EMPLOYMENT TRIBUNALS

Claimant: **Mr. A Chauhan**

Respondents: **University of Leicester (R1)**
Mubin Chowdhury (R2)
Julie Woods (R3)
Ben Cluskey (R4)
Manal Iqbal (R5)
Kelly McAuliffe (R6)

Heard at: **Leicester (Part Hybrid)**

On: **19th February 2024 (reading day)**
20th, 21st, 22nd, 23rd & 26th February 2024
27th and 28th February 2024 (in Chambers)

Before: **Employment Judge Heap**
Members: **Mr. K Rose**
Ms. L Woodward

Representation
Claimant: **Mr. C Echendu – Non-practising barrister**
Respondent: **Mr. J Chegwidden - Counsel**

RESERVED JUDGMENT

1. The complaint of direct discrimination relating to an incident in December 2021/January 2022 involving Terry Bailey and Andrew Permain is dismissed on withdrawal by the Claimant.

2. The remaining complaints of direct discrimination relying on the protected characteristic of race all fail and are dismissed.

3. The complaints of harassment relying on the protected characteristic of race all fail and are dismissed.

4. The complaints of victimisation all fail and are dismissed.

5. A hearing has been listed for 1st May 2024 with a time estimate of one day at the Leicester Employment Tribunal hearing centre. Any application by either party which they wish to be determined at that hearing must be made within 28 days of the date that this Judgment is sent to the parties.

REASONS

BACKGROUND & THE ISSUES

1. This is a claim brought by Mr. Ashok Chauhan (hereinafter referred to as "The Claimant") against his current employer, The University of Leicester (hereinafter referred to as "The First Respondent" or "The University") presented by way of a Claim Form received by the Employment Tribunal on 17th May 2022 following a period of early conciliation which took place between 6th April and 21st April 2022.

2. There are also claims against five other individual Respondents named above in respect of various of the complaints advanced. We refer to each of them in the Order that they are listed above. We do not intend any disrespect in referring to them that way rather than by name in the same way as we intend no disrespect to the Claimant for referring to him in that way. The claim is one of direct discrimination and harassment both relying on the protected characteristic of race and of victimisation. All complaints are resisted by the Respondents.

3. In the usual way the claim has been the subject of a Preliminary hearing designed to clarify the claims and the issues. That took place on 4th October 2022 before Employment Judge Ayre who discussed the issues with the parties and recorded within her case management summary what the complaints being advanced were. That included complaints which she permitted by amendment. We have discussed those issues further with Mr. Echendu following our reading into the papers on the first day of hearing time because the Claimant's witness statement was somewhat sparce on detail and it was unclear in places what the precise nature of the allegation was said to be and how certain Respondents were said to be involved. We have recorded in the schedule to this Judgment the original list of issues identified by Employment Judge Ayre and how matters developed after discussion with Mr. Echendu. How the matters developed are set out in italicised text.

4. That included the fact that Mr. Echendu told us that the complaint phrased at paragraph 2.2.3 of the list of issues at page 65 of the hearing bundle was not the complaint that the Claimant was advancing and that the allegation was not that the First Respondent had failed to protect the Claimant from being shouted at by Terry Bailey and Andrew Permain but the fact that he had been shouted at by them in the first place. Whilst that was what was phrased in the particulars of claim at page 37 it is regrettable that Mr. Echendu did not write to the Tribunal to correct the position in accordance with paragraph 17 of the Orders of Employment Judge Ayre. Fortunately, the evidence of Mr. Bailey has enabled us to determine the allegation as it originally stood. Given what Mr. Echendu has told us about the basis of this allegation we have not determined any allegation about a failure to protect the Claimant and that was not the way in which the case was put.

THE CLAIMANT'S POSITION

5. The Claimant contends that during his employment he was subjected to direct discrimination on the protected characteristic of race. He contends that he was treated less favourably than other white members of staff were or would have been treated and that the reason for that difference in treatment is his race. He similarly says that he was subjected to a number of acts of harassment because

of his race. He relied on his nationality and his ethnic origins for the purposes of these parts of the claim.

6. Finally, he says that he did two protected acts within the meaning of Section 27 Equality Act 2010 – namely bringing earlier Tribunal proceedings claiming race discrimination and by comments made to the Second Respondent at an investigatory meeting on 15th November 2021 - and that in consequence of those he was subjected to detriment by various of the Respondents and therefore was victimised. Alternatively, it is said that the relevant Respondents believed that the Claimant may do a protected act which Mr. Echendu clarified was bringing a further Employment Tribunal claim.

THE RESPONDENT'S POSITION

7. The Respondent contends entirely to the contrary. Insofar as the Claimant's complaints of direct race discrimination were concerned, the Respondents' position is that race was not a factor in any of the treatment of which the Claimant ultimately complains or otherwise that those matters did not occur or did not occur as he contends that they did. The same is true of the harassment complaints.

8. As to the victimisation complaints, the Respondents sensibly accept that the Claimant's first Employment Tribunal amounted to a protected act. It is not accepted that the Claimant did a protected act in respect of what was said to the Second Respondent at an investigatory meeting on 15th November 2021. It is said that whatever the position, neither the first claim or the comment made at the meeting influenced any of the treatment of which the Claimant complains if it is found to have occurred as claimed nor was any perceived protected act. It is also said that the Third, Fourth, Fifth and Six Respondents could not have subjected the Claimant to detriment because he had done a protected act because they had no knowledge about them.

9. With regard to certain of the discrimination complaints, the Respondent also contended that the Employment Tribunal had no jurisdiction to entertain them as the Claimant had presented a number of them outside the appropriate statutory time limit provided for by Section 123 Equality Act 2010.

THE HEARING

10. The claim was originally listed for 8 days of hearing time which took place between 19th February 2024 and 28th February 2024. We concluded the evidence and submissions on the afternoon of day six of the hearing. We determined that we would reserve our decision so as to save time and costs for the parties (particularly in view of the travel necessary for both representatives) and the Tribunal; to ensure that our deliberations could be completed; because it was likely that written reasons would have been asked for on one side of the other and that any remedy determination would not be possible in the time remaining after delivery of a Judgment and particularly because there was nothing in the Claimant's witness statement about that.

11. We have had a number of procedural issues to deal with during the course of the hearing which it is appropriate to note here. At the outset of the hearing Mr. Chegwidden made an application for the Third and Sixth Respondents to give

evidence remotely via Cloud Video Platform ("CVP"). Mr. Echendu objected to either witness giving evidence remotely, principally on the basis that they were both Respondents to the proceedings. Given that the Third Respondent no longer works for the First Respondent, lives some considerable way away in South Shields and has caring responsibilities for her father we permitted her evidence to proceed via CVP. We similarly permitted the Sixth Respondent to give evidence by CVP on the basis that she could not travel due to a back injury for which she has been certified as unfit for work. We are satisfied that the evidence of both witnesses was able to be given and received satisfactorily and that the fairness of the hearing to either party was not compromised.

12. Mr. Chegwidden by prior agreement appeared via CVP on days four and five and again there was no issue experienced in relation to him doing so other than a slight time lag between us speaking and that being relayed to Mr. Chegwidden and vice versa.

13. At the outset of the hearing we raised with Mr. Echendu that paragraphs 28 to 36 of the Claimant's witness statement did not appear to be allegations in the Claim Form nor complaints identified at the Preliminary hearing. Mr. Echendu accepted that was the case after an adjournment to identify where he considered that they were located. He indicated that those matters post dated the presentation of the Claim Form but that the Claimant wanted us to determine those additional complaints. Mr. Echendu accepted that he had not previously made an application to amend the claim but that he now wished to do so at the hearing before us. We gave Mr. Echendu some time to consider that with the Claimant given that it was almost inevitable that if we granted that application it would have the result that the Respondent would apply for an adjournment on the basis that they had not prepared their case to deal with those allegations and relevant witnesses had not been called to give evidence. Following the adjournment Mr. Echendu indicated that the Claimant wished to proceed without any amendment application and it was understood that we would not be determining those additional complaints that had been contained within his witness statement.

14. As his evidence was about to resume on the third day of the hearing the Claimant indicated that he had with him another person who he intended to call to give evidence. That was a trade union official, Jogginder Kaur Dhillon, who had previously provided him with some assistance. Mr. Echendu did not appear to have been made aware of that position and so there was an adjournment for him to take instructions. Upon the hearing resuming Mr. Echendu indicated that he intended to call Ms. Dhillon. No witness statement had been prepared or exchanged with the Respondent and so we left this matter overnight for Mr. Echendu to obtain a draft statement and that we would hear an application to call Ms. Dhillon the following day. That application was made and resisted by Mr. Chegwidden on behalf of the Respondents. Amongst other things, the lateness of the application was referred to, the relevance of the statement to the issues that the Tribunal was required to determine, the fact that the Claimant had already given his evidence and a concern that despite the Tribunal having made plain that the Claimant must not discuss his evidence until its conclusion he had been seen having such discussions with Ms. Dhillon during a break in proceedings. That was something that the Claimant did not deny although we were unable to get to the bottom of what had been said.

15. We refused the application on the basis that it was made far too late in the day and without any reasonable explanation as to why the witness statement could not have been served in accordance with the Orders made by Employment Judge Ayre. Equally importantly was that it was not possible, even following our enquiries of Mr. Echendu in that regard, to understand what the relevance of the evidence was going to be to the issues that we had to determine and how Ms. Dhillon was going to be able to give us any direct factual evidence. We have accordingly not heard from her and have not borne her statement in mind when determining the issues in the claim.

16. Following the close of the Claimant's evidence we raised with Mr. Echendu the fact that he had, in answer to questions from the Tribunal, identified a completely different document than we had been told was the one that it was alleged that the Third Respondent had downloaded and read. Mr. Echendu had identified the particulars of claim in an earlier Employment Tribunal claim that it was alleged that the Third and Fourth Respondents had seen. However, the Claimant's evidence was that this was not the case and that he was only saying that the Third Respondent (not the Fourth) had seen a document which was not in the hearing bundle. The Claimant initially said that he had that document with him. It had not been disclosed. We had a further adjournment to deal with Mr. Echendu taking instructions on that document. After the adjournment we had a document handed to us and to the Respondent which it was said was the document in question. However, Mr. Echendu had a different version of the document which he told us was the correct one. The Claimant appeared to disagree with that position but given the circumstances we indicated that we were not prepared to proceed without the precise document – which the Claimant said that he had at home – being before us.

