make adjustment/s that it would have been reasonable for it to make? C contends that R should have taken to following steps:
  3.41.1. Carry out stress risk assessments.

PCP8: requirement to carry out the full operational and administrative role of a Leading Firefighter and Sub Officer

3.42. Did R apply (or would R have applied) a PCP to C of the requirement to carry out the full operational and administrative role of a Leading Firefighter and Sub Officer?

3.43. If so, was C put at a substantial disadvantage compared to non-disabled persons? In particular, C asserts that:
  3.43.1. C was made unwell due to the excessive workload, lack of reasonable adjustments, training and support and he felt no option but to relinquish his rank on 16 March 2020.

3.44. If so, did the PCP put C at a substantial disadvantage because of his disability, namely, dyslexia?

3.45. Did R know or ought it reasonably to have known that:
  3.45.1. C had a disability, namely, dyslexia;
  3.45.2. C was put at a substantial disadvantage by the PCP?

3.46. If so, did R make adjustment/s that it would have been reasonable for it to make? C contends that R should have taken to following steps:
  3.46.1. Providing C with a mentor and an IT refresher course and giving additional time to complete his learning of operational policies when this was requested before starting his role as a Leading Firefighter in January 2020 at Woodford Fire Station.

4. Victimisation

Protected act 1: R's belief in a protected act

4.1. Did R believe that C had done or may have done a '*protected act*' under s.27(1)(b) EqA 2010? C relies on an email of 17 April 2018 referring to his grievance as evidence of this belief, but believes that R's belief may have commenced from 14 March 2018.
R accepts that the relevant belief was held by the time of Martin Freeman's email of 17 April 2018, but does not accept that it arose as early as 14 March 2018.

4.2. What detriment/s does C assert that he suffered as a result of the protected act? C relies on:
- 4.2.1 Doubling of targets in March 2018;
- 4.2.2 Threat of disciplinary action by Martin Freeman from March and July 2018 based on perceived inadequate performance;
- 4.2.3 Unreasonable targets from March to July 2018 by Martin Freeman.
- 4.2.4 Martin Freeman aimed to prevent C from raising a formal grievance and victimised C in the knowledge that he had made '*overtures*' regarding having dyslexia and there was a clear concern of mitigating a grievance that would be based on discrimination, as opposed to assisting C.
- 4.2.5 ~~Failing to initiate the Due to Service Procedure in respect of the Claimant's absence between 18th July and 11th August 2019 without considering the evidence, or follow its procedures in accordance with paragraph 6(c) of the Claimant's amended pleadings.~~

Protected act 2: grievance of 3 June 2016

4.3. Did C do a '*protected act*' under s.27(1)(b) EqA 2010? C relies on a grievance alleging discrimination on 3 June 2016 (apparently supplemented on 15 June 2016).
R accepts that both documents referred to here are protected acts in themselves.

4.4. What detriment/s does C assert that he suffered because of the protected act? C relies on:
- 4.4.1. Deciding not to uphold the Claimant's grievance, and subsequently following a flawed process to avoid upholding the same.
- ~~4.4.2. Failing to initiate the Due to Service Procedure in respect of the Claimant's absence between 18th July and 11th August 2019 without considering the evidence, or follow its procedures in accordance with paragraph 6(c) of the Claimant's amended pleadings.~~
- 4.4.3. Deciding to classify the Claimant's absence from May -November 2016 as 'Not Due to Service'

Protected act 3: 11 April 2018 email regarding dyslexia support

4.5. Did C do a '*protected act*' under s.27(1)(b) EqA 2010? C relies on 11 April 2018 (C sent an email highlighting the lack of support for his Dyslexia and not being referred for screening);

4.6. What detriment/s does C assert that he suffered because of the protected act? C relies on
- 4.6.1. Martin Freeman aimed to prevent C from raising a formal grievance and victimised C in the knowledge that he had made '*overtures*' regarding having dyslexia. and there was a clear concern of mitigating a grievance that would be based on discrimination, as opposed to assisting C.
- 4.6.2. Threat of disciplinary action by Martin Freeman from March and July 2018 based on perceived inadequate performance;

