EMPLOYMENT TRIBUNALS

Claimant: Mr Omari Adjei-Dawkins

Respondent: Halfords Limited

Heard at: Reading (by CVP) **On: 20, 21, 22, 23, 24, 27 and 28 November 2023**

Before: Employment Judge Gumbiti-Zimuto
Members: Mr Peter Hough and Miss Helen T Edwards

Appearances
For the Claimant: In Person
For the Respondent: Mr A MacMillan

RESERVED JUDGMENT

1. The claimant was dismissed on the grounds of redundancy. The claimant was unfairly dismissed.

2. A *Polkey* deduction should be made to the claimant's award of compensation. The claimant's compensation should be reduced to reflect that the Tribunal concluded that there was a 40% chance that the claimant would have been fairly dismissed.

3. The claimant was subjected to harassment related to race by reason of the conduct of RC, an employee of the respondent, between 2018 and 2020.

4. The claimant's complaints of direct race discrimination, indirect discrimination, victimisation and wrongful dismissal are not well founded and are dismissed.

REASONS

1. In a claim form presented on the 12 January 2021 the claimant made complaints of race discrimination and about pay. On 11 February 2021 the claimant applied to amended his claim form to add further complaints. The respondent denied the claimant's complaints in an initial response on 19 February 2021. The claimant provided further particulars about the

matters he was complaining about on 6 February 2021. A preliminary hearing took place on the 19 and 20 May 2021 before Employment Judge Manley at which, with the assistance of the parties "acting in flexible and pragmatic and acting in accordance with the overriding objective" the claimant's complaints were agreed, after amendment as being, direct race discrimination; harassment related to race; one complaint of indirect race discrimination; victimisation; unfair dismissal and wrongful dismissal. Following the preliminary hearing the respondent presented an amended response and the parties subsequently were able to agree a list of issues as was set out in the Hearing Bundle (p105).

2. The hearing of this case took place by CVP (video hearing). The claimant gave evidence in support of his own case and also relied on the evidence of Kristian Charnley-Parr, Johanan Adjei-Dawkins, Nicholas Richards, Tori Smith and Sophie Osborne who attended to give live evidence by CVP. The claimant also produced written statements from Daniel Kopaniarz, Nathan Jeffs, and Nicholas Evans whose witness statements were provided to us but did not give live evidence. The respondent relied on the evidence of David Brace and Kevin Duncombe who attend the to give live evidence by CVP. The respondent also provided a witness statement from Richard Curson who did not attend to give live evidence. The Tribunal was also provided with a Trial Bundle containing 518 pages of documents and a covert audio recording of an incident on 7 February 2021. The maker of the recording did not give evidence. From these various sources we made the findings of fact set out below which we considered necessary to decide the issues in this case.

Chronology of events

3. The claimant commenced employment with the respondent in January 2016, working in the Tottenham store. In February 2016 he was moved to the Mile End store where on his first day the junior duty manager told the claimant to sweep up and "*started doing an African accent and said racial slurs".* The claimant says that the junior duty manager would call him "*Babatunde (always with an African accent)*."

4. The respondent gives no evidence about this, but challenges the claimant's account in two respects: firstly that the clamant never complained about discrimination or this behaviour at the time and secondly the claimant at the time was being given instruction about the business by the junior duty manager at this time when he was new to the company as part of his introduction to working for the respondent and so he could reasonably have been given tasks to perform by him which may properly have included sweeping up. The claimant while accepting that keeping the store clean and tidy was an aspect of the role, states he was not a cleaner and the junior duty manager had no proper authority to direct him to carry out this menial task.

5. SS became manager of the Mile End store in 2017. SS is alleged to have bullied and harassed the claimant. The claimant complains about a variety

of incidents. There is no contemporaneous record of complaints about SS's conduct made by the claimant.

6. In 2017 the claimant complains that there was an unannounced intervention in the Mile End store when a manger from another store came to Mile End to carry out an investigation into a Black assistant manager (WS) who was suspected of theft.

7. The claimant complains that the investigation was set up and proceeded without him being notified when he was the assistant manager, but a junior employee was notified and involved in the investigation. When the claimant queried why this had occurred the claimant was treated in a disrespectful manner by the investigating manager, when the claimant protested about three of his staff going to be away from their duties for a number of hours at a busy time, taken away to support the investigation, the investigation manager's response was, *"not my issue mate. I am here for Simon, take it up with him."*

8. The claimant says that the respondent's approach to this issue was heavy handed and is evidence of the respondent's *"systemic failings and racial bias".*

9. Following a period of sickness absence for SS, during which time the claimant was acting store manager SS was replaced by SN as store manager at the Mile End store. The claimant complains about the behaviour of SN towards him. The claimant says that this behaviour was such that it *"undermined my authority and humiliated me in front of auto sales advisors and my supervisor Salman".* The claimant says that this occurred on countless occasions. The matters that the claimant complains of include not speaking to the claimant respectfully, making adverse abusive comments about the claimant and failing to communicate important and appropriate information to him about the store.

10. To address the situation the claimant called a meeting with SN and other colleagues at which the claimant raised a number of issues highlighting how he felt about how he was being treated, in this meeting the claimant raised an issue about his development explaining that he had not had any performance appraisal since joining the respondent. The claimant subsequently raised matters of concern with his area manager JB. Following this meeting the claimant had his one and only appraisal in his entire period of employment with the respondent carried out by SN.

11. In August 2018 SN was replaced as store manager by MW. The area manager JB was replaced by David Brace. The claimant states that he was told that he was to be moved to the Dartford store. Such a move would have meant that the claimant's journey between home and work would involve travel time of four hours.

12. The claimant contacted the manager of the Watford store who after an interview with the claimant offered the claimant the assistant manager role

at Watford initially on a temporary basis. On the occasion of his interview with the claimant Mark Chalky on introducing himself to the claimant told the claimant that he had heard that the clamant was challenging. David Brace did not recall telling the claimant he was transferring the claimant to Dartford. He stated that his recollection was that the claimant wanted to move to Watford because it was nearer his home, David Brace also said that in any event he had no jurisdiction over the Dartford store to be able direct the claimant's transfer to that store.