17. The Claimant obtained the whole of the document during the lunchtime adjournment. It transpired to be the one identified by the Claimant and which was provided to us after the adjournment but with the exception that it included a Tribunal crest and header. The inclusion of that document was not objected to by the Respondent although it was made plain that the Third Respondent would not be able to give evidence about it because she had not seen it or had the opportunity to give instructions and seek advice and in all events her position was that she had not read the document as the Claimant alleged.

18. On the fourth day of the hearing Mr. Echendu made an application for specific disclosure of an internet policy which was referred to in the Second Respondent's investigation report. That was opposed by the Respondent on the basis that the Claimant could have accessed it himself and so had never needed a copy from the Respondent and the timing of the application was such that the Claimant had already given evidence and could not now be cross examined on it as had the Third Respondent.

19. On the fifth day of the hearing we raised a concern with Mr. Echendu about the Claimant not appearing to be taking the proceedings particularly seriously. In this regard he had been late on almost every day of attended hearing time, had not returned from at least one break on time, had returned over half an hour late from a lunch break and had that morning absented himself from the start of the hearing without that being raised with the whole Tribunal. It was only a matter that he had sidestepped one of the non-legal members to raise in the corridor at the end of the fourth day of the hearing when he referred to being an hour and a

half late the following day because of what he referred to as a longstanding appointment. Mr Echendu told us that the Claimant had had to attend an emergency medical appointment because he had been taken unwell that had been arranged for him that morning and that he had probably approached the Tribunal member because he was suffering with his mental health. Given the difficulty resiling a longstanding appointment with an emergency one arranged that day we directed the Claimant to supply evidence of an emergency attendance at his General Practitioners. We had some difficulties in obtaining that and there were still issues with the documents that we did receive but ultimately we have not pressed that issue further because by the time that we received the last set of documents we were at the point of submissions and it was better to get on and deal with those matters.

20. On the sixth day of the hearing before we were about to hear from the Respondents' final witness, Ms. Haynes, Mr. Echendu handed up a number of documents dating from 2021/2022 which he wished to be put into evidence. As we were told that those related only to liability we parked that issue so as to make the best use of the time remaining.

21. We should record finally that Mr. Echendu raised with us that he believed that Mr. Chegwidden was harassing or intimidating him with regard to interruptions to his cross examination and that he was considering a referral to the Bar Standards Board and/or some form of application for costs. His position was that he was being prevented from being able to present the Claimant's case. Whilst we agreed that we would note that position we respectfully disagreed with Mr. Echendu's assessment. Any interactions were both necessary and made through the Judge. They were also on the vast majority of occasions matters of concern raised by the Tribunal which had included Mr. Echendu raising his voice, repeatedly using the first name of witnesses when it was not appropriate to do so and when he had been asked to refrain from doing that, talking over or interrupting a witness so that we could not hear their answer, repeating the same questions a significant number of times, asking questions that were more than one question or that a witness could not answer and openly laughing at answers that had been given. If we had seen inappropriate conduct on the part of Mr. Chegwidden then we would have raised it but we did not and we are satisfied that Mr. Echendu was not in any way stymied from putting the Claimant's case.

WITNESSES

22. During the course of the hearing, we heard evidence from the Claimant on his own behalf.

23. We also heard from a number of individuals on behalf of the Respondents. Those individuals were as follows:

- Julie Wood – the Third Respondent who the Claimant says manufactured frivolous complaints so as to discriminate against and victimise him;
- Kelly McAuliffe – The Sixth Respondent who the Claimant says manufactured frivolous complaints in order to subject him to race discrimination/harassment and/or victimisation;
- Ben Cluskey – The Fourth Respondent who the Claimant says manufactured frivolous complaints in order to subject him to race discrimination/harassment and/or victimisation;

- Terry Bailey – a Help Desk Operator who the Claimant says subjected him to harassment.
- Mubrin Chowdhury – The Second Respondent who completed an investigation into the allegations made by the Third, Fourth, Fifth and Sixth Respondents and who it is said discriminated against the Claimant and victimised him.
- Manal Iqbal - The Fifth Respondent who the Claimant says manufactured frivolous complaints in order to subject him to race discrimination/harassment and/or victimisation;
- Clare Haynes – the Assistant Director of Human Resources ("HR") who appointed the Second Respondent to investigate concerns which had been made against the Claimant by the Third, Fourth, Fifth and Sixth Respondents.

24. The Respondent also provided a witness statement from Andrew Permain although he was not called to give live evidence and we were invited to place what weight we considered appropriate to that statement. Mr. Permain's evidence related only to an incident where we already had satisfactory evidence from Mr. Bailey which meant that we have not had to place any significant weight on that additional statement to determine that particular allegation of harassment. We deal with that matter further below.

25. We make our observations in relation to matters of credibility in respect of each of the witnesses from whom we have heard below.

26. In addition to the witness evidence that we have heard, we have also paid careful reference to the documentation to which we have been taken during the course of the proceedings and also to the oral submissions made by Mr. Echendu on behalf of the Claimant and the written and oral submissions of Mr. Chegwidden on behalf of the Respondent.

CREDIBILITY

27. One issue that has invariably informed our findings of fact in respect of the complaints before us is the matter of credibility. Therefore, we say a word about that matter now.

28. We begin with our assessment of the Claimant. Ultimately, we found him to be an entirely unsatisfactory witness. In many areas of his evidence we found him to be evasive and found that he frequently failed to answer the questions asked of him, choosing instead to answer something completely different despite having been told at the outset of his evidence that he needed to focus on the questions asked or otherwise simply failing to give an answer at all. Mr. Chegwidden frequently had to repeat questions more than once and often still did not receive a satisfactory answer or sometimes any answer. Whilst Mr. Echendu prefaced the Claimant's evidence with the fact that he is suffering severely with his mental health and had memory difficulties we had no medical evidence to that effect (other than a letter indicating that the Claimant had recently attended his General Practitioner reporting memory issues which we were told was the emergency appointment referred to above) that would affect his ability to give evidence.

29. In all events, the Tribunal is experienced in receiving evidence from parties and witnesses with mental health problems and the issues which we saw in respect of

the Claimant's evidence were not related to his memory. In all events, some of the more concerning issues in respect of his credibility, which we shall come to in our findings of fact below, were plain from the documentation before us.

30. We turn then to the evidence given on behalf of the Respondents. We had no issue with the credibility of any of the witnesses called by the Respondents or the Respondents themselves. All gave evidence in a candid and straightforward way and one which was consistent with the documentation before us. They were prepared to make concessions where appropriate such as where specific dates could not be recalled. Mr. Echendu's cross examination was not always easy to follow, was repetitive and at times disrespectful as we have already observed above but we were satisfied that all of the Respondents' witnesses attempted to give evidence which assisted the Tribunal and which was an honest account. We had no reason to doubt the evidence or credibility of any of them.

31. We should observe that some witnesses – most notable the Third and Sixth Respondents could not recall specific dates that they had experienced issues with the Claimant. Particularly, Mr. Echendu indicated early into the evidence of the Sixth Respondent that she should no longer give evidence because he submitted that her entire witness statement was void because she could not recall a specific date. We rejected that position. It is not unusual for people – Claimants and Respondents alike – not to be able to recall a specific date or dates of events but to be able to recall with clarity what it was that actually happened. We are satisfied that this is what happened in this case.

THE LAW

32. Before turning to our findings of fact, we remind ourselves of the law which we are required to apply to those facts as we have found them to be.

Discrimination relying on the protected characteristic of race

33. When considering complaints of discrimination a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) ("The Code") to the extent that any part of it appears relevant to the questions arising in the proceedings before them.

34. The Claimant's discrimination complaints all fall to be determined under the Equality Act 2010 ("EqA 2010) and, particularly, with reference to Sections 13, 26, 27 and 39.

35. Section 39 EqA 2010 provides for protection from discrimination in the work arena and the relevant parts provide as follows:

(1) An employer (A) must not discriminate against a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;

(b)as to the terms on which A offers B employment;

(c)by not offering B employment.

(2) An employer (A) must not discriminate against an employee of A's (B)—

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c)by dismissing B;

(d)by subjecting B to any other detriment.

(3) An employer (A) must not victimise a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;

(b)as to the terms on which A offers B employment;

(c)by not offering B employment.

(4) An employer (A) must not victimise an employee of A's (B)—

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(c)by dismissing B;

(d)by subjecting B to any other detriment.

Direct discrimination

36. Section 13 EqA 2010 provides that:

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others".

37. It is for a Claimant in a complaint of direct discrimination to prove the facts from which the Employment Tribunal could conclude, in the absence of an adequate non-discriminatory explanation from the employer, that the employer committed an unlawful act of discrimination (see **Wong v Igen Ltd [2005] ICR 931**).

38. If the Claimant proves such facts, the burden of proof will shift to the employer to show that there is a non-discriminatory explanation for the treatment complained of. If such facts are not proven, the burden of proof will not shift.

39. In deciding whether an employer has treated a person less favourably, a comparison will in the vast majority of cases be made with how they have treated or would treat other persons without the same protected characteristic in the same or similar circumstances. Such a comparator may be an actual comparator whose circumstances must not be materially different from that of the Claimant (with the exception of the protected characteristic relied upon) or a hypothetical comparator.

40. Guidance as to the shifting burden of proof can be taken from that provided by Mummery LJ in **Madarassy v Nomura International Plc [2007] IRLR 246**:

> *"'Could conclude' ….. must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of …… discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage …. the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like….. and available evidence of the reasons for the differential treatment.*
>
> *The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."*

41. However, there must be something from which an inference could be drawn that the treatment complained of relates to the protected characteristic relied on. The fact that a person has that protected characteristic is not enough nor is a mere difference in treatment. Similarly, unreasonable treatment is not enough to establish that there has been discrimination (see **Bahl v The Law Society [2004] IRLR 799**).

42. The protected characteristic need only be a cause of the less favourable treatment but need not be the only or even the main cause. A Tribunal when considering the cause of any less favourable treatment will be required to consider that question having regard not only to cases where the grounds of the treatment are inherently obvious but also those where there is a discriminatory motivation (whether conscious or unconscious) at play (see **Amnesty International v Ahmed [2009] ICR 1450.**)

Harassment

43. Harassment is dealt with by way of the provisions of Section 26 EqA 2010, which provide as follows:

> *(1)A person (A) harasses another (B) if—*
>
> *(a)A engages in unwanted conduct related to a relevant protected characteristic, and*
>
> *(b)the conduct has the purpose or effect of—*

(i)violating B's dignity, or

(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

44. The conduct complained of, in order to constitute harassment under Section 26, must relate to the protected characteristic relied upon by the complainant. However, in respect of a complaint of harassment, the word "relate" has a broad meaning (see for example paragraph 7.10 of the EHRC Code).