4.6.3. Unreasonable targets from March to July 2018 by Martin Freeman
4.6.4. Failing to initiate the Due to Service Procedure in respect of the Claimant's absence between 18th July and 11th August 2019 without considering the evidence or follow its procedures in accordance with paragraph 6(c) of the Claimant's amended pleadings..
4.6.5. Attempting to initiate capability proceedings on 22nd July 2019, 31st July 2019, 12th August 2019, and 17th September 2019

Protected act 4: grievance dated 14 May 2018

4.7. Did C do a '*protected act*' under s.27(1)(b) EqA 2010? C relies on a formal grievance dated 14 May 2018 relating to R's failure to follow its Learning Support policy to provide him with a dyslexia screening.
R accepts that this was a protected act.
4.8. What detriment/s does C assert that he suffered because of the protected act? C relies on:
4.8.1. R failed to hear C's formal grievance and has not provided an official response;
~~4.8.2. R refused to promptly refer C to dyslexia screening/assessment until after he had spent several months raising concerns.~~
4.8.3. Attempting to initiate capability proceedings on 22nd July 2019, 31st July 2019, 12th August 2019, and 17th September 2019,
~~4.8.4. Failing to carry out stress risk assessments on multiple occasions in breach of the Respondent's own policy.~~

Protected act 5: grievances dated 31 August 2018

4.9. Did C do a '*protected act*' under s.27(1)(b) EqA 2010? C relies on his grievances dated 31 August 2018;
4.10. What detriment/s does C assert that he suffered because of the protected act? C relies on:
4.10.1. R failed to hear C's formal grievance and failed to provide a formal response as required by its policy within a reasonable time;
4.10.2. R failed to investigate the grievances in a timely and appropriate manner.
~~4.10.3. Failing to initiate the Due to Service Procedure in respect of the Claimant's absence between 18th July and 11th August 2019 without considering the evidence or follow its procedures in accordance with paragraph 6(c) of the Claimant's amended pleadings.~~
~~4.10.4. Failing to carry out an Attendance Support Meeting in line with their own procedures on 20 November 2018.~~
4.10.5. Failing to carry out stress risk assessments on multiple occasions in breach of the Respondent's own policy.
4.10.6. Attempting to initiate capability proceedings on 22nd July 2019, 31st July 2019, 12th August 2019 and 17th September 2019.

Protected act 6: grievance dated 23 September 2019

4.11. Did C do a '*protected act*' under s.27(1)(b) EqA 2010? C relies on his grievance dated 23 September 2019 regarding the failure to implement the Due to Service process regarding his disability related absence.
R accepts that this was a protected act.

4.12. What detriment/s does C assert that he suffered because of the protected act? C relies on:
  4.12.1. R did not uphold C's request to classify his sickness absence between 18 July 2018 to 11 August 2019 as 'Due to Service';
  ~~4.12.2. Failing to carry out stress risk assessments on multiple occasions in breach of the Respondent's own policy.~~

Protected act 7: grievance dated 16 October 2019

4.13. Did C do a '*protected act*' under s.27(1)(b) EqA 2010? C relies on his grievances dated 16 October 2019 and 24 March 2020.
R accepts that the grievance dated 23 March 2020 (sent by email on 24 March 2020) was a protected act. R does not accept that the grievance of 16 October 2019 was a protected act.

4.14. What detriment/s does C assert that he suffered because of the protected act? C relies on:
  4.14.1. Rebecca Denton and Maria Apostle prevented C's formal grievances from being heard.
  4.14.2. Failing (through Rebecca Denton and Maria Apostle) to properly investigate or deal with the Claimant's grievance of 16th October 2019,
  4.14.3. Failing (through Station Commander Matthew Hearne and Catherine Gibbs) to properly investigate or deal with the Claimant's grievance of 24 March 2020
  4.14.4. Rebecca Denton and Deputy Assistant Commissioner Alan Perez disclosing to Station Commander Matthew Hearne and Borough Commander Jamie Jenkins details of the Claimant's grievances in breach of confidentiality,
  4.14.5. Station Commander Matthew Hearne (on 21 November 2019) and Borough Commander Jamie Jenkins (on 25 November 2019) putting the Claimant under pressure to withdraw the same.
  ~~4.14.6. Failing to carry out stress risk assessments on multiple occasions in breach of the Respondent's on policy.~~
  4.14.7. Ignoring the Claimant's request of 5 December 2019 for an additional two weeks to read and learn the relevant policies before he was required to attend an assessable Incident Command course.