13. The claimant also pointed out that a part-time sales assistant (E) was given favourable treatment by David Brace who facilitated her move onto the internal assistant manager course Aspire notwithstanding that she only worked 30 hours (i.e. part-time). The claimant points out that about 6 months after his transfer from Mile End, E was in the assistant Manager role. David Brace was not asked about this so was not able to comment on this issue.

14. Upon the claimant's transfer to Watford the claimant lost some travel allowances and also ceased to receive London Weighting from the respondent.

15. At the Watford store the claimant's colleagues included a cycle technician GR who *"continuously challenged"* the claimant's authority as a manager. The claimant brought up GR's conduct with the store manager (JT) the claimant complains that no action was taken by JT.

16. The claimant also describes GR as "*braggadocious*" about his performance of his role and saying that he was the "*third highest earner in the store*." The claimant complains that GR a cycle technician was earning more than him. Tori Smith in her evidence stated that GR had skills which were highly valued by the respondent and not easily replaced without extensive retraining of another member of staff.

17. The claimant was asked by the store manager to monitor the time keeping of RC, the claimant attempted to discipline RC for lateness by making a *"record of a conversation"*. Kevin Duncombe, the other assistant manager in the Watford store, was RC's direct line manager and he did not agree with the claimant doing so. Kevin Duncombe made his disagreement known to the claimant.

18. RC's behaviour on occasions was offensive generally but particularly to the claimant. RC posted a photograph of a naked Black man with a large penis whose name was ostensibly "*Barry"* on the work group chat. After the photograph was taken down, he would refer to the claimant as "*Barry*". This occurred on numerous occasions and was in the evidence of Tori Smith done "*constantly".* In his witness statement RC denied this. Although making a witness statement RC was not called to give evidence to defend his statement. The Tribunal reject this denial and accept the evidence given by the claimant and Tori Smith on this issue.

19. RC would also make comments to the claimant or in the claimant's hearing where he spoke in a mock African accent. This must have been known by RC to be offensive and was intended to be mocking to the claimant, it was done in public and where the customers of the respondent could hear it. The claimant's managers were informed but the behaviour continued.

20. As an assistant manager the claimant attempted to keep discipline with his staff including RC and VC who were brother and sister. RC and VC objected to the claimant's management of them, and they kept a diary noting the claimant's time keeping. The claimant became aware of this when he was informed of it by the store manager.

21. In about April or May 2019, while the store manager was off work and the claimant was the senior manager on shift, Rick Coleman (RC(AM)) a new area manager, made a surprise visit to the Watford store. The claimant had never met RC(AM) before this visit. On his arrival he met one of the sales assistants, Sophie Osbourne, and was accompanied her for about five hours while he carried out his inspection of the store. The claimant describes how during the visit he and other staff "*were flat out on our feet trying to stem the customer flow"*. RC(AM) did not speak to the claimant or introduce himself to the claimant. The claimant says that it is rare for an area manager "not to liaise with the most senior colleague on shift" and considers that "it all just felt a little odd". As RC(AM) was leaving the store the claimant approached him "and began to express to him how humiliated he made me feel" by taking a junior sales assistant and ignoring the claimant thus embarrassing and belittling the claimant in front of his colleagues. RC(AM)'s response was to the tell the claimant that he did have to answer to or explain anything to the claimant and then left the store.

22. In June 2020 the claimant was acting up as store manager. Although an allowance was agreed, initially the claimant was not paid the acting up allowance however when the claimant raised the issue with the area manager RC(AM), the situation was eventually resolved, and the claimant was paid an acting up allowance.

23. On 26 July 2020, while the claimant was acting store manager, he suspended VC for her conduct which included walking out of a disciplinary meeting. Present and witness to the incident that led to the suspension of VC was HH. VC made a grievance against the claimant and at the grievance meeting HH was to act as a notetaker. In the course of her grievance VC admitted that she advised her brother RC to keep a diary on the claimant noting the claimant's punctuality by recording any time the claimant was late for work. Following the VC grievance, the claimant was invited to attend a facilitated mediation meeting with VC on 13 November 2020.

24. In August 2020, Jack Willis was appointed as store manager at the Watford store.

25. On 16 October 2020 Jack Willis told staff that the area manager RC(AM) was coming to visit the store. The claimant explained that he would like to have an opportunity to speak to RC(AM) when he was at the store. The area manager arrived at the store carried out his visit and after speaking with the store manager, although he would have seen the claimant in the store, left without speaking to the claimant.

26. The claimant filed a grievance on 11 September 2020. The grievance consisted of three aspects: pay inequality, racism/oppression, and "*failure to carry out duty of mental care*". In the grievance the claimant requested *"at least one member of Black origin from Halfords to be present during my hearing, be it the lead interviewer or note taker."*

27. The respondent's people department wrote to the claimant acknowledging his grievance. On 9 October 2020 the claimant received an email from Claire Walker in which she apologised for the delay and stated that she hoped to have *"a suitable chairperson to hear the grievance very soon"* and asked the claimant to provide further information. The claimant replied by 21 October 2020 with the information requested.

28. On 26 October 2020, Claire walker told the claimant that she had found a suitable chairperson and note taker for the claimant's grievance. She also told the claimant that the meeting would be held via Microsoft (MS) Teams. The Divisional Director Justin Willis, the area manager's manager, was to conduct the grievance and Ravi Ariya was to be in attendance as a note taker.

29. The claimant wrote to Claire Walker on 28 October 2020 informing her that he declined a MS Teams meeting (having previously indicated he wanted a face-to-face meeting). The claimant referred to his request for a Black person to conduct the hearing or take notes of the grievance which was not addressed or explained.

30. On 9 November 2020 Claire Walker explained that as the grievance related to the area manager a more senior colleague to chair the grievance was required and further, *"You made a request that a person of Black origin be present in the meeting, however there is no such colleague who befits the aforementioned criteria who is also in an appropriate position within the Retail Operational team to hear your concerns. Further, we do not believe your requested criteria to be an appropriate measure of the right person to hear your, or in fact any grievance."*

31. On 11 November 2020 the claimant replied explaining his position and reaction to the respondent's treatment of his grievance. The claimant asked that his grievance to be escalated higher than South Divisional Director and a different note taker to be appointed.

32. In July 2020 VC had made a grievance against the claimant. The claimant was invited to attend a facilitated mediation meeting with VC which took place on 13 November 2020.