45. The Employment Appeal Tribunal in **Nazir & Anor v Aslam [2010] UK EAT/0332/09** set out the questions for a Tribunal dealing with a claim of this nature are therefore the following:

a. What was the conduct in question?

b. Was it unwanted?

c. Did it have the purpose of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant?

d. Did it have the effect of doing so having regard to an objective, reasonable standard and the perception of the complainant?

e. Was the conduct related to the protected characteristic relied upon?

Victimisation

46. Section 27 EqA 2010 provides that:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a)B does a protected act, or

(b)A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a)bringing proceedings under this Act;

(b)giving evidence or information in connection with proceedings under this Act;

(c)doing any other thing for the purposes of or in connection with this Act;

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

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

47. It will not be sufficient for a Claimant to simply use words such as "discrimination" for that to amount to a protected act within the meaning of Section 27 EqA 2010. The complaint must be of conduct which interferes with a characteristic protected by the EqA. There need not be explicit reference to the protected characteristic itself but there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the EqA 2010 applies (see **Durrani v London Borough of Ealing UKEAT/0454/2012**).

48. In dealing with a complaint of victimisation under Section 27 EqA 2010, Tribunal will need to consider whether:

    (a) The alleged victimisation arose in any of the prohibited circumstances covered by Section 39(3) and/or Section 39(4) EqA 2010 (which are set out above);

    (b) If so, was the Claimant subjected to a detriment; and

    (c) If so, was the Claimant subjected to that detriment because he or she had done a protected act.

49. In respect of the question of whether an individual has been subjected to a detriment, the Tribunal will need to consider the guidance provided by the EHRC Code (as referred to above) and the question of whether the treatment complained of might be reasonably considered by the Claimant concerned to have changed their position for the worse or have put them at a disadvantage. An unjustified sense of grievance alone would not be sufficient to establish that an individual has been subjected to detriment (see paragraphs 9.8 and 9.9 of the EHRC Code).

50. If detriment is established, then in order for a complaint to succeed, that detriment must also have been "because of" the protected act relied upon. The question for the Tribunal will be what motivated the employer to subject the employee to any detriment found. That motivation need not be explicit, nor even conscious, and subconscious motivation will be sufficient to satisfy the "because of" test.

51. A complainant need not show that any detriment established was meted out solely by reason of the protected act relied upon. It will be sufficient if the protected act has a "significant influence" on the employer's decision making (**Nagarajan v London Regional Transport 1999 ICR 877**). If in relation to any particular decision, the protected act is not a material influence of factor – and thus is only a trivial influence - it will not satisfy the "significant influence" test (**Villalba v Merrill Lynch & Co Inc & Ors 2007 ICR 469**).

52. In any claim of victimisation, the Tribunal must be satisfied that the persons whom the complainant contends discriminated against him or her contrary to Section 27 EqA 2010 knew that he or she had performed a protected act (**Nagarajan v London Regional Transport [1999] ICR 877**). As per **South London Healthcare NHS Trust v Al-Rubeyi (2010) UKEAT/0269/09** and **Deer v Walford & Anor EAT 0283/10**, there will be no victimisation made out where there was no knowledge by the alleged discriminators that the complaint relied upon as a protected act was a complaint of discrimination.

FINDINGS OF FACT

53. We ask the parties to note that we have only made findings of fact where those are required for the proper determination of the issues in this claim. We have inevitably therefore not made findings on each and every area where the parties are in dispute with each other where that is not necessary for the proper determination of the complaints before us. The relevant findings of fact that we have therefore made against that background are set out below. References to pages in the hearing bundle are to the bundles which was before the Tribunal and the witnesses.

The First Respondent and the commencement of the Claimant's employment

54. The First Respondent is a higher education institution based in Leicester. All of the individual Respondents are or were at the material time with which the claim is concerned employees of the First Respondent.

55. The Claimant commenced his employment with the Respondent in November 2014. He describes himself as a British Citizen of Indian ethnic origin. At all material times he has been employed as a cleaner. We have not seen the Claimant's contract of employment but we accept the evidence of Clare Haynes, the Assistant Director of Human Resources, that cleaners do not have any fixed place of work and can be deployed to clean any areas of the University premises that are required.

The first Employment Tribunal claim

56. It is not in dispute that the Claimant presented an earlier Employment Tribunal claim in July 2019 alleging race discrimination ("The First Claim"). That claim was against the First Respondent only and it was a claim of race discrimination. It is also not in dispute that that was a protected act.

57. It is worth setting out what happened in relation to the First Claim because it never progressed beyond initial stages. The Claimant was at the time a litigant in person. He failed to comply with Orders to particularise the First Claim so that an Unless Order was made. It was determined on 19th July 2021 that there had been material non-compliance with the terms of the Unless Order such that the claim had been dismissed in its entirety. An application for relief from sanction was refused. The Claimant appealed to the Employment Appeal Tribunal and was unsuccessful. As far as we understand it there has been an onward appeal to the Court of Appeal which is still pending. Whatever the position, however, there was no longer any live claim before the Employment Tribunal after 19th July 2021 in respect of the First Claim.

January 2021 complaints, the informal discussion and expectations

58. In January 2021 the Claimant had been based in the engineering department but a complaint was made about him and as a result he was transferred to work in the First Respondents George Davies building. We accept the evidence of Ms. Haynes that where a complaint is made then it is not unusual for there to be a transfer to another area or building and as we have already observed there was no contractual provision for a set location of work.

59. The Claimant wrote a long letter to his supervisor, Fredy Caballero, complaining about the transfer and how it had been undertaken. It is not necessary for us to set out the details of that complaint but it appears at pages 295 to 302 of the hearing bundle.

60. As a result of the complaint that had been made about the Claimant and his concerns about a transfer Mr. Caballero had an informal telephone discussion with him on 2nd February 2021 and later wrote to confirm what had been discussed and to set out expectations for future conduct and communication with colleagues in the working environment (see pages 98 to 100 of the hearing bundle). Not all of that letter (for example issues about where the Claimant should go for supplies of gloves) is relevant to the issues before us and so it is not necessary for us to set out in full.

61. However, the letter made the following relevant points:

    a. That part of the complaint stated that the Claimant had approached staff working in the Engineering building asking them to contact him if they had any information about senior management at the University;

    b. That another part of the complaint was that the Claimant had told staff that he was going to sue the University and that it was a bad place to work and had whilst doing so used offensive language;

    c. That the Claimant should not be speaking to members of staff in an excessively negative way about the University or using offensive language and that there should not be excessively long or frequent discussions about non-work related matters during work time and that all staff were expected to behave in accordance with the Dignity & Respect Policy;

    d. That the Claimant had confirmed that he understood and that he would ensure that the behaviour would not reoccur;

    e. That the Claimant should not be printing multiple copies of personal documents using the University printers and should only print documents relevant to his role; and

    f. That it was expected that in the future the Claimant would maintain focus on his duties during working time, maintain a level of professionalism and conduct at all times and communicate with colleagues in a respectful manner.

62. The letter made plain at the conclusion that any further or unacceptable behaviour may lead to a formal investigation under the University Disciplinary Ordinances being instigated (see page 100 of the hearing bundle).

<u>Experiences of the Third, Fourth, Fifth and Sixth Respondents</u>

63. We accept the evidence of the Third Respondent that she had experienced issues with the Claimant which made her feel uncomfortable and that that had involved seeing material of an adult nature on the Claimant's personal laptop when he had asked her to assist him to download and print a document (and we

will come further to that below) and that when the Claimant saw that she had seen that material covered the relevant part of the screen with his hands and said that he had not intended her to see it.

64. We also accept that he had made comments when he had overheard her say that she was "happily single" about affairs that he had had and dating sites where he could connect with women and that he would loiter around her seeking to make conversation about conspiracy theories and accusing the University of racism. Whilst Mr. Echendu points to what he termed as inconsistencies between the initial information given by the Third Respondent and the later investigatory interviews, those are minor in nature and are to be expected given that the initial emails were sent with a view to determining if the matter should be taken forward. It is normal for further information to be given at an investigatory interview and indeed at a hearing such as this one, particularly when someone is responding to specific questions asked.

65. We accept the evidence of the Third Respondent that she did not raise these issues at the time that they occurred and instead sought to avoid the Claimant but that she did so when she became aware that there was a wider problem. We come to the circumstances of that later. She did, however, warn the Fifth Respondent of what she had seen on the Claimant's laptop. That was not gossiping as suggested by Mr. Echendu but out of concern for a younger colleague in the event that she was asked for IT assistance by the Claimant and might come across adult material that may upset her.

66. We accept that the Fifth Respondent had also experienced uncomfortable conduct from the Claimant. That included when she had commenced her employment with the First Respondent the Claimant telling her that the University had many cases of racism which were hushed up and framed that as a concern for her (the Fifth Respondent is from an ethnic minority background) and that that was a recurring event. That was of course a repeat of earlier behaviour which had been dealt with informally by Mr. Caballero.

67. We accept the Fifth Respondent's evidence that she had also experienced further conduct from the Claimant approaching her on a number of occasions seeking to discuss a film by the name of Bandit Queen which depicts sexual violence and raising the topic of a previous student of the University who had been murdered. We fully accept that the Fifth Respondent did not want to hear things of this nature and we can understand why that would be the case.

68. We also accept her evidence that a further incident occurred when the Claimant approached the Fifth Respondent whilst she was alone and asked her "Do you feel safe". At that time there was no context to that and we are not surprised that the Fifth Respondent felt uneasy, particularly in view of earlier topics that he had tried to raise with her. The Claimant had then gone on to raise issues as to job security and had been referring to being safe in that context, but we accept that what he had said initially had scared the Fifth Respondent.

69. Like the Third Respondent, the Sixth Respondent had taken to avoiding the Claimant because he was making her feel uncomfortable.

70. Whilst Mr. Echendu points to the fact that the Fifth Respondent, when she later raised concerns about the Claimant, made reference to nothing having been

"overt harassment" that was clearly in the context of the fact that she had not known at the time of others experiences and thought it may just have been her own opinion and that, as she told us, she did not know if it was something that she was able to raise as a concern. We note in that context that the Fifth Respondent was only 22 years of age when these matters occurred and we do not find it unusual that she was unsure if she could raise the matter and took the view that she did about it perhaps only being her experience.