Protected act 8: 4 December 2019 concerns regarding dyslexia adjustments

4.15. Did C do a '*protected act*' under s.27(1)(b) EqA 2010? C relies on raising concerns by email to Learning Support Adviser, Rasheedat Ogunbambi stating "*I am very concerned that my Dyslexia assessment outcome and the reasonable adjustments that you have recommend are not being considered or followed by my line management*".
R accepts that this was a protected act.

4.16. What detriment/s does C assert that he suffered because of the protected act? C relies on:

4.17. '*Station Commander Sean Fox and Learning Support Advisor, Rasheedat Ogunbambi failed to provide C with reasonable adjustments, adequate training and time to learn a vast number of policies before attending an assessable Incident*

Command course in preparation for my return to operational duties following six-and-a-half~year'.

5. Direct discrimination on grounds of race

5.1. C's race is Asian, Pakistani. C's comparators are "white" and not Asian/Pakistani.
5.2. Did R subject C to less favourable treatment as set out below?
5.3. If so, did the Respondent subject the Claimant to less favourable treatment because of his race.

6. Direct discrimination on grounds of religious belief

6.1. C's religion is Muslim. C's comparators are non-Muslims.
6.2. Did R subject C to less favourable treatment as set out below.
6.3. If so, did the Respondent subject the Claimant to less favourable treatment because of his religion.

7. The LFT

~~7.1. R failed to initiate (through Spencer Sutcliffe, Rebecca Burton and Robert McTague) the 'due to service' procedure in respect of C's absence between 31st May 2016 and 24th November 2016 as per its Classification of Due To Service Sickness Absence Guidance Note, and Managing Attendance policy and R failed to classify this sickness absence as Due to Service; COMPARATORS: Pamela Jones, Daniel Alie and Colin Parker;~~
~~7.2. Between January 2017 and July 2018, C was not provided with sufficient development, support and/or training on:~~
~~7.2.1. R's process for undertaking statutory fire safety building consultations ('D' jobs); COMPARATORS: Orlando Brancaccio, Jonathan Johnson, Kevin Harris, Bee Lui, Tracey Orchard, Mike Dearing, Michael Jackson and Tim Ross;~~
~~7.2.2. undertaking fire safety inspections of schools and factories; COMPARATORS: Hypothetical and/or Orlando Brancaccio~~
~~7.2.3. carrying out the Brigade Duty Officer Role from March 2017. COMPARATORS: Orlando Brancaccio, Jonathan Johnson, Kevin Harris, Bee Lui, Tracey Orchard, Mike Dearing, Michael Jackson and Tim Ross;~~
~~7.3. C was not provided with any formal monthly development review meetings, nor did he receive regular feedback and guidance on his electronic Personal Development Record between May 2017 and June 2018 whilst in his role as a Developing Fire Safety Inspection Officer; COMPARATORS Michael Jackson, Jonathan Johnson and Alice Gane;~~
~~7.4. C was required to carry out the role of Brigade Duty Officer on 10th and 29th March 2017 before having received appropriate training and qualifications including the Level 3 Fire safety qualification COMPARATORS are Orlando Brancaccio, Bee Lui, Tracey Orchard, Michael Jackson, Jonathan Johnson and Kevin Harris;~~
~~7.5. Between June 2017 and July 2018 R required C to carry out work outside his competence including carrying out fire safety inspections and drafting and serving enforcement notices before he had attained his Level 3 Certificate in fire safety and before his warrant card had been issued [many activities fell under Stage 3 when C~~

~~was still at Stage 1 of his development; COMPARATORS: Orlando Brancaccio, Tracey Orchard, Bee Lui, Lee Pyke and Jonathan Johnson;~~

7.6. R (through Martin Freeman ~~and Ben Dewis)~~ doubled C's audit targets from August 2017 to July 2018, from five audits per month to 10 audits per month (R imposed audit targets of five audits per month in August 2017, then doubled them to 10 audits per month in March 2018); COMPARATORS Tracey Orchard and Bee Lui and Lee Pyke;