33. The claimant contrasts the way his grievance was dealt with and the way that the grievance of VC was dealt with by the respondent.

34. The claimant mentions that he was subjected to abuse from RC in the form of him speaking to the claimant in an African accent and making slurs against the claimant by referring to him as Barry. This happened over an extended period from 2018 to 2020 and was witnessed by others and reported to the store manager whose response was to be tell the claimant to ignore it or to say he would deal with it.

35. On 10 January 2021 the claimant approached a customer who was acting in a manner that the claimant thought amounted to a breach of COVID Guidelines. The customer's overall behaviour towards the claimant led to the claimant calling the police. The claimant declined to make a formal statement to the police about the incident. The claimant informed his manager Jack Willis about the incident and in reporting the incident the claimant told Jack Willis that he was concerned that HR would not have fully supported him if he had made a formal statement about the incident. The claimant complains that the respondent made no further attempt to check on the claimant's welfare after the incident.

36. In November 2020, the respondent made the decision to review its retail structure and as a result proposed that the Assistant Manager role be removed from the structure and replaced with a Deputy Manager role. The claimant's role was therefore at risk of redundancy.

37. The claimant considers that the redundancy process was a sham and that the process which involved the junior roles being filled first meant that the claimant as an Assistant Manager was deprived of the opportunity to be placed in a junior role as part of the redundancy process, the claimant also says that there was discrimination in the way that the respondent decided who should be given roles in the reorganisation stating that the Black employees were denied employment. The claimant specifically referred to one colleague, Dominic.

38. The claimant was advised that his role was at risk of redundancy and told that there would be a formal consultation period. The first consultation meeting took place on the 15 January 2021 and was conducted by the store manager Jack Willis. The claimant was told that all Assistant Managers would have the opportunity to apply for a Deputy Manager role.

39. The Duty Manager role was to be determined by a two-stage recruitment process involving at the first stage a test by video interview involving the employee answering 20 questions, a score under 12 was considered a fail. If the employee passed the first stage there was a second stage which was a face to face interview with an Area Manager.

40. The claimant asked that his area manager RC(AM) was not involved in his redundancy process the claimant was told that HR could not get involved in the Duty Manager interviews.

41. The notes of the first consultation meeting do not indicate that any consideration was given to alternative employment other than the reference to the Deputy Manager role. The note of the meeting indicates that the claimant asked the question: "*if you pass interview stages and don't get role, what happens?"* but there is no record of an answer being given or if it was what the answer was.

42. The claimant applied for the In-Store Deputy Manager vacancy, but the claimant was unsuccessful in securing the role.

43. The claimant should have been informed of the outcome of the first stage video interview by the 26 January 2021, but this did not take place until after that date. The claimant was informed in a brief telephone call from RC(AM) that he had failed the video interview and when the claimant asked what score he had achieved RC(AM) refused to tell the claimant and said he would discuss feedback later.

44. The claimant followed up this call with a text message requesting that he be provided with his score. In his response RC(AM) sent the claimant a thumbs up emoji and also stated that he would be happy to discuss feedback and scores in a prearranged call with the claimant.

45. RC(AM) was suspended from work. On 1 February 2021 the claimant was told that David Brace would remark the video interviews. The claimant was failed in the assessment made by David Brace. David Brace states that the claimant's answers in the video interview "*lacked detail and very often he did not even answer the question being asked.*"

46. There was an incident in the Watford store on 7 February 2021 which resulted in a complaint being made against the claimant by one of the junior staff colleagues. Following this incident, the claimant was asked by Jack Willis, store manager, if he wanted to go home the claimant refused and continued to work until the end of his shift.

47. The claimant had been aware for some time that his final consultation meeting was scheduled to take place on the 8 February 2021. When the claimant arrived at work on that day the claimant was told that his final consultation meeting would now take place on 9 February. Jack Willis explained that the reason for this was because Jack Willis had failed to give the claimant a letter telling him of the meeting with at least 24 hour notice.

48. The claimant's second consultation meeting took place on 9 February 2021 present at the meeting were the claimant, accompanied by Tori Smith, Jack Willis and HH as a notetaker. The claimant was informed that he had not been successful in obtaining a Deputy Manager role and that

his role was therefore redundant. The claimant was told that because of the incident on 7 February 2021 the respondent had decided that the claimant was not to work his remaining shifts and would be paid in lieu of notice from the 9 February 2021. Although the claimant did not want to go home, he was directed to go home and leave the store by Jack Willis.

49. The claimant did not appeal the decision to dismiss him as redundant.

Unfair dismissal

50. Section 98 of the Employment Rights Act 1996 ("ERA") provides that in determining whether the dismissal of an employee was fair or unfair, it shall be for the employer to show the reason (or, if there was more than one, the principal reason) for the dismissal, and that it is a potentially fair reason. The redundancy of an employee is a potentially fair reason (section 98(2)(c) ERA).

51. Where an employer has shown a potentially fair reason the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.

52. Section 139 ERA defines redundancy as occurring when an employee who is dismissed where the dismissal is wholly or mainly attributable to (a) the fact that his employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed by him, or to carry on that business in the place where the employee was so employed, or (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

53. In *Williams v Compair Maxam Ltd* [1982] ICR 156 the following principles which a reasonable employer should adopt in a redundancy situation were identified. (a) The employer will seek to give as much warning as possible of impending redundancies to enable affected employees to consider possible alternative solutions; (b) The selection criteria should, so far as possible, not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service; (c) The selection should be made fairly in accordance with the criteria; (d) The employer should consider whether alternative employment could be offered.

Conclusions on unfair dismissal

54. The claimant is not claiming constructive dismissal as set out in section 7 of the list of issues.

55. The claimant has not advanced an alternative reason for dismissal other than redundancy. What the claimant has said is that there was discrimination in his selection for redundancy and it is the process that he considers a sham rather than the reason for the dismissal.

56. The effectively uncontested evidence in this case is that the respondent made the decision to review its retail structure and as a result proposed that the assistant manager role be removed from the structure and replaced with a deputy manager role. The Tribunal is satisfied that the requirements of the respondent's business for employees to carry out work of a particular kind (assistant manager) have ceased or diminished or were expected to cease or diminish. There was in our view a redundancy. The claimant was not successful in his application for the role of deputy manager, and he was therefore selected for dismissal. The reason for the claimant's dismissal was therefore redundancy.