71. We accept the evidence of the Sixth Respondent that she also experienced at an early point in her employment conduct from the Claimant which she felt to be inappropriate. That had first manifested itself by the Claimant approaching the Sixth Respondent whilst she was in the staff room taking her break and asking her questions about what she thought about the University, the people and about her ethnicity before telling her that the University was racist, the Vice Principle was not privy to the same information as white people, that she should be careful who she talked to and that she should look for another job because the University was no good for "people like" her. The Sixth Respondent is also mixed race. The Claimant offered to show the Sixth Respondent email links to prove his contention that the First Respondent was a racist institution and we accept that he loitered around during the course of the remainder of that day and kept nodding at the Sixth Respondent.

72. We accept that that upset the Sixth Respondent, who was otherwise having a positive experience working for the First Respondent, to the extent that she remarked upon it to her partner and resolved to sit elsewhere on her next Saturday shift whilst taking her break.

73. The Sixth Respondent also experienced a further issue which concerned her with the Claimant which she also reported at the time. The Sixth Respondent had been working in the library assisting students with visa enquiries and had asked two young female students to wait in the queue behind others who had been there first. Her intention was to assist them when it was their turn. The Claimant picked the two students out of the queue and called the Sixth Respondent over. He had their documentation in his hands and said that they did not need to be in the queue. Nothing to do with the visa process or assisting students was in the Claimant's remit and we accept that the Sixth Respondent found it a strange experience and something that should be raised as a concern.

74. We should say that Mr. Echendu appeared to suggest at one stage that the Third, Fifth and Sixth Respondents should have been disciplined for taking part in conversations with the Claimant of the sort that they complained of. Leaving aside the fact that the Claimant denied anything inappropriate in his interactions with these Respondents, we are satisfied that at no time did any of the relevant Respondents engage in conversation with the Claimant on these topics and there was no mutual discussion. They were topics that none of them wanted to discuss.

75. We also accept the Fourth Respondents evidence that like the Third Respondent he had also viewed inappropriate material on the Claimant's personal laptop when he had asked him to assist him to connect to the University Wi-Fi. Whilst he could not recall all of the specific titles, we accept that he saw files with names such as black bottoms and sex with pregnant women. We accept that the Fourth Respondent was concerned about that because he was not sure where the

Claimant was accessing that material and whether he was doing so on the First Respondent's premises. He was therefore concerned that students and staff might see it and that, particularly, some students or potential students were under 18 years of age. We accept that he asked the Claimant why such files were on his laptop and he told him that it was because of a computer virus. He asked the Claimant to ensure that he removed them but on a further occasion when the Claimant again asked for assistance he had seen that they were still there and the Claimant told him that he had not had time to remove them.

76. We found many elements of the cross examination of the Fourth Respondent to be confusing as it appeared on more than one occasion when dealing with the topic of unlawful accessing of personal data that Mr. Echendu was putting that there was adult material but that the Fourth Respondent should have ignored it. As it was, and given that the Claimant's evidence was that he was not contending that the Fourth Respondent had ever seen the particulars of claim in the First Claim as Mr. Echendu had initially told us, it was not always overly clear what documents or files it was being said that the Fourth Respondent had accessed.

77. However, in respect of both the Third and Fourth Respondents we are entirely satisfied from their evidence that they had not viewed anything on the Claimant's laptop that he had not put directly in front of them when asking them for assistance. They had not searched any files, emails or documents – indeed the Third Respondent did not even touch the Claimant's laptop – and it is as plain as a pikestaff that if you are asked to look at a screen to assist someone with an IT issue that you will see what is on it.

Knowledge of the experiences of others

78. In October 2022 the Second Respondent and Fifth Respondent were in a staff room within the library with James Spurr (an IT Assistant) and another member of staff who was raising an issue that had occurred with a lecturer who had viewed a screen to access private information about a student. Mr. Spurr had been told by the Fourth Respondent (who was not present during this discussion) about his experiences with the Claimant and the adult material that he had seen on his laptop. We accept that the Fourth Respondent had informed Mr. Spurr about that in the event that the Claimant asked him for assistance with his laptop and he came across similar material. There was nothing inappropriate about that in a work context and we do not accept Mr. Echendu's submissions that this was impermissible gossiping or colluding about the Claimant.

79. In the context of the conversation about the lecturer Mr. Spurr mentioned what he had been told by the Fourth Respondent about material that he had seen on the Claimant's laptop. Both the Third and Fifth Respondent then shared their experiences of the Claimant that went on to form the basis of their concerns raised to the First Respondent. Neither had previously known the extent of what had occurred and although they had observed each other and, in the case of the Fifth Respondent others, looking uncomfortable at interactions with the Claimant they had not known that there was a wider issue.

80. The Sixth Respondent came to know of matters when she heard the Third and Fifth Respondents discussing their experiences. No names had been mentioned but given her own experiences with the Claimant she asked them if they were

talking about him and they confirmed that to be the case. The Sixth Respondent had also not understood there to be a wider issue and thought that it was only her own experiences.

81. We are satisfied that the fact that all considered themselves to have been the only person that these things had happened to was the reason that they had not previously raised a complaint or concern. There was no gossiping, collusion or conspiracy as is contended.

Discussions with Alison Charlesworth

82. After the conversation in the staff room Hannah Congrave, their line manager who was also present at the time, told them that the matters ought to be raised with the Library Manager, Alison Charlesworth. We find that unsurprising. Ms. Congrave accordingly raised with Ms. Charlesworth what she had been told

83. Ms. Charlesworth then had a meeting with the Third, Fifth and Sixth Respondents. It was initiated by Ms. Charlesworth and clearly that was as a result of what she had been told by Ms. Congrave. It was suggested by Mr. Echendu that this was a group meeting involving the Third, Fourth, Fifth and Sixth Respondents. There was no evidential basis for that suggestion. We accept the clear evidence of the Third, Fifth and Sixth Respondents that they each had individual meetings and the evidence of the Fourth Respondent that he did not have any meeting with Ms. Charlesworth at all. That is because he was not present when Ms. Cosgrave had been told about the concerns about the Claimant. He came to know about wider concerns when he was informed about the matter by Mr. Spurr who had been present. He had earlier spoken to his own line manager, Ismail Patel, about his concerns as to what he had seen on the Claimant's laptop who had told him that he could raise a concern and how to go about that.

84. We accept that the Fourth Respondent was not pressured by Mr. Ismail or anyone else from management or HR to raise his concerns and it was entirely his choice to do so. The Claimant has no evidence at all to the contrary.

85. We are satisfied that during the course of the individual meetings Ms. Charlesworth explained to each of them that they could raise a concern and that if they wanted to do so the First Respondent had a dedicated email account where that could be done. That was concerned@leicester.ac.uk. That was the way in which complaints were raised and we deal with those further below. We are satisfied that at no time was any pressure placed on any of the Third, Fourth, Fifth or Sixth Respondents by Alison Charlesworth or anyone else from the First Respondent. The Claimant again has no evidence at all to the contrary.

October 2021 concerns about the Claimant

86. In October 2021 following the individual conversations with Alison Charlesworth a number of concerns were raised about the Claimant by the Third, Fourth, Fifth and Sixth Respondents. They were all raised at a similar time concerning issues that had occurred in the past with the Claimant and which we have already described above. We can see how at first blush the Claimant may have had suspicion that those complaints were made as a result of collusion with each other because of that timing but, as we have already dealt with above, that does

not stand up to scrutiny. The fact that all the complaints emanated from library staff, and thus it is contended amounted to them conspiring because that was not the only place that the Claimant cleaned, also does not stand up to scrutiny when viewed against the background of the discussions that are described above and the fact that there is no evidence of the Claimant asking anyone else outside the library for help with his laptop.

87. The Claimant's case in relation to the alleged conspiracy between the Third, Fourth, Fifth and Sixth Respondents has been somewhat confused. It began with a suggestion by the Claimant that these Respondents had been motivated to take their complaints to management to gain favour with management of the First Respondent in order to gain promotion, some other advantage or to avoid redundancy.

88. That later developed in these proceedings to the Respondents being motivated by the Claimant's race and/or that he had brought Employment Tribunal proceedings and that they had decided to take their complaints to management to again gain favour. It was also said alternatively that senior management and unnamed members of HR had incited these Respondents to make unfounded complaints either because of the Claimant's race or otherwise to either punish him for the First Claim or force him to withdraw it.

89. We are satisfied that none of those things are accurate and there was no evidence whatsoever for any of those propositions.

90. It was also initially said that the "ringleader" who incited or "sold the idea of racism" to the other Respondents to make complaints about the Claimant (for whatever reason) was the Third Respondent. By the end of cross examination of the Fifth Respondent she was also said to be a ringleader although the basis for that is far from clear. Again, we are satisfied that neither of those things are true and there was no evidential basis for them.

<u>The investigation by the Second Respondent</u>

91. Upon receipt of the concerns raised it was determined that there would be an investigation.

92. We do not accept the suggestion of Mr. Echendu that the First Respondent was not obligated to investigate the concerns that had been raised. Those were potentially serious matters that needed to be considered, investigated and acted on appropriately.

93. The Second Respondent was tasked with undertaking that investigation by HR. We do not accept the suggestion that the Second Respondent was not an independent person to conduct the investigation. He was appointed by Ms. Haynes because he had no prior knowledge of the matters which he was tasked with investigating nor of the Claimant or any of the complainants or witnesses. Whilst Mr. Echendu suggested in cross examination of Ms. Haynes that an external investigator should have been appointed we accept that that is not the policy of the First Respondent and that is a matter which in our experience is not unusual and generally not necessary. The Second Respondent was a Health and Safety Business Partner who was well versed with undertaking investigations

and we accept that he was a suitable and independent person to undertake the investigation into the Claimant's alleged conduct.

94. It was suggested by Mr. Echendu that Ms. Haynes should have produced written terms of reference for the Second Respondent. We accept that that was not part of the procedure operated by the First Respondent nor have we been taken to anywhere to demonstrate that they should have been produced. It is clear from the investigation report that the Second Respondent was aware of what it was that he was tasked with investigating.

95. Mr. Echendu also submitted that the Second Respondent was tasked by Ms. Haynes with only determining if there was a case for the Claimant to answer and that that was in some way directing him to find evidence only to point towards his guilt. We do not accept that and in all events as we shall come to with regard to the findings of the investigation report, that is not what the Second Respondent did.

96. The remit of the Second Respondent was only to investigate the allegations against the Claimant. It was not to discipline the Claimant because that matter fell to a separate individual who was the decision maker as to whether to advance matters to a disciplinary hearing and, if so, what the sanction should be. That was Martin Miller, the Head of Campus Services, and we accept the evidence of the Second Respondent that it was open to Mr. Miller to either accept or reject the content of his report and the recommendations.