7.7. R (through Martin Freeman) unfairly threatened C with disciplinary action in August 2017, in March 2018 and in July 2018 for alleged performance issues; COMPARATORS Hypothetical and/or Tracey Orchard and Bee Lui and Lee Pyke;

~~7.8. R (through the R's learning support department and/or Rasheedat Ogunbambi) refused to assess C for dyslexia on 20th December 2017 and thereby delayed identifying the support which could be provided to him; COMPARATORS: John Webster and Kelly Miles and Daniel Pyett;~~

~~7.9. R did not allow C an additional 25% time as a reasonable adjustment for completing online fire safety courses between January and February 2018; COMPARATORS Tracey Orchard, Bee Lui and Orlando Brancaccio, Kelly Miles and Daniel Pyett;~~

7.10. R (through Martin Freeman) sought to unfairly remove C from his role by suggesting a meeting, issuing a 'Letter 1' and stating that C may need to be returned to an operational role if he could not undertake the Inspecting Officer (IO) role effectively in his email of 14th March 2018. COMPARATORS: Hypothetical and/or Bee Lui, Tracey Orchard, Siam Kee Yeoh, Lee Pyke;

7.11. R (through Martin Freeman) attempted to prevent C from raising a grievance on 17th April 2018 and 14th March 2018; COMPARATOR: Hypothetical;

~~7.12. R failed to consider C's grievance dated 14th May 2018; COMPARATOR: Hypothetical;~~

~~7.13. R failed to carry out a stress risk assessment following; COMPARATOR Antony Hurle;~~

~~7.13.1. C recording his stress levels on 5 June 2018;~~

~~7.13.2. C informing R he was stressed on 25 June 2018;~~

~~7.13.3. C's emotional breakdown on 9th July 2018.~~

~~7.13.4. Following discussions and correspondence about the outstanding stress risk assessment on 22 July 2019, 12/13/15/19 August 2019, 17/25 September 2019 and 4 October 2019.~~

7.14. R (through Charlie Pugsley and its HR department) failed to investigate C's complaint against Martin Freeman of 31st August 2018 in a fair and reasonable manner; COMPARATOR: Hypothetical;

7.15. R failed to initiate (through Martin Freeman, ~~Ben Dewis and Robert McTague~~) the 'due to service' procedure in respect of C's absence between 18th July 2018 to 11th August 2019 as per the classification of Due to Service Sickness Absence Guidance Note, and Managing Attendance Policy and R failed to classify this sickness period as Due to Service Absence; COMPARATORS: Pamela Jones, Daniel Alie and Colin Parker;

~~7.16. R failed to consider or respond to C's grievance dated 31st August 2018 regarding support, training and development; COMPARATOR: Hypothetical~~

~~7.17. R (through Rebecca Burton) failed to carry out a formal Attendance Support Meeting on 20th November 2018 in accordance to the Occupational Health Report and R's own Managing Attendance Policy and Managing Attendance Handbook and recorded the informal meeting on 20th November 2018 on C's personal record file as a formal ASM; COMPARATORS: [Names unknown but 5 other individuals in C's team that had ASM's carried out whilst off sick];~~

~~7.18. Various critical findings made by the Information Commissioner's office regarding R's handling of the C's Subject Access Request (SAR) were respects in which C asserts an equivalent SAR would not have been deficient had C been of a different race or religion. COMPARATOR: Hypothetical;~~

~~7.19. R (through Ben Dewis) failed to carry out a formal Attendance Support Meeting on 10th April 2019 in accordance with R's Managing Attendance Policy and Managing Attendance Handbook in that C was not notified in advance or at the meeting that it was an Attendance Support Meeting, and was not given with the right to be accompanied, no targets were set and no confirmation letter in that regard was ever sent to C, and recorded the informal meeting on 10th April 2019 on C's personal record file as a formal ASM; COMPARATOR: [Names unknown but 5 other individuals in C's team that had ASM's carried out whilst off sick];~~