57. The Tribunal is satisfied that the respondent gave as much warning as possible of impending redundancies to enable affected employees to consider possible alternative solutions.

58. The selection criteria involved the candidates being taken through a video interview and if they failed the interview they did not proceed in the process. The process on the face of it was an even playing field at this stage. While the claimant insisted that he was under marked and that he must have passed because he had experience and qualifications which meant that he was better qualified than the post he was occupying for the respondent required. David Brace however gave evidence of why he came to the conclusion that the claimant's performance was a failure. Other than the claimant's belief and assertion there was nothing to gainsay what he said we had no reason to disregard his evidence. The only evidence we have is from David Brace who explains that the claimant was selected for redundancy in accordance with this selection criteria.

59. The claimant at one point in his evidence appeared not to know that there was a "*tab on the intranet*" where vacant roles were advertised. There is no evidence that the claimant was told about it or if he should already have known about it was remined of it in the redundancy process and told that he must avail himself of it in order to seek alternative employment. There was no evidence at all from the respondent that they advised the claimant that the employer considered whether there was alternative employment that could be offered to the claimant. Such evidence as there was showed the opposite, namely that after the claimant's failure in respect of the deputy manager role there was no consideration about whether the claimant should be offered alternative employment, the claimant was told that he should go home as a result of the incident on the 7 February 2021 and there was no further consideration given to the claimant other than to

give him notice of termination of his employment as of the 12 February 2021.

60. The conclusion of the Tribunal is that this was unfair. A reasonable employer would have given separate consideration of his redundancy including consideration of the question whether there was alternative employment for the claimant with any issue of misconduct arising from the 7 February incident considered discretely. If the 7 February incident was to inform the claimant's dismissal, a reasonable employer would have done that in a transparent way that allows the claimant to respond as he could to any allegations made against him. The dismissal was unfair because there was no consideration by the respondent as to whether there was alternative employment for the claimant. We are satisfied that there was alternative employment available because Kevin Duncombe who like the claimant was unsuccessful in the video interview was able to find a role so as to avoid dismissal. The respondent's evidence shows a complete failure in relation to the claimant to consider this.

61. The Polkey question arises by virtue of section 123(1) ERA, which directs a Tribunal to award such compensation as is just and equitable. The following principles were set out in Software 2000 Ltd v Andrews UKEAT/0533/06.

> "(1) In assessing compensation the task of the tribunal is to assess the loss flowing from the dismissal, using its common sense, experience and sense of justice. In the normal case that requires it to assess for how long the employee would have been employed but for the dismissal.
>
> (2) If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely. However, the tribunal must have regard to all the evidence when making that assessment, including any evidence from the employee himself. (He might, for example, have given evidence that he had intended to retire in the near future.)
>
> (3) However, there will be circumstances where the nature of the evidence which the employer wishes to adduce, or on which he seeks to rely, is so unreliable that the tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made.
>
> (4) Whether that is the position is a matter of impression and judgment for the tribunal. But in reaching that decision the tribunal must direct itself properly. It must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just compensation, even if there are limits to the extent to

> which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence."

62. In this case there was clearly an issue as to whether the claimant's conduct in the incident on the 7 February was misconduct and if it was misconduct what the appropriate sanction for that should be. The respondent and its managers appear to have had a high level of tolerance of offensive behavior and the use of offensive language was not uncommon. This appears clearly from the evidence given by the claimant and more significantly his witnesses who gave credible evidence. Recognizing that apparent level of tolerance towards abusive language we are not satisfied that it follows that the claimant would have been dismissed for what appears to us to be his obvious misconduct in referring to a colleague in abusive terms. The overall conduct of the claimant might have revealed a lack of professionalism but we do not consider that it was inevitable that the claimant would have been dismissed by this employer for his behaviour, however we recognize that that there is a chance that the claimant might have been dismissed. Our conclusion is therefore that the claimant the had a 40% chance of being dismissed by the respondent and that his award of compensation should be reduced accordingly applying the Polkey principle.

Wrongful dismissal

63. A wrongful dismissal is a dismissal in breach of the relevant provision in the contract of employment relating to the expiration of the term for which the employee is engaged. To entitle the employee to sue for damages, two conditions must normally be fulfilled namely: the employee must have been engaged for a fixed period, or for a period terminable by notice, and dismissed either before the expiration of that fixed period or without the requisite notice, as the case may be; and his dismissal must have been without sufficient cause to permit his employer to dismiss him summarily. The common law claim for wrongful dismissal is considered separately from the statutory claim for unfair dismissal.

64. The response does not state when the claimant was given notice of termination of his employment. The response states at paragraph 33: *"The claimant was advised that his role was at risk of redundancy during a meeting on 13 January 2021".* At paragraph 34 it states that: "*The first consultation meeting took place on 15 January 2021."* At paragraph 35 it states that: *"During the meeting, the claimant was advised that all Assistant Manager would have the opportunity to apply for a Deputy manager role and a second meeting was scheduled for 8 February 2021."* The second meeting in fact took place on 9 February 2021 when the claimant was told that he had not been successful in obtaining a deputy manager role and was therefore redundant. The claimant was paid five weeks' pay in lieu of notice from the 12 February 2021, he was not required to work his notice period. We have not been provided with a copy of the claimant's contract and it has not been said that there was a

contractual provision allowing the claimant to be dismissed without notice and given a payment in lieu of notice. On the face of things, the claimant was wrongfully dismissed on 12 February 2021 however the respondent then paid him his contractual and statutory entitlement to notice pay. The claimant therefore has suffered no loss as a result of any technical wrongful dismissal.

Direct race discrimination

65. An employer must not discriminate against an employee by dismissing him or subjecting him to any other detriment. An employer discriminates against an employee if because of his race he treats the employee less favourably than he treats or would treat others. Race includes colour, nationality ethnic or national origins. Where the employee seeks to compare his treatment with that of another employee there must be no material difference between the circumstances relating to each case.

66. If there are facts from which the employment tribunal could decide, in the absence of any other explanation that the employer contravened the provision concerned the employment tribunal must hold that the contravention occurred. However, this does not apply if the employer shows that it did not contravene the provision.