97. It was also not within the remit of the Second Respondent to investigate what is termed to be alleged misconduct on the part of the Third, Fourth, Fifth and Sixth Respondents. We accept his evidence that he uncovered nothing that was indicative of any form of misconduct of anyone else other than the Claimant but had that been the case then he would have raised it with HR. That also chimed with the later evidence of Ms. Haynes who confirmed that it was also open to Mr. Miller to have raised any such issue had he found evidence of it.

98. As part of his investigation the Second Respondent interviewed the following people:

    a. The Claimant on 15th November 2021;
    b. The Third Respondent on 23rd November 2021;
    c. The Fifth Respondent on 25th November 2021;
    d. The Fourth Respondent on 9th December 2021;
    e. James Spurr on 9th December 2021; and
    f. The Sixth Respondent on 12th December 2021.

99. With the exception of the Claimant all gave consistent accounts with that which was previously given and as before us. We do not include James Spurr in that because we have not heard from him nor did he make any individual complaint himself. However, what he did say at interview was consistent with what the Second Respondent was told by the Fourth Respondent when he was interviewed and also the evidence that he gave to us.

100. The interview with the Claimant has a number of notable points. We deal firstly with what the Claimant told the Second Respondent about the First Claim and which Mr. Echendu identified were relied on as being a protected act for the

purposes of the victimisation complaints against the Second Respondent. Those were three entries which were as follows:

"MC are you aware of the present Employment Tribunal case I have regarding racism" (page 103 of the hearing bundle)

"Reference to documents for the tribunal, do you understand the reference to a window cleaner? They never stopped or walked away or told me I could not do this. If you are in the library and something goes wrong it will say material is blocked or inaccessible so you will know something has gone wrong. On the transfer there was no message, only the member of staff who didn't stop the transfer the University internet didn't stop it."

"I am aware but I don't think it is applied across the board, for me it is used in a disciplinary but it is not used across the board. It is a protective measure but I don't feel I am protected I feel I am brought up on this"[1].

101. It is plain from the interview notes that neither the Second Respondent nor HR who was assisting believed the references to the Employment Tribunal had anything to do with what they were investigating (see for example pages 103, 104 and 105 of the hearing bundle) and we accept entirely the evidence of the Second Respondent that what he was told by the Claimant about the First Claim played no part in his later recommendation that the matter proceed to a disciplinary hearing.

102. The Claimant was evasive during the interview when asked about what the Third Respondent had said about there being pictures of *"scantily clad or naked ladies in provocative sexual positions"* on his laptop. The Claimant did not immediately deny that as would be expected if the position was as he adopted before us that there was no inappropriate material on his laptop and all that the Third Respondent had seen was an Employment Tribunal document. Instead, he referred to it being some months ago and asked whether it was a male of female member of staff. The Claimant was asked by HR if he could recall and incident and what he remembered about that (clearly referring to the same allegation) to which he replied:

"I will go through it, you need to know there were no pictures or sound. I am going to be up front and on the level, are you taking notes Helen".

103. We accept that that gives a clear indication that there was something of this nature on the laptop although the Claimant referred to this as some form of table with a "directory of the titles". That is very similar to the basis of the concern raised by the Fourth Respondent that he had seen folders with names that suggested content of an adult nature. We should also note that the Claimant gave, for the first time in his evidence before us, some indication that files that may have been seen by the Fourth Respondent was a folder of his wife's about her pregnancy and names of people that they referred to as "Big Mouth" who he may encounter at weddings. None of that was in the Claimant's witness statement and none of it had been referred to at his interview with the Second Respondent. We did not accept that evidence.

[1] This was said in the context of being asked if he was aware of the Dignity and Respect Policy.

104. The Claimant also referred to nothing being intentional, anything that was done being done innocently, not accessing porn pictures or sound at any time, no one else being around, his back being to the wall, IT not advising him or walking away, that he wanted to apologise and that what was done being done through innocence and that he had been told that it could not be seen. None of that immediate discussion related to any denial that he had inappropriate material on his laptop and tended to suggest to the contrary given that he was referencing a desire to apologise. That is entirely contrary to his position before us in his evidence.

105. Also of note is the fact that when asked if he had ever asked for help downloading a document from another member of staff the Claimant replied:

"No, there are only two guy who I speak to Mon-Fri. I don't recall doing tribunal work on a Saturday as I don't have time. I finish at 5.30 on Saturdays and the library staff have gone. I'm on my break for only 30 min to smoke, eat etc. Helen would you say AC would do this".

106. None of that was accurate. The Claimant's case before us is that he had asked the Third Respondent for assistance to download a document and that had been an Employment Tribunal document. The Claimant was not able to give any explanation for the difference in the positions or to accept the possibility that what he had said at the interview had been incorrect.

107. The interview notes were signed by the Claimant as being an accurate record. We have not had any reasonable explanation as to why the Claimant's position has now changed in the ways described above.

108. We do not accept the criticism of Mr. Echendu that the questioning by the Second Respondent of any of the people that he interviewed was indicative of a desire to prove a case against the Claimant. They were open questions relevant to investigation of the issues that the Second Respondent had to determine.

<u>The investigation outcome</u>

109. The Second Respondent produced his investigation report on 25th January 2022.

110. He found, on the balance of probability, the allegations against the Claimant to be made out. Particularly, he found that the Claimant had:

a. Breached the University Internet Code of Practice by accessing material of a pornographic or obscene nature or which may cause offence when viewed in a public area such as an open access user area;

b. Engaged in inappropriate and unwanted conversations with University staff whilst they were at work;

c. Breached the University Dignity and Respect Policy by engaging in behaviour that is disrespectful and offensive to other members of staff; and

d. Breached the University Dignity and Respect Policy by harassing other members of staff.

111. The findings reached were all supported with the evidence which had been gathered during the course of the investigation. That included what had been said by witnesses and what had been said by the Claimant.

112. Mr. Echendu contends that the findings made by the Second Respondent were indicative of him having created or made more significant the allegations against the Claimant by finding that they breached the Dignity and Respect Policy when no one had mentioned harassment in the complaints that they had made. We do not accept that. A complainant does not have to refer to a specific policy or piece of legislation as Mr. Echendu appeared to suggest in cross examination or even to feeling harassed. What had been reported to the Second Respondent in terms of having adult material on his laptop and putting that in the sight of others, comments made to the Third Respondent after he overheard that she was single and comments about race and race discrimination made to the Fifth and Sixth Respondents clearly satisfied the definition of harassment within the Dignity and Respect Policy (see particularly the first, fourth and fifth bullet points at page 283 of the hearing bundle) and it was open to the Second Respondent to conclude that. That was not the creation of unmade allegations against the Claimant or an exacerbation of them.

113. The Second Respondent made a recommendation that the matter should be considered at a disciplinary hearing which was clearly made on the basis that he considered what he had been told by the witnesses to be credible. His recommendation said this:

"On the basis of the investigation findings above, the Investigating Officer found the witnesses' accounts credible and factual. The Investigating Officer concludes, that on the balance of probability, there is sufficient evidence to support the allegations made against Ashok Chauhan. Therefore, the Investigating Officer recommends that the case should proceed to a formal disciplinary hearing. The Investigation Report is now referred to the Chair, Martin Miller, Head of Campus, for consideration".

114. Mr. Echendu was critical of that recommendation on the basis that he appeared to contend that the Second Respondent should have accepted the Claimant's account over that of those who had raised concerns and that that was supported by Mr. Spurr who had reported that he had not seen anything inappropriate on the Claimant's laptop. That ignores, however, that fact that the Second Respondent considered the information provided by the complainants to be credible, the Claimant had all but admitted that he had inappropriate content on his laptop by saying that he had something to apologise for and that Mr. Spurr had simply reported that whilst he had not seen anything he was aware that the Fourth Respondent had.

115. It was also suggested by Mr. Echendu that the Second Respondent had only included within the report things which supported the management case against the Claimant and nothing exculpatory. That is not the case. The report set out what the Claimant had told the Second Respondent about the allegations against him and, particularly, the position that he felt that the allegations stemmed from him having upset one member of staff who had then talked to other members of

staff and who had in turn had created allegations to support her (see page 93 of the hearing bundle).

116. Criticism has also been levelled at the Second Respondent for his reference within the investigation report to the informal expectation letter sent to the Claimant by Mr. Caballero in February 2021. We find it unsurprising that reference was made to it given that it dealt with conduct of a very similar nature to that which the Fifth and Sixth Respondents had experienced. It was not necessary for the Second Respondent to go back and investigate those earlier matters and that was not what he was tasked with doing.

117. The report had a number of appendices which, it is common ground, included the record of the interview with the Fifth Respondent. That included a passage which the Fifth Respondent had said after being asked a question about who else had spoken about the Claimant which reads as follows:

"Declan Guiney said AC was a visitor in Oadby library. Khalid stated recently and said AC worked at Leicester College and made women uncomfortable there. Sophie[2] said she was uncomfortable so another colleague asked Sophie to help her so Sophie could get away from him. Abi also feels uncomfortable".

118. That was an accurate account of what the Fifth Respondent said at the interview in response to the question that was asked of her by the Second Respondent. We accept her evidence that she was not commenting as to the accuracy or honesty of that particular piece of information as to what the position was at Leicester College and that she was only answering the question that she had been asked and reporting what she had been told by Khalid. Her expectation was that if that was relevant the Second Respondent would speak to Khalid. That passage did not feature in the body of the investigation report and it was not relied upon by the Second Respondent in making his recommendations.

119. Following production of the report it was sent to a select number of people namely Mr. Miller, HR and those who had been interviewed as part of the process, including the Claimant. There was no wider distribution than that.

<u>Grievance against the Second, Third, Fourth, Fifth and Sixth Respondents</u>

120. On 7th March 2022 the Claimant raised a grievance about race discrimination, harassment, victimisation, bullying and intimidation against the Second, Third, Fourth, Fifth and Sixth Respondents. It was a lengthy grievance running to eleven pages and echoed the complaints that are raised in these proceedings. It was not written by the Claimant as all of his other complaints had been handwritten documents in a certain style. He was not prepared to say, however, during cross examination who had written it only that he had received some assistance but that they were his words.

121. It was at this stage that the Claimant raised a suggestion that the female Respondents within the library had conspired against him to either avoid redundancy with regard to a restructure that was taking place or *"seeking recognition/favour for a pay increase or promotion"*. There is absolutely no evidence of that and despite the Claimant making plain during cross examination that the evidence would be made clear during Mr. Echendu's cross examination,

[2] This was a typographical error which was later corrected by the Fifth Respondent to Sofia.

it was not. Indeed, we accept that evidence of the Third Respondent that neither she nor the Fifth or Sixth Respondents were ever at risk of redundancy through the restructuring process because they were a grade higher than those that might be placed at risk.