~~7.20. On 2 October 2019, 17 September, 12 August, 31 July and 22 July 2019, 2 April 2019, 21 January 2019 R attempted to unfairly initiate a Stage 1 Capability process; COMPARATORS Ben Dewis, Rodney Vitalis and Gary Thompson;~~

~~7.21. R through DAC Allen Perez and Rebecca Denton breached confidentiality on 25 November 2019 by disclosing details of C's grievance against Rebecca Denton to Borough Commander Jamie Jenkins and Matthew Hearne and then those individuals interfering with the grievance process and attempting to get C to withdraw it COMPARATOR: Hypothetical;~~

~~7.22. R through (through David Amis) refused on 17th December 2019 to accept that C's absence (between 18th July 2018 to 11th August 2019) was 'due to service' without considering any of the information C had listed in his formal grievance, failing to follow the DTS and grievance process and unfairly applying an apportionment contrary to OH reports and the C's witness statement; COMPARATOR: Hypothetical;~~

~~7.23. R (through Rebecca Denton and Maria Apostle and/or relevant manager) prevented C's formal grievance (about a failure to accurately record discussions) from being heard on 18th December 2019. COMPARATOR: Hypothetical and/or Julie-Anne Steppings.~~

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8. Jurisdiction

8.1. C gave Acas notice of EC on 26 January 2021. An EC certificate was issued on 9 March 2021. C's ET1 was filed on 8 April 2021. Any allegations which took place prior to 9 December 2020 are, potentially, out of time.

8.2. Are any of C's allegations potentially out of time;

8.3. Has C shown that there was conduct extending over a period of time, ending on or after 9 December 2020;

8.4. If allegations are out of time, should the Tribunal extend time on a '*just and equitable*' basis pursuant to section 123(1)(b) of the EqA 2010.

9. Disability

9.1. As above, from when did R know, or ought it to have known, that C was a disabled person by virtue of his dyslexia? C's case is that from 6 December 2017, when C completed the British Dyslexia Association (BDA) checklist with his line manager, Ben Dewis, R had constructive knowledge that C was disabled because of dyslexia. R's case is that it had knowledge of C's disability from 14 October 2019 when it received the assessment;

9.2. C asserts that he was disabled by virtue of his anxiety and depression from June 2016. R concedes that the Claimant was a disabled person by virtue of his anxiety and/or depression from July 2019. From when did R know, or ought it to have known, that C was a disabled person by virtue of his anxiety and/or depression? C's case is that R knew or should have known from September 2016. R's case is that it had knowledge from July 2019.

10. Discrimination because of something arising in consequence of a disability (namely, depression / anxiety and dyslexia)

10.1. Did R know, or could R be reasonably expected to know, that C had the disability or disabilities?

10.2. Did the following thing(s) arise in consequence of the Claimant's disability:

- 10.2.1. Taking longer to complete and/or review paperwork (disability – dyslexia/anxiety/depression).
  R accepts that this arose in consequence of the disability.
- 10.2.2. Finding it more difficult and time consuming to take notes during training and complete coursework (dyslexia/anxiety/depression);
  R accepts that this arose in consequence of the disability.
- 10.2.3. Lack of confidence (dyslexia/anxiety/depression);
- 10.2.4. Grievances of disability discrimination;
- 10.2.5. Being demoted from a Leading Firefighter (Dyslexia/-anxiety/depression);
- 10.2.6. Perceived *'failing*' in Fire Safety Role and move to operational duties (Dyslexia/anxiety/depression);
- 10.2.7. Refusing to give a statement due to his mental health (disability – anxiety/depression);
- 10.2.8. Tiredness and irregular sleep patterns (disability: anxiety/depression);
- 10.2.9. Absence (anxiety/depression).
  R accepts that this arose in consequence of the disability.