67. Section 123 Equality Act 2010 (EqA) provides that a complaint under the EqA within section 120 may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable.

68. The claimant states, in respect of time limits, as follows in his closing submissions;

> "The leading authority on determining whether "conduct extends over a period of time or not is the Court of Appeal decision in the Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530. This established that the employment tribunal should consider whether there was an "ongoing situation" or "continuing state of affairs" (which would establish conduct extending over a period of time) or whether there were a succession of unconnected specific acts (in which there is no conduct extending over a period of time, thus runs from each specific act). As Lord Justice Jackson indicated in Aziz v First Division Association [2010] EWCA Civ 304, in considering whether there has been conduct extending over a period, one relevant bit not conclusive factor is whether the same individuals or different individuals were involved in those incidents."

The claimant contends that there was an act extending over a period or a continuing state of affairs.

Conclusion on direct race discrimination

69. The claimant sets out in the list of issue at section 3 the direct discrimination complaints. The Tribunal have considered the matters set out in the Scott schedule (p99) as setting out a convenient list of the matters that we have to decide in this case. The complaints that the claimant makes date back to a time shortly start of his employment. The claimant's employment started in January 2016 and his first complaint of discrimination is made in respect of events in February 2016.

70. Apart from the evidence that comes from Mr Brace the respondent has not provided evidence in respect of complaints which occurred before the claimant moved from the Mile End store to the Watford Store. All these matters occurred in or before 2018. The claimant has not made complaints of discrimination at the time these events occurred. Many of the complaints the claimant makes are of a general nature, for example the claimant complains that he was bullied by SS but does not set out specific events for example in his further information the claimant says about his complaints against SS:

> "Approx April to October 2017 Mile End- My store manager Simon would constantly bully and harass me. He regualrly chastised me, or would answer me back sarcastically in front of our colleagues, in an attempt to belittle me. Simon would say things to me such as "are you stupid?" and "Don't be daft" in earshot of customers and staff.
> He would often discuss and berate me to my motoring sales assistants on my days off, who would report to me what was said. Simon would notify Emma of tasks, and managerial information before telling me, undermining my position in the store on many separate occasions."

71. We further note that in the specific case of SS the claimant says he has in any event been dismissed by the respondent. There are other persons who form part of the narrative background and also those at the forefront of the claimant's complaints who are no longer employed by the respondent.

72. The claimant's contention that there has been an act extending over period is in our view not made out in respect of the complaints that relate to the events in Mile End store and the events in the Watford Store. Apart from Dave Brace in respect of whom there are limited but very specific complaints there is no continuity in respect of the individuals concerned. The claimant's complaints about events in the Mile End store are not events that carry over to the Watford store. We reject the contention that there is an act extending over a period.

73. The claimant has not provided an explanation for why his complaints about discrimination were not made formally until 2021 when they relate to events in 2016 to 2018. The claimant has not given any evidence of an

impediment that prevented the complaints being made or a reason why no timely complaint was made until these proceedings were commenced in 2021. We recognise that the claimant says that he was raising these matters verbally with managers at various times but he says that nothing formal was done.

74. We remind ourselves that we have a wide discretion in determining whether it is just and equitable to extend time. We may consider anything that is relevant. Time limits are exercised strictly in employment cases. When the Tribunal considers the discretion to consider a claim out of time on just and equitable grounds, there is no presumption that we should do so unless we can justify failure to exercise the discretion. It is the contrary, the Tribunal cannot hear a complaint unless the claimant convinces us that it is just and equitable to extend time. The exercise of the discretion is thus the exception rather than the rule.

75. In this case we do not consider that it is just and equitable to extend time in respect of the claimant's complaints that arise out of his time at the Mile End store. This deals with the complaints as set out in the Scott schedule from number 1 to number 5. In any event in respect of each of those complaints, other than the matters at number 1, we have not been satisfied that the claimant has shown that there are facts from which we could have concluded that the claimant was discriminated on the grounds of his race. As to the matters at number 1, if correct those matters would have required an explanation from the respondent, otherwise in our view the claimant would have been entitled to succeed. To be clear however our conclusion is that it is not just and equitable to extend time to consider those complaints because it is not clear that the respondent, after the passage of time was in any position to address them.

76. The claimant says that the complaints from number 6 of the Scott Schedule onwards form part of an act extending over a period. The Tribunal do not consider that there is a single course of conduct that cover all the matters complained of. There are different types of events involving different people.

77. The claimant complains that he was discriminated against in respect of the reduction in pay. The claimant referred to travel allowances and London Weighting as the matters he complains of. The claimant for a period of time acting up was paid an allowance of £125 this was stopped when the claimant stopped acting up.

78. The Tribunal concluded that there are clear non-discriminatory explanations for alleged pay reductions. The claimant was no longer travelling to Mile End so any travel allowance relating to that could properly be stopped when the claimant stops being employed from Mile End. The claimant's move from Mile End also meant that he was no longer needed to be paid London Weighting. The claimant is not entitled to an acting up allowance when he is not acting up.

79. The claimant complains that there was promotion and favourable treatment of E by David Brace. There is no evidence at all that this was a race related matter. The claimant explained how after he left Mile End he was replaced by another person as assistant manager but after about 6 months E was promoted to assistant manager. There nothing to make a like for like comparison in relation to this specific matter.

80. The claimant gave a considerable amount of evidence relating to GR. The evidence he gave was legion with examples of disrespecting the claimant and GR being treated in a way that the claimant considered more favourable. However, there is no direct evidence that points to race being a factor. What the evidence showed, including evidence given by the claimant's witnesses, was that GR was a person who was able to exploit his position as a cycle technician to his advantage and did so at times in conflict with the claimant. Race did not appear to be a part of this.

81. There was no evidence that race was a factor in respect of the intervention by Kevin Duncombe when the claimant wanted to discipline RC.

82. The claimant was not paid an acting up allowance in the first instance but did receive it when the issue was raised. The claimant's acting up allowance had been agreed by the area manager, however the area manager was then off sick for a period of time. This was in around June 2020. There is no evidence that the claimant was not paid his acting up allowance because of a race related issue.