122. The grievance threatened various legal proceedings and called for disciplinary action to be commenced against all of the named Respondents. There was no basis for any of that.

Disciplinary sanction

123. The Claimant was invited to a disciplinary hearing which took place on 27th May 2022. That was dealt with by Mr. Miller. The Claimant did not stay for the duration of the hearing.

124. The allegations against the Claimant were that:

a. He had breached the University Internet Code of Practice by accessing material of a pornographic or obscene nature or which may cause offence when viewed in a public area – although Mr. Miller concluded that the Claimant had had adult material on his laptop he did not uphold the allegation on the basis that it was the Claimant's personal laptop and there was no evidence that he had been accessing it in a public place;

b. He had engaged in inappropriate and unwanted conversations with University staff while they were at work – this allegation was upheld;

c. He had breached the University Dignity & Respect Policy by engaging in behaviour that is disrespectful and offensive to other members of staff – this allegation was upheld; and

d. He had breached the University Dignity & Respect Policy by harassing other members of staff. It was identified that the definition of harassment for these purposes including verbal or written comments of an offensive nature and spreading malicious rumours and displaying material that was likely to cause offence to others – this allegation was upheld.

125. The decision made by Mr. Miller was to issue the Claimant with a first written warning which would remain live for a period of 12 months. We accept that it would have been open to the Respondent to dismiss the Claimant in respect of the allegations that Mr. Miller found to be made out and it undermines entirely the Claimant's argument that the intention behind the allegations and how they were dealt with had the purpose of removing him from the First Respondent and dismissing him because of the First Claim.

Incident at the George Davies Centre in December 2021/January 2022

126. It is not in dispute that there was an interaction between the Claimant and Terry Bailey at the George Davies Centre where the Claimant was based in or around

December 2021[3]. Rather oddly, the Claimant's witness statement did not deal with this incident at all. He was, however, cross examined about it.

127. We heard detailed evidence from Mr. Bailey about the matter. We preferred his account to that of the Claimant which was, at best, confused. In that regard he appeared not to focus on any alleged shouting but about the words that he said that Mr. Bailey should have used which, we accept Mr Chegwidden's submission, were remarkably similar in all events to what Mr. Bailey did actually say.

128. The George Davies Centre is a medical teaching building and we accept the evidence of Mr. Bailey that as at December 2021 anyone entering was still required to wear a face covering because of the risk of transmission of Covid-19 unless they were exempt because of NHS requirements. Whilst Mr. Echendu's position was that the rules had at that time been relaxed, we accept Mr. Bailey's evidence that that was not the case for those involved with the NHS and so face coverings still had to be worn in that building.

129. Mr. Bailey's duties involve welcoming and assisting visitors, checking identification and general tasks of that nature. As part and parcel of that role he reminds anyone who enters the building and who is not wearing a face covering that they need to do so. Face masks were made available in the foyer of the building for anyone who needed one.

130. Mr. Bailey is located for the most part behind a desk in the foyer of the building and we accept his evidence that that desk was at the time shielded off by see through plastic coverings which was of course not unusual during the Covid-19 pandemic. We prefer his evidence to the Claimant that whilst in the building he would wear a face mask. He gave clear evidence on that that whilst he was in fact exempt from doing so he chose to wear one because he did not think it was right to ask others to do so if he was not wearing one.

131. The foyer is relatively large and during the incident in question Mr. Bailey was behind the shielded off desk and wearing a face covering. We prefer his evidence on that and that he was not to the side of the desk without a mask as the Claimant contended. Although because of the time of year the building was less busy there were still students around in the foyer and there would have been background noise as a result.

132. It does not appear to be denied that the Claimant was not wearing a face covering when he encountered Mr. Bailey. We accept the evidence of Mr. Bailey that when he first saw the Claimant he was some distance away and he asked him to wear a mask. We accept that the Claimant did not reply and Mr. Bailey repeated the request saying something along the lines of *"you need to wear your mask it's mandatory in here"*. That was entirely accurate. We accept that he repeated himself because the Claimant did not acknowledge him nor put a face covering on. The Claimant did not respond to Mr. Bailey the second time either.

133. Mr. Bailey then asked the Claimant to put on a face mask for the third time. On the second and third occasions he accepts that his voice may have been slightly raised – and we observe that Mr. Bailey is relatively softly spoken – because he thought that the Claimant may not have heard him because of his own mask or did not realise that the request was directed at him. Some raising of voices

[3] Whilst the Claimant says that this was in January 2022 the date does not particularly matter.

would also be somewhat inevitable given the size of the foyer as described to us, the background noise from students and visitors and the distance that Mr. Bailey was from the Claimant. However, what we do not accept is that Mr. Bailey at any stage shouted at the Claimant or otherwise acted inappropriately towards him.

134. We do not accept that Mr. Permain did either. Although he did not give live evidence and has not been cross examined his account is consistent with both logic and the evidence of Mr. Bailey and it is notable that he makes no denial of having asked the Claimant to put a mask on when he did not respond to Mr. Bailey. It was not put to Mr. Bailey that Mr. Permain swore and the focus of most of Mr. Echendu's cross examination focused on whether it was necessary to ask the Claimant to wear a mask three times and whether it was necessary at all because he was signing out of the building. Those matters were easily answered by Mr. Bailey who indicated that he had had to repeat his request because it was necessary for face coverings to be worn, the Claimant had not replied to his requests and he thought that he may not have heard him. As to the position that the Claimant was signing out, we accept Mr. Bailey's evidence that he did not know that when making his initial requests and even when the Claimant had signed out he was still passing people on his way to the exit and so should have been wearing a face covering.

135. We accept Mr. Bailey's evidence that he was on good speaking terms with the Claimant and that he regularly interacts with people at work from a wide variety of backgrounds. We accept that he would have told and did tell anyone regardless of their race or ethnicity to wear a mask if they were in the building and not already doing so and would require them to wear one unless they were exempt. That included white members of staff.

136. On 6th January 2022 the Claimant raised what he termed as a formal complaint against Mr. Bailey and Mr. Permain. It was a lengthy handwritten complaint covering a number of topics. That was treated as a grievance by the First Respondent. It was not upheld.

<u>Knowledge of the first Employment Tribunal claim</u>

137. As we have already touched on above, the Claimant had issued an earlier Employment Tribunal claim. It is not denied by the Respondents that that amounted to the doing of a protected act. However, it is denied that the Third, Fourth, Fifth and Sixth Respondents had knowledge of that until the course of these proceedings.

138. We deal with the position of each of them separately and begin with the Third Respondent. The Third Respondent was employed at the time as a Student Library Information Services ("SLIS") Adviser. Part of the Third Respondent's role was to assist students and staff with library services. That would include Information Technology ("IT") queries.

139. It is not in dispute that the Claimant approached the Third Respondent in her capacity as an SLIS Adviser for assistance downloading and printing a personal document. He should of course not have been doing that given the reminder that had been given to him by Mr. Caballero in February 2021 about printing documents that were not work related.

140. We cannot ultimately be certain what document it was that the Claimant asked for assistance with. That is because Mr. Echendu originally told us that it was the particulars of claim in the First Claim which the Third Respondent had seen. The Claimant was present when that was being discussed and did not correct Mr. Echendu. However, his evidence before us was that it was a completely different document which was an email from the Tribunal dated 25th January 2021 relating to the First Claim. Even assuming that that was the correct document it did not contain the information that the Claimant said that it did about 10 points that were being permitted to go through to a hearing. It was a request for clarification about the complaints that the Claimant was seeking to advance. However, we have proceeded on the basis that the document was more than likely correspondence from the Tribunal because of the Third Respondent's evidence that it appeared to be a government document.

141. The Claimant's evidence was that whilst he had been with the Third Respondent at all times whilst asking her for assistance with his laptop he had turned to look down to the side and when he had looked back up he had seen that the Third Respondent was reading through the third page of the document and that her expression had changed. His position was that he had asked the Third Respondent not to say anything and that she had responded "It's more than my jobs worth".

142. We do not accept any of that evidence. None of it was in the Claimant's witness statement and we prefer the evidence of the Third Respondent that she did not read the document and had no interest in it. Her evidence was clear and rational that she was busy and would have not had time to read documents that staff and students asked for help with because otherwise she would have got nothing done. The Claimant's account also cannot be correct because we accept that the Third Respondent never touched his laptop but just provided guidance to him about what to do and as such would not have been able to scroll through his document and read it.

143. We accept that the most that the Third Respondent knew was that it looked to be a government document and she had only formed that view because she used to work in the Civil Service prior to joining the Respondent and it looked like a similar layout to documents that she would have used at that time. Particularly, we accept that she did not know it was from the Employment Tribunal, did not read it and did not know that the Claimant had brought any claim against the First Respondent alleging race discrimination.

144. As to the Fourth Respondent Mr. Echendu set out at the outset of the hearing that it was also said that he had seen and accessed the particulars of claim in the First Claim. The Claimant's evidence was that the Fourth Respondent had not seen that document nor was it alleged that he had seen the document which it is alleged that the Third Respondent had seen. The position then adopted was that the Third Respondent had told the Fourth Respondent about it in order to collude to set up the Claimant. We accept the evidence of the Third and Fourth Respondents that that did not happen and that in fact they never spoke to each other about the Claimant. There is not one shred of evidence that there was any information of this or any other nature given by the Third Respondent to the Fourth Respondent and, indeed, she could not have said anything about a Tribunal claim because she had not read the Claimant's document.

145. It is not alleged that either the Fifth or Sixth Respondents saw the document upon which the Claimant relies and instead the position is again that the Third Respondent informed them about the First Claim and that that was about race discrimination with a view to conspire against the Claimant. Again, there is not a shred of evidence to say that that was the case and we accept that even the Third Respondent did not know about the First Claim and so could not possibly have told anyone else.

146. We are therefore satisfied that none of the Third, Fourth Fifth or Sixth Respondents had any knowledge of the First Claim until the course of these proceedings where they are named as Respondents. It follows that none of them could have subjected him to detriment in respect of bringing the complaints because of the First Claim.

147. It is also notable that the Claimant also gave a variety of reasons at the interview with the Second Respondent why he believed that the complaints had been raised. These included the following:

    a. That he could not think of a reason why a member of staff would say something had happened when it had not (see page 104 of the hearing bundle);

    b. That he may have upset someone with general opinion about footballers or a pop competition (see page 107 of the hearing bundle);

    c. That he was a cleaner and looked down on so that he may have offended people by having opinions (see page 107 of the hearing bundle);

    d. That he had “upset one woman” who he referred to as a “Queen Bee” (and which must be the Third Respondent) and that things had “taken flight”. The Claimant referred to bringing a “civil suit” against her if she upset him (see pages 109 and 111 of the hearing bundle); and

    e. That he had “upset the queen bee in one place and it has grown and included the neighbours”.