10.3. Did R treat C unfavourably as follows:

- 10.3.1. Being told by Mr Bannon twice between April and November 2020 that C would take longer than his colleagues to complete the inventory form. (relates to 12.2.1);
- 10.3.2. Mr Bannon having warned C for "taking too long to complete and sign off the inventories" around June 2020, told C on a second occasion around July/August 2020 "Kam you need to hurry up, you're taking too long to complete and sign off the inventories" (relates to 12.1.1);

10.3.3. C was required to learn and complete over a short period of time a number of new Brigade policies and being told he had not provided information on 18th October 2020 as a result by email (relates to 12.2.1);

10.3.4. Matt Bannon regularly ridiculing the Claimant in the period May 2020 onwards regarding his perceived failure in the Fire Safety role as a result of his dyslexia including:

10.3.4.1. On the first day the Claimant started working at the Walthamstow Green Watch in April 2020 after having been demoted from a LFF (Leading Firefighter), Mr Bannon stated that the Claimant had been "*hung out to dry*"; (Claimant relies on the 'something arising' pleaded above at 12.2.6)

10.3.4.2. Mr Bannon has also stated to other firefighters, "*Did you know Kam's done a stint in fire safety?*" on 11 August 2020; (12.2.6)

10.3.4.3. On 11 August 2020, whilst undertaking Mandatory Fire Safety training in the main lecture room, the Claimant was participating and giving insight into the subject matter, when Mr Bannon interrupted stating "*Have you done time in fire safety? Bore off*" and then continued to laugh loudly; (12.2.6)

10.3.4.4. Mr Bannon would deliberately ignore the Claimant's advice and continuously make fun out of the Claimant by asking him if he had ever been a fire safety officer or that he should consider going into fire safety; (12.2.6)

10.3.4.5. On 21 October 2020, whilst undertaking Fire Safety Checks training in the lecture room, Mr Bannon again made a joke in front of his colleagues stating, "*Have you done a stint in fire safety Kam, you should think about going into it*" and then continued to laugh loudly. (12.2.6)

10.3.5. On 6 November 2020, Mr Bannon inappropriately made a comment about C to his colleagues, stating "*I bet Kam's been sleeping for the past three hours*" (relates to 12.2.1,12.2.6, 12.2.8);

10.3.6. Mr Bannon enticed C to make a statement twice after the initial refusal from the Claimant, to which C again refused, after which Mr Bannon became aggressive and threatened C on 24 May 2020 when he raised his voice and stated "*you should give a statement otherwise imagine what will happen if Duncan goes into a job with one of the 'bucks' and they can injured or worse, it will be on your conscience*." (relates to 12.2.7);

10.3.7. In or around July 2020, Mr Bannon stated that R '*was not able to fully discipline Mr Shelley as a result of the Claimant not providing a statement. Mr Bannon further stated that had Mr Shelley would have been disciplined and removed, then the Claimant would not have sustained the injury on 23 May 2020*.' (relates to 12.2.7).

10.4. Did R treat C Claimant unfavourably as alleged because of the relevant 'thing arising' or 'things arising' from his disability or disabilities?

10.5. If so, has R shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim? R relies on the following as its legitimate aim(s):

10.5.1. R is not in a position at this stage to specify any legitimate aim/s in light of the need for further clarification on C's section 15 claim as set out above. However, in broad terms it appears that some of the allegations, if proven, are capable of justification on grounds of legitimate management feedback in order to monitor and review the performance.

11. Harassment related to disability

11.1. Did R commit unwanted conduct (as set out below) related to disability, the purpose or (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for C;

11.2. The alleged unwanted conduct was:

11.2.1. Applying unreasonable pressure to C following his disclosure that he could not take part in a disciplinary process against a colleague due to his disability in May 2020 and July 2020:

11.2.1.1. Mr Bannon enticed the Claimant to make a statement twice after the initial refusal from the Claimant, to which the Claimant again refused, after which Mr Bannon became aggressive and threatened the Claimant on 24 May 2020 when he raised his voice and stated "*you should give a statement otherwise imagine what will happen if Duncan goes into a job with one of the 'bucks' and they can injured or worse, it will be on your conscience*".

11.2.1.2. In or around July 2020, Mr Bannon stated that R '*was not able to fully discipline Mr Shelley as a result of the Claimant not providing a statement. Mr Bannon further stated that had Mr Shelley would have been disciplined and removed, then the Claimant would not have sustained the injury on 23 May 2020*.'