83. The way that the appointment of Jack Willis to the position of store manager came about has not been explained deeply. There was no evidence from any person as to how this came about. There was no evidence from the claimant about it. The claimant's evidence, that is the evidence that the claimant can properly give about it, is limited to the fact that Jack Willis was appointed and the claimant was not appointed. There is no evidence that the appointment of Jack Willis was irregular. The claimant did not apply for the role. The evidence from David Brace was that the roles of store manager were advertised when they arose, the adverts were in the respondent's intranet. David Brace was ignorant of the circumstances involving the appointment of Jack Willis. Jack Willis had been a manager in another store before he was appointed to the position of Manager in the Watford store. There is no evidence at all from which we could conclude that race played a part in the decision to appoint Jack Willis, let alone that in his appointment there was race discrimination against the claimant.

84. In April/May 2019 and 16 October 2020 RC(AM) made visits to the Watford store. The claimant says that when he failed to speak to the claimant, he was acting in a way that discriminated against the claimant on the grounds of his race. The claimant's witness Sophie Osborne gave evidence that supported the claimant's evidence about how the claimant was ignored by RC(AM) on the earlier occasion. The claimant's account speaks to the rude and perhaps unprofessional way that RC(AM) dealt

with the visit to the respondent's store but there is no evidence that points obviously to race playing a part. However, there is evidence of a motivation to RC(AM)'s actions in relation to Sophie Osborne, namely that he was "*hitting on me*", we understood this to indicate that he was interested in her in a sexual way. Whether or not this is in fact the case is not so much to the point as the fact that to the extent that there is any evidence about the reasons for the behaviour of RC(AM) it was not related to race at all.

85. There is no evidence at all that the claimant's race played a part in the way that the claimant's grievance was dealt with. The claimant seeks to contrast his grievance with the grievance brought by VC. There is in our view no proper comparison that can be made, as the circumstances of the two cases are materially different. In the claimant's case he was making, among other complaints, a complaint about his area manager, had sought specific conditions in respect of dealing with his grievance and had refused to attend a MS Teams meeting. There was a delay in finding someone to conduct the claimant's grievance. None of these factors appear to have been present in the case of the grievance brought by VC and we cannot identify any specific aspect of the grievance by VC which suggests that in the case of the claimant race played a part. To the extent that the VC grievance was revenge it does not suggest race played a part. The claimant's grievance was not concluded while VC's grievance was concluded that position arose because of the claimant's protest to the way it was dealt with by the respondents HR. It is not evidencing that race played a part.

86. The claimant was asked to indicate if he wanted a face-to-face grievance meeting and confirmed that he did. That this was not accommodated, and the claimant was offered a MS Teams meeting appears to the Tribunal to have more likely to do with timing and availability of a senior manager to conduct the grievance. There is no basis for concluding that race played a part.

87. The respondent's evidence was that there was no appraisal used in the scoring of the video interview in the redundancy process. There is no evidence that the claimant was treated any differently to any of the other people subject to the process for redundancy.

88. There is no evidence of any action by David Brace that was less favourable treatment of the claimant. There appears to have been a failure by RC(AM) to deal with the claimant's video interview in a timely manner and once he did get to confirm to the claimant that the claimant had failed there was a reluctance to provide the claimant with a score when the claimant asked for it. The failing of RC(AM) were unexplained there was however no evidence from which we are able to point to race being a part of the reason for his actions. There is no suggestion that the claimant was treated any differently to any of the other assistant managers as Kevin Duncombe whom he had to deal with.

89. There was an incident involving a member of the public and the claimant this was an upsetting incident for the claimant and resulted in him having to call the police. However, there is no indication from what the claimant said in his evidence that the respondent ought to have known that the claimant was in such a state that it was necessary or appropriate to make a check-in on the claimant's wellbeing after the incident. In any event the claimant has not explained what should have happened or why for us to be able to conclude that the claimant could properly consider that he had been subjected to a detriment in this regard.

90. The reason for reorganising the date of the claimant's final redundancy meeting was because the procedure required the claimant to be given a 24-hour notice of the meeting. This was nothing to do with the claimant's race.

91. The claimant complains that he was targeted by the respondent following the incident on the 7 February. The Tribunal concluded that the evidence did not support such a conclusion. What happened was that Jack Willis asked the claimant if he wanted to go home on the day of the incident because feelings were running high. The claimant refused and did not go home. There is no issue of race in respect of that issue.

92. There is no basis for saying that the use of HH as a notetaker was discrimination on the grounds of the claimant's race. The claimant's complaint in any event appears to have been based on the fact that HH had been involved in matters relating to VC, that is not a matter which relates to race.

93. The failure to re-instate the claimant was not related to race. The case of two colleagues reinstated after redundancy is not the same as the claimant. In the case of the two colleagues it appears to have been because there was an error made in their cases. There was no evidence of such an error having been made in the claimant's case and therefore it is not the case that the claimant was treated less favourably in comparison with someone whose circumstances were not materially different.

94. There is no evidence that grading of the claimant's salary was related to race. It was what he was contractually entitled to.

95. The claimant and all assistant managers were placed in a pool for redundancy there was no distinction of the claimant arising from his race.

96. The claimant says that he was not offered the same support and progression as other colleagues and not promoted on two separate occasions. There was no explanation by the claimant of how the respondent did deal with the issue of promotion or whether the claimant was treated differently and less favourably to others in the same circumstances. While the claimant can show that he was not promoted on two separate occasions, the claimant has not applied to be promoted. The evidence given by David Brace was that promotion was achieved by

successful application for a vacant role. The claimant never applied. Those who were appointed either applied for store manager roles or were in store manager roles and moved from store to the next by their managers for the purposes of the business.

97. The claimant complains that "*Adam and Chris*" were rehired after they were dismissed for disciplinary reasons. There is no reasonable comparison between these cases and the claimant for the purposes of race discrimination. The claimant was not dismissed for a disciplinary matter. The claimant did not apply for re-employment with the respondent. That was the situation in the case of both Adam and Chris.

98. The claimant complains that there was a failure to supply extra PPE and safety for black colleagues during COVID 19. The claimant says that the respondent should have made additional arrangements for Black colleagues during COVID. The Tribunal do not consider that there is a detriment shown by the claimant. To the extent that claimant alleges that any obligation arose to treat Black colleagues differently is not established. In any event it is not clear what it is alleged that the respondent should have done for Black colleagues that they did not do. There was no evidence given by the claimant that shows that the claimant was treated less favourably because of race in this regard.