148. The Claimant was not able to give any reasonable explanation during his evidence as to why he had later determined that it was his race or knowledge of the Tribunal claim that influenced other than he had thought about it since. There is nothing that has come to light since the interview to factually support those contentions and we found the Claimant’s evidence on these points to be unsatisfactory. It is also worthy of note that by the time that the allegations were made the First Claim had been dismissed by Employment Judge Adkinson and there were no longer any live proceedings before the Tribunal.

149. We should also note that at one point in his evidence during cross examination the Claimant said that he in fact had “no idea” why the relevant Respondents had raised complaints about him but the discrimination complaints were nevertheless still advanced.

CONCLUSIONS

150. Insofar as we have not already done so we now turn to our conclusions in respect of the remaining complaints before us.

151. We take each allegation in turn but where they are pursued as more than one strand of discrimination we deal with all of them within consideration of the specific allegation.

152. In order to deal with the victimisation complaints we need to firstly determine if the Claimant did a protected act in respect of the parts of the investigatory meeting in November 2021 which were identified by Mr. Echendu. We are not satisfied that any of those references were, either singularly or cumulatively, such as to amount to a protected act. The Claimant referred to the First Claim and that that was about racism but merely referencing an existing claim cannot be something that falls within the provisions of Section 27(2) EqA 2010. Similarly, what the Claimant said as to the application of the Dignity & Respect Policy to him and others cannot reasonably be said to be something which amounted to an allegation of discrimination or any of the other prescribed elements of Section 27(2). What was said at the investigatory meeting of 15th November 2021 was therefore not a protected act.

153. As to the perception of any of the relevant Respondents that the Claimant might do a protected act by way of bringing further proceedings, there was no evidential basis for that nor was it put by Mr. Echendu in cross examination.

154. The First Claim is, of course, accepted as being a protected act.

155. The first allegation is that the First Respondent, between October 2021 and 25th January 2022, subjected the Claimant to a malicious and mischievous investigation on the grounds of fallacious, unreasonable, incredible and frivolous allegations which did not have substance. That is said to be an act of direct race discrimination and victimisation.

156. We are satisfied that that allegation is factually inaccurate. Firstly, the allegations against the Claimant were not fallacious, unreasonable, incredible or frivolous allegations and they did have substance. In all events, they were raised with the First Respondent who was duty bound to investigate them to determine if they had substance. We are satisfied that no one, whether in management, HR or otherwise, influenced the Second Respondent to undertake the investigation or undertake it in any particular way nor was it commenced by the First Respondent for any other reason than they were obligated to investigate.

157. We accept that the Second Respondent undertook the investigation reasonably and fairly and reached his conclusions on the basis of the evidence before him. There was nothing malicious or mischievous about it for the reasons that we have already given in our findings of fact above. This allegation is therefore not made out factually and we are entirely satisfied that there was no instruction from management (whether Alison Charlesworth or anyone else), HR (whether Clare Haynes or anyone else) or anyone at all to induce anyone to make complaints or to have them investigated.

158. However, even if that was not the case there were no facts to which we have been taken to suggest that his race (either his nationality or ethnic origin) had anything whatsoever to do with the allegations against him; the decision of the First Respondent to investigate it or the way in which the Second Respondent investigated them.

159. This complaint of direct discrimination therefore fails and is dismissed.

160. However, it is also pursued as an act of victimisation. Whilst it also fails on its facts, we nevertheless have considered in the alternative whether had we not found that to be the case there was any material influence by the fact that the Claimant had done or might do a protected act. It is accepted that the First Claim amounted to a protected act. The Claimant also relies, however, on what was said to the Second Respondent at the Investigatory interview in November 2021. That cannot be relevant to this allegation, however, because it had not happened yet and in all events the parts of the interview relied on do not amount either singularly or cumulatively to the doing of a protected act. The Claimant alternatively relies on the fact that the Respondent believed that he may do a protected act by bringing a further Employment Tribunal claim, albeit that proposition was not put to anyone during the course of cross examination and as we have observed above there is no evidential basis for it.

161. Again, it is for the Claimant to prove facts from which we could draw an inference that a protected act materially influenced the behaviour of which he complains. There is no factual basis for that position and despite the Claimant's evidence that it would become clear during cross examination, that did not happen. There was nothing more than an assertion by the Claimant and Mr. Echendu that this was an act of victimisation. There are no supporting facts which allow us to draw any inference and in all events it is difficult to see what motive the First Respondent would have given the Claimant's evidence that this was to prevent him from continuing with the First Claim given that it had been dismissed many weeks before the circumstances of this claim arose.

162. The complaint of victimisation therefore fails and is dismissed.

163. The second complaint for determination is whether the First Respondent between October 2021 and 25th January 2022, ignored misconduct committed by the Third, Fourth and Fifth Respondents but subjected the Claimant to a disciplinary sanction, contrary to the First Respondent's Disciplinary and Dignity at Work policies and data protection legislation. This is pursued as an act of direct discrimination and victimisation.

164. Again, this complaint fails on its facts. The Claimant contends that the Third and Fourth Respondents had committed misconduct by unlawfully accessing his personal data but for the reasons that we have already set out above that was not the case and they did no more than look at a screen which the Claimant had presented to them when asking for assistance. The Fifth Respondent is said to have committed misconduct by virtue of what she said at her investigatory interview with the Second Respondent concerning the Claimant and Leicester College. That was plainly not misconduct. It was the Third Respondent answering a direct question that she had been asked. There was, as such, no misconduct to investigate although we accept the evidence of the Second

Respondent and Ms. Haynes that had that been found it would have been a matter referred to HR.

165. However, even if that was not the case it also fails as an act of direct discrimination and victimisation for precisely the same reasons as the previous allegation because there is nothing more than an assertion made that race or any protected act or potential for a protected act to be done had anything to do with the matter. The complaints of direct discrimination and victimisation therefore fail and are dismissed in respect of this allegation.

166. The next allegation was phrased as the First Respondent failing to protect the Claimant against Terry Bailey and Andrew Permian shouting at him within the issues identified by Employment Judge Ayre. However, that was not the way the allegation was phrased in the Claim Form and despite the understanding of Employment Judge Ayre not having been corrected we are satisfied that that is the complaint that we should determine and that it is the fact of shouting at all. It is no longer pursued as an act of direct discrimination but of harassment only.

167. Again, this allegation fails on its facts. Neither Terry Bailey or Andrew Permain shouted at the Claimant. However, even if they had, again there is absolutely nothing other than assertions to that effect that any shouting related to the Claimant's race and we accept Mr. Bailey's evidence that race had nothing to do with his actions of raising his voice when asking the Claimant repeatedly to wear a mask. This allegation of harassment therefore fails and is dismissed.

168. The fourth allegation is the Third Respondent and/or the Fourth Respondent going beyond their roles and responsibilities and accessing and reading the Claimant's files on his laptop without permission and using that to make fallacious allegations about him. This is also pursued as a complaint of direct discrimination and victimisation. Again, this allegation fails on its facts. Neither of these Respondents did anything than view something that the Claimant had put directly in front of them. They did not access or read files on the Claimant's laptop nor did they make any fallacious allegations as we are satisfied that the concerns raised were genuine.

169. As to direct discrimination, the Claimant relies on the Third and Fourth Respondents as actual comparators. We agree with the assessment of the Respondents that they are not appropriate comparators because the Claimant's circumstances must be not materially different to that of the comparators. That is not the case here. However, even if that was not the case there are again no facts which would allow us to infer that race was anything to do with this matter. The Claimant has again advanced nothing other than an assertion to that effect. This complaint of direct discrimination therefore fails and is dismissed.

170. The allegation is also pursued as an act of victimisation. We are satisfied that neither the Third or Fourth Respondents decided to create false allegations against the Claimant. We are also satisfied that the concerns that they raised were not for the purposes of gaining favour with the management of the First Respondent (whether to avoid redundancy or for any other reason) with a view to them having leverage over the Claimant with regard to the First Claim. We are also satisfied that no one from the First Respondent induced complaints to be made either because of the First Claim, any potential further claim or for any other reason. Indeed, neither the Third nor Fourth Respondents had any

knowledge of the First Claim at that time. The Claimant has advanced no facts that support any complaint of victimisation with regard to this allegation and, again, it has been a matter of assertion only which is plainly insufficient.

171. The fifth allegation is that the Third Respondent and/or the Fourth Respondent failed to respect the Claimant's confidential information on his laptop. This is essentially a repeat of the first part of allegation four and despite discussing this with Mr. Echendu we were unable to discern any particular difference. However, it is again an allegation for the reasons that we have already said that fails on its facts. Even if that was not the case, there is again no factual basis which is advanced by the Claimant that either his race, the First Claim or the potential for any future claim (which was again not a matter put at all in cross examination) had anything to do with this matter. The burden is on the Claimant to show those facts and he has failed to do so. It is again a matter of assertion only. The complaints of direct discrimination and victimisation therefore fail and are dismissed.

172. The sixth allegation is that the Third, Fourth, Fifth and/or Sixth Respondents, between September 2021 and 25th January 2022 'caricatured' the Claimant and painted him as a useless and mentally deranged person. This is an allegation pursued as direct discrimination, harassment and victimisation.

173. Again, the allegation fails on its facts. Nothing that any of those Respondents said either caricatured the Claimant or made him appear to be useless and mentally deranged. All that they did was report genuine concerns about the Claimant to determine if they should be investigated. Nothing that they said came even close to the depiction of the Claimant that this allegation paints.

174. Moreover, the Claimant has again shown no facts from which we could infer that his race had anything to do with the concerns raised or the words used in respect of them. There is equally nothing to suggest that anything done related to the Claimant's race. As to the complaint of victimisation, none of these Respondents had any knowledge of the First Claim and it was not put to any of them that they thought that the Claimant might bring an Employment Tribunal claim and the allegation fails also on that basis alone. However, even if we had been satisfied that they were aware of the First Claim then the Claimant has again shown no facts from which we could conclude that that motivated them in any way whatsoever to raise the concerns that they did. Again, this amounts to nothing more than an assertion to that effect which is not enough.