11.2.2. Being told by Mr Bannon twice between April and November 2020 that he would take longer than his colleagues to complete the inventory form. (disability: dyslexia)

11.2.3. Mr Bannon having warned C for "taking too long to complete and sign off the inventories" around June 2020 he told C on a second occasion around July/August 2020 "Kam you need to hurry up, you're taking too long to complete and sign off the inventories" (disability: dyslexia)

11.2.4. Matt Bannon regularly ridiculing the Claimant in the period May 2020 onwards regarding his perceived failure in the Fire Safety role as a result of his disability including:

11.2.4.1. On the first day C started working at the Walthamstow Green Watch in April 2020 after having been demoted from a LFF (Leading Firefighter), Mr Bannon stated that C had been "hung out to dry". (disability: anxiety/depression/dyslexia)

11.2.4.2. Mr Bannon has also stated to other firefighters, "Did you know Kam's done a stint in fire safety?" on 11th August 2020 (disability: anxiety/ depression/dyslexia).

11.2.4.3. Mr Bannon would deliberately ignore C's advice and continuously make fun out of C by asking him if he had ever been a fire safety officer or that he should consider going into fire safety (disability: anxiety/depression/dyslexia)

11.2.4.4. On 11 August 2020, whilst undertaking Mandatory Fire Safety training in the main lecture room, C was participating and giving insight into the subject matter, when Mr Bannon interrupted stating

"Have you done time in fire safety? Bore off" and then continued to laugh loudly. (disability: anxiety/depression/dyslexia)

11.2.4.5. On 6 October 2020, C was invited to an informal meeting with Mr Bannon and Mr Beecham, during this meeting Mr Bannon repeatedly used profanities such as "fuck" and "fucking" to intimidate and harass C (disability: Anxiety/depression/dyslexia).

11.2.4.6. On 21 October 2020, whilst undertaking Fire Safety Checks training in the lecture room, Mr Bannon again made a joke in front of his colleagues stating, "Have you done a stint in fire safety Kam, you should think about going into it" and then continued to laugh loudly. (disability: anxiety/depression/dyslexia)

11.2.4.7. On 06 November 2020, Mr Bannon inappropriately made a comment about C to his colleagues, stating "I bet Kam's been sleeping for the past three hours" (disability: anxiety/depression/dyslexia).

12. Breach of the duty to make reasonable adjustments

PCP1: requiring employees to learn policies in a short time scale

12.1. Did R apply (or would R have applied) a PCP to C of requiring employees to learn policies in a short time scale;

12.2. If so, was C put (or would C be put) at a substantial disadvantage compared to non-disabled persons? In particular, C asserts that:

12.3. C could not complete the task quickly and as a consequence was told that the has not provided the information by email of 18th October 2020.

12.4. If so, did the PCP put C at a substantial disadvantage because of his disability, namely, C could not complete the task quickly and as a consequence was told that the has not provided the information by email of 18th October 2020;

12.5. Did R know or ought it reasonably to have known that:

12.5.1. C had a disability, namely, dyslexia;

12.5.2. C was put (or would be put) at a substantial disadvantage by the PCP?

12.6. If so, did R make adjustment/s that it would have been reasonable for it to make? C contends that R should have taken to following steps:

12.6.1. Providing C with additional time to complete the task;

12.6.2. Proving C with assistance to complete the task.

PCP2: Requiring employees to provide a witness statement and participate in disciplinary proceedings against a colleague

12.7. Did R apply (or would R have applied) a PCP to C of requiring employees to provide a witness statement and participate in disciplinary proceedings against a colleague;

12.8. If so, was C put (or would C be put) at a substantial disadvantage compared to non-disabled persons? In particular, C asserts that:

12.8.1. The Claimant was less able to do so, due to his mental health disability.

12.8.2. The Claimant felt that he was being put under unreasonable pressure and would be R's next target

12.9. If so, did the PCP put C at a substantial disadvantage because of his disability, namely, his depression / anxiety?

12.10. Did R know or ought it reasonably to have known that:

12.10.1. C had a disability, namely, depression / anxiety;
12.10.2. C was put (or would be put) at a substantial disadvantage by the PCP?
12.11. If so, did R make adjustment/s that it would have been reasonable for it to make? C contends that R should have taken to following steps:
12.11.1. Not seek to force employees to provide a witness statement and participate in disciplinary proceedings against a colleague.