99. There is no evidence that the claimant was marked down by RC(AM) or David Brace. The only evidence is that they assessed that the claimant failed the video interview. Kevin Dumcombe a white employee, the claimant's fellow assistant manager also failed and he was also assessed by the same people.

100. The claimant was an assistant manager James Willis was a store manager. There is an explanation which seeks to justify the difference in pay between the claimant and his manager. It is not a race based difference in pay, it is to do with their status.

101. The claimant alleges that a colleague by the name of Simon was guilty of various instances of gross misconduct, but he was not dismissed. The claimant was not dismissed for gross misconduct. There is no proper comparison to be made between the claimant's case and Simon's case. The cases are materially different.

102. The claimant also contends that Jack Willis was guilty of various acts of gross misconduct. Even if this was the case there is no proper comparison to be made with the claimant because the claimant was not treated less favourably as a result of carrying out any gross misconduct.

103. The Tribunal recognise that proving case of direct race discrimination is difficult because it is rare for people to admit that there has been discrimination and often there are matters complained of which are on their face unrelated to race and no obvious indicators of race. We are conscious of the guidance given in the cases such as King v Great Britian

China Centre [1992] ICR 516 which give guidance to Tribunals as to how we are to approach cases of discrimination. Further we have attempted to step back and look at the picture painted by the evidence as whole and asked ourselves whether that suggests that there has been discrimination related to race against the claimant in respect of the matters set out above. We have also considered whether the matters set out below, where we have found that there was a form of discrimination related to race are such as to point us in the direction of concluding that the claimant has been discriminated against and we do not.

104. The matters set out above in so far as they are out if time it is not just and equitable to extend time for consideration of the complaints. There is no overarching continuous act that covers these matters. They are discrete complaints which related to different things, some can be classed into groups such as the claimant's grievance, of the redundancy process, however outside of that there is no overarching act covering them all. The matters set out above are not acts of discrimination there is either no detriment or when there is a detriment identified there is no proper basis for concluding that race played a part.

105. The Tribunal has not addressed complaints relating to RC and VC because we consider that they come into a different category and we consider them under the heading of harassment.

Harassment

106. The claimant makes a complaint of harassment in respect of a number of matters set out in the list of issues.

107. Section 26 EqA provides that a person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account the perception of B; the other circumstances of the case; whether it is reasonable for the conduct to have that effect.

108. Harassment and direct discrimination claims are mutually exclusive, and a claimant cannot succeed in respect of both claims in relation to the same conduct.

Conclusion on harassment

109. The respondent produced a witness statement from RC but did not call him to give evidence. The claimant gave damning evidence about the manner in which RC behaved towards the claimant, making references to the claimant as "Barry" in circumstances where the reference was intended to associate the claimant with a naked Black man with a large penis. The claimant was spoken to and about by RC with an African

accent in circumstances which can only have been viewed as offensive. The respondent suggested that the claimant on occasion laughed when RC behaved in this way. The claimant denied it but in our view even if that did happen in context of RC's overall behaviour just because on an occasion the claimant may have been amused by the racially abusive behaviour of RC does not prevent it being conduct that has the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The fact that the claimant on one occasion laughed does not mean that the conduct does not have the effect referred to even taking into account the perception of the claimant that on that one occasion he laughed or to conclude that it is not reasonable for the conduct to have that effect.

110. We note that RC and his sister VC entered into an agreement to make a note of the claimant's movements. This was clearly part of behaviour that was intended to make the claimant feel intimidated. We conclude that was the case because their conduct was made known to the claimant as a result of VC telling the store manager that is what she was doing.

111. The behaviour of RC was not a one off, it is clear from the evidence of the claimant and the claimant's witnesses that there was a campaign of behaviour that was intended to be offensive to the claimant. The conduct was described as "constantly". The behaviour of RC continued from 2018 until 2020. To the extent that the acts of harassment are out of time Tribunal are satisfied that it is just and equitable to extend time to consider such complaints.

112. The conclusion of the Tribunal is that the claimant was subjected to harassment by RC over an extended period from 2018 to 2020.

113. In respect of the claimant's other complaints of harassment the Tribunal consider that the complaints are not well founded for the reasons set out under the section dealing with direct race discrimination above.

Victimisation

114. A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. A protected act is bringing proceedings under the Equality Act 2010; giving evidence or information in connection with proceedings under the Equality Act 2010; doing any other thing for the purposes of or in connection with the Equality Act 2010; making an allegation (whether or not express) that A or another person has contravened the Equality Act 2010.

115. In order for a disadvantage to qualify as a detriment, it must arise in the employment field in that the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.

116. The respondent accepts that the claimant has done a protected act.

117. The respondent in submissions states:

> "4. The essential question in determining the reason for a claimant's treatment following a protected act is always the same: what, consciously or subconsciously, motivated the employer to subject the claimant to the detriment?
> 5. In the majority of cases, this will require an inquiry into the mental processes of the employer. If the necessary link between the detriment suffered and the protected act can be established, the claim of victimisation will succeed. The test is not precisely one of causation, however.
> 6. In *Chief Constable of West Yorkshire Police v Khan 2001 ICR 1065, HL* the Court of Appeal held that the Chief Constable's refusal to give a reference to the police force to which K had applied for a post was by reason of the fact that K had brought proceedings, in the sense that had K not brought the proceedings he would have been provided with a reference. However, the House of Lords rejected this 'but for' approach to victimisation. While it was true that the reference was withheld by reason that K had brought the race discrimination claim in the strict causative sense, Lord Scott said that the language used in S.2(1) of the Race Relations Act 1976 (RRA) was not the language of strict causation. Rather, it required the tribunal to identify 'the *real reason*, the core reason, the causa causans, the motive' .
> 7. An employer's failure to investigate a complaint of discrimination or harassment will not constitute victimisation under S.27 unless there is a link between the fact of the employee making the complaint and the failure to investigate it — *A v Chief Constable of West Midlands Police EAT 0313/14*. In that case the EAT observed that it is difficult to contemplate how a failure to hear a complaint fully could be caused by the making of the complaint in the first place. If the particular nature of the complaint meant that it would not be discussed or dealt with in a way in which other complaints would — for instance, if the employer found the prospect of dealing with a complaint of sexual harassment embarrassing to the extent that it took no action — it is possible that an employment tribunal might conclude that the omission to act, if it caused the victim a detriment, could conceivably come within the scope of victimisation. However, the situation in the instant case was markedly different. Here, the alleged detriment was the decision to limit the scope of the claimant's complaint about harassment. There was no causal link between that decision and the claimant's protected act (of making the complaint in the first place)."