175. The seventh allegation is that the Fifth Respondent, between September 2021 and 25th January 2022, made a false statement calculated to damage and defame the character and person of the Claimant. As explored with Mr. Echendu at the outset of the hearing this allegation is limited to what the Fifth Respondent said at the investigatory meeting with the Second Respondent on 25th November 2021. We remind ourselves that the only part of what was said that is relied on in the context of this allegation is the following:

"Declan Guiney said AC was a visitor in Oadby library. Khalid stated recently and said AC worked at Leicester College and made women uncomfortable there. Sophie said she was uncomfortable so another colleague asked Sophie to help her so Sophie could get away from him. Abi also feels uncomfortable".

176. This is pursued as an allegation of direct race discrimination and victimisation. Again, the allegation fails on its facts. The Fifth Respondent did not make a false statement. We are satisfied that all that she did was repeat what she had been told by Khalid because of the direct question that she was asked by the Second Respondent at the investigatory interview. We are also satisfied that that was not designed to damage and defame the Claimant. It was again simply to answer a question asked and at no point did the Fifth Respondent speak to the truth of what she had been told. It was a point that she left with the Second Respondent to see if he wished to speak to Khalid or not. As it was it was never taken further.

177. However, again the Claimant has advanced no facts from which we could conclude that his race had anything whatsoever to do with what the Fifth Respondent said in this regard. Her evidence was clear that the Claimant's race had nothing to do with the matter and there are no facts at all to support any contention to the contrary. The complaint of direct discrimination in respect of this allegation therefore fails and is dismissed.

178. As to the complaint of victimisation, again the complaint fails on the basis that the Fifth Respondent was not aware of the First Claim nor was it put to her that she was influenced by the fact that the Claimant may make a further claim. In all events, even if she had been aware of the First Claim there are no facts at all to suggest that she would have been influenced by it. She was not named in it and there was no conspiracy with or by management or HR for the reasons that we have already found.

179. The final allegation is that the Second Respondent, on 25th January 2022, documented and published a false statement made by the Fifth Respondent. This is said to be an act of victimisation only. Again, it fails on its facts. The Second Respondent did not publish any false statement. All that he did was append accurate interview notes to an investigation report to send to a select audience and most notably to Mr. Miller so that he could decide on the appropriate next steps. That is perfectly normal practice so that the evidence can be reviewed. We are also satisfied for the reasons that we have already said that the statement was not false and it was simply what the Fifth Respondent had been told.

180. Moreover, whilst the Second Respondent was aware of the First Claim that was only because the Claimant told him about it. He was plainly not phased by it and made clear that it was not relevant to his investigation. There are no facts advanced by the Claimant to even begin to suggest that the First Claim, anything that was said on 15th November 2021 (had we found that to be a protected act) or any belief that the Claimant may bring a further claim (which was not put to him in cross examination) had anything to do with the Second Respondent appending the interview notes to his report. The complaint of victimisation therefore fails and is dismissed.

181. For all of those reasons the claim fails and is dismissed.

182. As a result of the conclusions that we have reached it has not been necessary for us to address the question of jurisdiction although we should say that had we found any complaint to have been made out of time then the Claimant's witness statement and oral evidenced advanced nothing as to jurisdiction.

183. It was agreed at the conclusion of the hearing whilst the parties were still present that a one day hearing would be listed at the Leicester hearing centre on 1st May 2024 with a time estimate of one day in order to deal with remedy, if appropriate, or any applications that either party has arising from the Judgment. If no application is made by either party within 28 days of the date that this Judgment is sent to the parties that hearing will be vacated.

Employment Judge Heap

Date: 29th February 2024
JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Note:

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Schedule

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 7th January 2022 may not have been brought in time.

1.2 Were the discrimination and victimisation complaints made within the time limit in Section 123 of the Equality Act 2010?

The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable?

The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Direct race discrimination (Equality Act 2010 section 13)

2.1 The Claimant is a British citizen of Indian ethnic origin. He compares himself with a hypothetical comparator and, in relation to the allegations set out at paragraphs 2.2.4 and 2.2.5 below, the Third and Fourth Respondents.

2.2 Did the Respondents do the following things:

2.2.1 Did the First Respondent, between October 2021 and 25th January 2022, subject the Claimant to a malicious and mischievous investigation on the grounds of fallacious, unreasonable, incredible and frivolous allegations against the Claimant that did not have any substance, as set out in paragraph 44(a) of the Details of Claim attached to the ET1? The claimant relies upon a hypothetical comparator for this allegation.

2.2.2 Did the First Respondent, between October 2021 and 25th January 2022, ignore misconduct committed by the Third, Fourth and Fifth Respondents but subject the Claimant to a disciplinary sanction, contrary to the First Respondent's Disciplinary and Dignity at Work policies and data protection legislation, as set out in paragraph 44(b) of the Details of Claim? The Claimant relies upon a hypothetical comparator for this allegation. *Mr. Echendu confirmed at the outset of the hearing that the misconduct alleged by both the Third and Fourth Respondents was that they had accessed his personal information relating to his first Employment Tribunal claim and had disclosed it to others. He confirmed that the allegation of misconduct against the*

Fifth Respondent was that it was said that she had made a false allegation that the Claimant had made women at Leicester College feel uncomfortable.

2.2.3 Did the First Respondent fail to protect the Claimant against Terry Bailey and Andrew Permian shouting at the Claimant on 6th January 2022, as set out in paragraph 44(i) of the Details of Claim? *Mr. Echendu confirmed at the outset of the hearing that this allegation was not about a failure to protect the Claimant but the fact that it is said that he was shouted at by Mr. Bailey and Mr. Permain. Mr. Echendu withdrew the allegation of direct discrimination and confirmed that this was a complaint of harassment only although the issue as to how that was said to relate to race was parked for Mr. Echendu to consider the provisions of Section 26 Equality Act.*

2.2.4 Did the Third Respondent and/or the Fourth Respondent 'go beyond their roles and responsibilities and access and read the Claimant's files on his laptop without permission, and use that to make fallacious allegations about the Claimant, as set out in paragraph 44(c) of the Details of Claim? There is a dispute as to when this alleged conduct took place. The Respondent says that it happened in September 2021, the Claimant says January 2022. The Claimant relies upon the Third Respondent and the Fourth Respondent and a hypothetical comparator for this allegation. The Respondent says that the Third and Fourth Respondents are not appropriate comparators. *Mr. Echendu confirmed at the outset of the hearing that the basis of this allegation was that the Third Respondent had accessed the particulars of claim in his first Employment Tribunal claim and that in respect of the Fourth Respondent he had accessed an icon called "Pregnancy gymnastics" which related to the Claimant's wife. He indicated that the date specified of January 2022 was when the Claimant came to learn of these things although that cannot logically be correct as the Claimant was present when both of those things are said to have occurred.*

2.2.5 Did the Third Respondent and/or the Fourth Respondent fail to respect the Claimant's confidential information on his laptop as set out in paragraph 44(d) of the Details of Claim? There is a dispute as to when this alleged conduct took place. The Respondent says it happened in September 2021, the claimant says January 2022. The Claimant relies upon the Third Respondent and the Fourth Respondent and a hypothetical comparator for this allegation. The Respondent says that the Third and Fourth Respondents are not appropriate comparators. *Mr. Echendu indicated at the outset of the hearing that this was a different allegation to that at paragraph 2.2.4 above.*

2.2.6 Did the Third, Fourth, Fifth and/or Sixth Respondents, between September 2021 and 25th January 2022 'caricature' the Claimant and paint him as a useless and mentally deranged person as set out in paragraphs 24-28 and 44(f) of the Details of Claim? The Claimant relies upon a hypothetical comparator for this allegation. *Mr. Echendu confirmed at the outset of the hearing that the basis of this aspect of the complaint was limited to the concerns that were raised by each of the relevant Respondents in October 2021 and what they each said in their investigatory interviews with the Second Respondent.*

2.2.7 Did the Fifth Respondent, between September 2021 and 25th January 2022, make a false statement calculated to damage and defame the character and person of the Claimant, as set out in paragraphs 33 and 44(g) of the Details of Claim? The Claimant relies upon a hypothetical comparator for this allegation. *Mr. Echendu*

confirmed at the outset of the hearing that this allegation was limited to a comment made by the Fifth Respondent at an investigatory meeting with the Second Respondent in November 2021 in that it is said that she had made a false allegation that the Claimant had made women at Leicester College feel uncomfortable.

2.3 Was any of the above less favourable treatment? The Tribunal will decide whether the Claimant was or would have been treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

2.4 If so, was it because of race? *Mr. Echendu confirmed at the outset of the hearing that he relied on both his nationality and ethnic origins for the purposes of this part of the claim.*

3. Harassment related to race (Equality Act 2010 section 26)

3.1 Did the Respondents do the things set out at paragraphs 2.2.3, 2.2.6 and 2.2.7 above?

3.2 If so, was that unwanted conduct?

3.3 Did it relate to race?

3.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

3.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. Victimisation (Equality Act 2010 section 27)

4.1 The Respondents admit that the Claimant did a protected act by bringing the First Claim.

4.2 Did the Claimant do a protected act by making allegations of race discrimination to the Second Respondent during an investigation interview on 15th November 2021? *Mr. Echendu confirmed at the outset of the hearing that the Claimant relied on the following three extracts from what he said at that interview:*

> *"MC are you aware of the present Employment Tribunal case I have regarding racism" (page 103 of the hearing bundle)*
>
> *"Reference to documents for the tribunal, do you understand the reference to a window cleaner? They never stopped or walked away or told me I could not do this. If you are in the library and something goes wrong it will say material is blocked or inaccessible so you will know something has gone wrong. On the transfer there was no message, only the member of staff who didn't stop the transfer the University internet didn't stop it."*

"I am aware but I don't think it is applied across the board, for me it is used in a disciplinary but it is not used across the board. It is a protective measure but I don't feel I am protected I feel I am brought up on this"

4.3 Did the Respondents do the following things:

4.3.1 Those things set out at paragraphs 2.2.1, 2.2.2, 2.2.4, 2.2.5, 2.2.6 and 2.2.7 above?

4.3.2 Did the Second Respondent, on 25 January 2022, document and publish a false statement made by the Fifth Respondent? *Mr. Echendu confirmed at the outset of the hearing that this allegation was limited to the Second Respondent appending notes of the investigatory interview with the Fifth Respondent to his investigation report dated 25th January 2022. It is not disputed that those notes were appended.*

4.4 By doing so, did they subject the Claimant to detriment?

4.5 If so, was it because the Claimant did a protected act?

4.6 Was it because the Respondents believed the Claimant had done, or might do, a protected act? *Mr. Echendu confirmed at the outset of the hearing that this was the belief that the Claimant might bring a further Employment Tribunal claim claiming race discrimination.*