13. Victimisation

Protected act 1: declining to provide a statement against Mr Shelley

13.1. Did C do a '*protected act*' under s.27(1)(b) EqA 2010? C relies on declining to provide a statement in disciplinary proceedings against Mr Shelley on mental health grounds.
13.2. What detriment/s does C assert that he suffered as a result of the protected act? C relies on:
13.2.1. on 24 May 2020, Mr Bannon raised his voice and stated "*you should give a statement otherwise imagine what will happen if Duncan goes into a job with one of the 'bucks' and they can injured or worse, it will be on your conscience*";
13.2.2. In or around July 2020, Mr Bannon stated that R '*was not able to fully discipline Mr Shelley as a result of the Claimant not providing a statement. Mr Bannon further stated that had Mr Shelley would have been disciplined and removed, then the Claimant would not have sustained the injury on 23 May 2020*.'

Protected act 2: grievance dated 23 March 2020

13.3. Did C do a '*protected act*' under s.27(1)(b) EqA 2010? C relies on his grievance dated 23 March 2020 following his disclosures to Adam Placey on the 16 March regarding the Respondent's refusal to allow his reasonable adjustment requests.
R accepts that this was a protected act
13.4. What detriment/s does C assert that he suffered as a result of the protected act? C relies on:
13.4.1. Matt Bannon regularly ridiculing the Claimant in the period May 2020 onwards regarding his perceived failure in the Fire Safety role as a result of his disability, including on or around:
13.4.1.1. April 2020;
13.4.1.2. June 2020;
13.4.1.3. July 2020;
13.4.1.4. 11 August 2020;
13.4.1.5. 6 October 2020;
13.4.1.6. 21 October 2020;
~~13.4.1.7. 6 November 2020;~~
~~13.4.1.8. 17 December 2020;~~
~~13.4.1.9. 30 April 2021.~~

14. Direct discrimination on grounds of race

14.1. C's race is Asian, Pakistani. C's comparators are "white" and not Asian/Pakistani.
14.2. Did R subject C to less favourable treatment as set out below?

14.3. If so, did the Respondent subject the Claimant to less favourable treatment because of his race.

15. Direct discrimination on grounds of religious belief

15.1. C's religion is Muslim. C's comparators are non-Muslims.
15.2. Did R subject C to less favourable treatment as set out below.
15.3. If so, did the Respondent subject the Claimant to less favourable treatment because of his religion.

16. The LFT

16.1. On 6 November 2020, Mr Bannon informed C during a one-to-one meeting, a Letter 1 was to be issued to him retrospectively due to him not wearing a seatbelt on 2 November 2020. COMPARATORS: Mr Bannon, LFF Dave Beecham, FF Lee Baker, LFF Ciara Breen and FF Rooney Martin;
16.2. In July 2020, C was verbally threatened by Mr Bannon with disciplinary action for not sterilising his facemask. COMPARATOR: LFF Dave Beecham;
16.3. Failing to properly investigate C's complaints on 23 November 2020 and 16 March 2021 about Mr Bannon breaching the Respondent Policy 251 between April to 6 November 2020 when relieving other officers early and himself from duty after the latest cut off time that the policy permits and not carrying out the safety checks immediately in his allocated Breathing Apparatus set on a regular basis. COMPARATOR: Hypothetical.
~~16.4.~~ Divulging personal sensitive information to colleagues such that: Mr Bannon initially divulged it to all C's watch colleagues on the evening after C left the station after booking sick on 6 November 2020 and FF Lee Baker who is allegedly good friends with Mr Bannon, had told the Blue watch members the next evening about the Letter 1 meeting. ~~As a consequence the following occurred:~~
~~16.4.1. On 17 November 2020 when C went to Walthamstow Station, he was asked by Mr Sprague, who works on a separate watch, if he was there to gather information about his work stress issues. COMPARATOR: Hypothetical;~~
~~16.4.2. On 20 November 2020 the Claimant was asked by Mr Rooney Martin, who works on a separate watch, why he was off from work with stress. COMPARATOR: Hypothetical;~~
16.5. Failure to address the Claimant's grievance adequately or in a timely manner COMPARATOR: Hypothetical.