Conclusion on victimisation

118. The claimant makes a number of different complaints about victimisation. There is no obvious evidence that points to the claimant's grievance being the reason why the claimant was subjected to the alleged various detriments. It is not clear why some of the matters that the claimant complains of are said to be acts of victimisation. There is no evidence that obviously links the claimant's grievance which was issued in September 2020 with the alleged detriments that occur after that date.

119. The claimant does not say in his evidence that RC(AM) was aware of his grievance. The claimant mentions that when he asked Jack Willis, on 16 October 2020, if RC(AM) had left the claimant was told that Jack Willis had not told the RC(AM) that the claimant wanted to speak to him. No evidence is given that any detriment arising from this to the claimant was due to the grievance.

120. There is no evidence that the nature of the grievance or the making of the grievance affected the way it was dealt with by the respondent.

121. VC's grievance was submitted before the claimant carried out his protected act, it cannot have been caused by the claimant's grievance.

122. The claimant's grievance and VC's grievance were different in nature, the claimant's grievance was accompanied by specific conditions which the claimant wanted satisfied and the affected his attitude the way he responded to the respondent's HR's efforts to address his grievance.

123. There is no evidence that the claimant making the grievance was in any sense the cause why the offer of fact to face meeting was withdrawn it would appear to have been about the timing of the grievance hearing.

124. There is nothing in the evidence that points to the claimant's grievance being in any sense the cause for the way the claimant's video interview was scored by RC(AM) or by David Brace.

125. There is no detriment in the fact that the respondent did not check-in on the claimant following the incident with a customer. The absence of the check in is not on any evidence before us shown to be because of the grievance.

126. The final redundancy consultation meeting was moved because the claimant had not been given 24-hour notice.

127. The Tribunal did not find that the claimant was targeted in relation to an incident with colleagues.

128. The reason that the claimant was asked if he wanted to go home was because there had been a heated incident where tempers flared and feelings run high and people were upset, the offer was likely made as a way of allowing tempers and feelings to cool.

129. There was no detriment in HH being used as a note taker in the claimant's consultation meeting. The fact that the claimant had raised a grievance has not in the any sense cause this to occur.

130. There was no connection between the claimant's grievance and the claimant's employment not being reinstated. There was no reason to reinstate the clamant' employment.

131. The claimant's contract determines the claimant's pay it is not in any way affected by the fact that the claimant raised a grievance.

132. All assistant managers were placed in a redundancy pool whether they had raised a grievance.

133. There is no evidence that the claimant was 'marked down or marked as failed because he raised a grievance.

134. The fact that the claimant and Simon were treated differently is because their circumstances were different. In our view there is no detriment.

135. There is no detriment to the claimant if Jack Willis did receive favourable treatment in respect of disciplinary matters.

136. The claimant's complaints of victimisation are not proven, they are not well founded.

Indirect discrimination

137. Section 19(1) EqA, provides that the claimant needs to show that respondent applied to her a provision, criterion or practice ("PCP") which is discriminatory in relation to her sex. Pursuant to s.19(2) EqA, a PCP is discriminatory if: (a) A applies, or would apply, it to persons with whom B does not share the characteristic, (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, (c) it puts, or would put, B at that disadvantage, and (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

138. In order to satisfy the test of objective justification, the employer must show that the PCP is "reasonably necessary" to achieve its objective: *Chief Constable of West Yorkshire Police v Homer* [2012] ICR 704 (SC).

139. The list of issues records the claimant's complaint of indirect discrimination as follows:

> "The PCP the claimant relies on is, the failure to provide extra PPE, or safety awareness to Black colleagues during COVID 19 national emergency. All staff were provided with the same level of PPE, irrespective of race."

140. The Tribunal do not consider that the first sentence above, in particular the words “failure to provide extra PPE, or safety awareness to Black colleagues during COVID 19 National Emergency” can amount to a PCP giving rise to indirect discrimination with the meaning of section 19 EqA. To be a PCP for the purposes of section 19 it must be applied to persons with whom the complainant does not share the characteristic. As drafted the PCP is specific to Black colleagues and so is outside the requirements of section 19(2)(a).

141. If the PCP is read as though it relates to all, and not just Black colleagues the PCP must be shown to put Black colleagues at a particular disadvantage. The claimant relies on the contention that Black people were more adversely affected by COVID than any other racial groups.

142. The PCP analysed does not show that there was a group disadvantage to Black people. The PCP in so far as it is capable of being a PCP is that Black People were given PPE, but they were given the same PPE as everyone else. We do not consider that there is any evidential basis for us to conclude that was a known substantial disadvantage at the time.

143. Further in any event we do not consider for the reasons that the claimant has shown that he suffered a particular disadvantage as required by section 19(2) (c).

144. Finally, we consider that at the relevant time PPE was being provided by employers and others, in at times a haphazard way, relying on government guidance and advice. The claimant does not articulate how the provision of PPE to all in the same way could be considered anything but a proportionate means of achieving the legitimate aim of protecting public health in the face of the novel corona virus known as COVID 19.

145. The claimant’s complaint of indirect discrimination is not well founded and is dismissed.

Remedy hearing

146. This case is already listed for a remedy hearing to take place on the 11 and 12 March 2024. The parties must disclose all documents relevant to remedy by providing lists and copy documents by the 9 January 2024. The claimant must provide to the respondent a revised schedule of loss by 9 January 2024. The respondent must provide to the claimant a counter schedule of loss by the 23 January 2024. The parties are to agree, and the respondent must prepare, a remedy bundle and provide one hard copy to the claimant by the 6 February 2024. The parties must exchange witness statements of fact relevant to remedy by 18 February 2024. The respondent must provide to the Tribunal an electronic copy of the remedy bundle and any witness statements to be used at the remedy hearing.

_____
Employment Judge Gumbiti-Zimuto

Date: 11 December 2023

Sent to the parties on:
28 December 2023

For the Tribunals Office

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