



# EMPLOYMENT TRIBUNALS

**Claimant:** Dwight Pile-Grey

**Respondent:** Ministry of Defence

**Heard at:** London Central Employment Tribunal  
**On:** 1<sup>st</sup>- 9<sup>th</sup> June and 6<sup>th</sup> July 2023

**Before:** Employment Judge Singh  
Ms K O'Shaughnessy  
Mr D Kendall

**Representation**  
**Claimant:** Mr N Roberts of Counsel  
**Respondent:** Mr N Fetto KC

## JUDGMENT

1. The Tribunal does have jurisdiction to hear the Claimant's complaints of direct discrimination, harassment and victimisation in accordance with s121 of the Equality Act 2010.
2. The Claimant's claims of direct race discrimination, racial harassment and victimisation are successful.

## REASONS

### Preamble

3. Firstly, I must apologise to both parties about the length of time it took for these written reasons to be sent out. I appreciate it must have been frustrating to not receive them within the normally expected period.

### Background

4. The Claimant in this case was a Lance Sergeant in the British Army from 2005. He was a musician in the Grenadier Guards Band. At the time of the incidents that form the basis of the claim, he was based at Wellington Barracks, in London.
5. The Claimant describes himself as a black Rastafarian.

6. On the 20<sup>th</sup> July 2021, the Claimant came onto the barracks for a medical appointment. He was not on duty that day so was not dressed in his uniform but wearing civilian clothes.
7. Following his appointment, he exited the barracks to make a phone call. He tried to return but was stopped by the guard on duty, Lance Corporal Stott, and asked to show his ID card, which he did not have on him.
8. The Claimant alleges that he was subjected to racist comments by the guard. The Claimant eventually gained access to the barracks. He then changed into his uniform and returned to speak to the guard to challenge his behaviour towards the Claimant.
9. The Claimant alleges that during that confrontation LCpl Stott accused the Claimant of “playing the race card”.
10. The Claimant then sought to speak to the guard’s superior officer, Staff Sergeant Flowers, who was in the guard room. The Claimant alleges that when he tried to speak to SS Flowers, he made comments to him to indicate that he was not interested in listening to him, accused the Claimant of “playing the race card”, walked away from the Claimant and then encouraged or permitted the Claimant to be forcibly ejected from the guardroom.
11. An altercation then took place outside the guardroom that was captured on CCTV. The Claimant acted aggressively towards SSgt Flowers and had to be removed from the situation by another person (who has not been identified by either party).
12. The Claimant then went back to the guardroom, this time to ask about making a complaint about SSgt Flowers. The audio of this meeting was secretly recorded. The Claimant was told that in order to make a complaint about SSgt that he would need to speak to Lieutenant Colonel Hunter, the Garrison Commander. The Claimant went immediately to see Lt Col Hunter.
13. The Claimant expressed his concerns to Lt Col Hunter and also accepted that his own actions afterwards had not been up to the expected standard. The Claimant declined an offer of a disciplinary investigation into the actions of SSgt Flowers and LCpl Stott, and instead requested an informal mediation meeting. Lt Col Hunter agreed to this course of action.
14. The next day, on the 21<sup>st</sup> July 2021, the Claimant was contacted by his own commanding officer, Captain Ben Mason, the director of music. He asked to speak to the Claimant to discuss the incident that had occurred.
15. In that meeting, the Claimant was informed that Capt Mason had been instructed to consider “AGAI” (Army General Administrative Instructions) proceedings. This is a disciplinary investigation into army personnel. It is distinct from Disciplinary Action (DA) as the outcome of an AGAI investigation is administrative in nature, whereas the sanction for DA is much more severe.
16. DA involves charging a service person with a service offence and can potentially lead to court martial.
17. Following that meeting the Claimant received Captain Mason’s report which indicated that the Claimant’s actions had breached the service test and that Minor AGAI action was the appropriate sanction.
18. The Claimant was asked to sign this to confirm he accepted the outcome but he refused to do so. The Claimant instead wrote on the report the things he was unhappy with.

19. The Claimant stated to Captain Mason that he was contemplating making a Service Complaint (which is akin to an internal grievance for the army) or speak to the press.
20. A mediation session was scheduled on the 26<sup>th</sup> July 2021, between the Claimant, SSgt Flowers and LCpl Stott, as the Claimant had requested. However, only the Claimant turned up. The Claimant was told that LCpl Stott had covid which is why he could not attend, but it later was confirmed that LCpl Stott had refused to attend.
21. On the 28<sup>th</sup> July 2021, the Claimant returned the unsigned AGAI papers to Captain Mason, with his comments on them.
22. The Claimant was on leave in August 2021 and returned in September 2021. When he returned the matter had not been progressed.
23. However, in that period, Lt Colonel Haw (the Commanding Officer of the Bands of the Household Division, Captain Mason's senior officer), had sought further statements from SSgt Flowers and others present in the guardroom on the 20<sup>th</sup> July 2021.
24. On the 28<sup>th</sup> September 2021, the Claimant was notified that he was now being formally charged with Disciplinary Action and had to attend a summary hearing chaired by Lt Col Haw.
25. The summary hearing took place on the 21<sup>st</sup> October 2021 and was chaired by Lt Col Haw. The Claimant pleaded guilty to the charge of insubordination, in relation to his conduct outside the guardroom on the 20<sup>th</sup> July 2021 to SSgt Flowers. He was fined 1 day's pay and a disciplinary entry was made on his service record.
26. The Claimant submitted a service complaint on the 17<sup>th</sup> December 2021, about the treatment he had received on the 20<sup>th</sup> July 2021, but also about the manner in which his complaints and the complaints against him had been dealt with.
27. The outcome was delivered on the 18<sup>th</sup> November 2022. The Claimant's complaints were rejected. The Claimant appealed on the 2<sup>nd</sup> December 2022.

### **The claim**

28. The claims contained within that were as follows-
  - a. Direct discrimination on the grounds of race
  - b. Harassment (race)
  - c. Victimisation
29. The issues were set out in an agreed List of Issues document, following an order of the tribunal. They were as follows

#### **Direct race discrimination**

30. Did the Respondent subject the Claimant to the following treatment?
  - (i) The manner in which LCpl Stott Spoke to the Claimant on the 20<sup>th</sup> July 2021 upon his return to the barracks.

- (ii) SSgt Flower's conduct on the 20<sup>th</sup> July 2021, including (a) saying "*oh, if you're going to turn this into a racial thing then I'm not interested.*"; (b) walking away from the Claimant; (c) accusing the Claimant of '*playing the race card*'; and (d) encouraging or permitting the Claimant to be bundled out of the guardroom.
- (iii) LCpl Stott's conduct on the 20<sup>th</sup> July 2021, on the Claimant's return to the guardroom, including accusing the Claimant of '*playing the race card*'.
- (iv) The making of complaints or reports about the Claimant's conduct on the 20<sup>th</sup> July 2021.
- (v) Pursuing disciplinary proceedings against the Claimant on various occasions from 21<sup>st</sup> July 2021 to 21<sup>st</sup> October 2021. In particular, in deciding to abandon any effort at informal mediation (or failing to progress it), deciding not to pursue minor AGAI action, and instead deciding to formally charge the Claimant with a service offence.

31. If so, did the Respondent treat the Claimant less favourably? The Claimant relies upon the following comparators-

- (i) In relation to the first incident with LCpl Stott, the Claimant relies on the actual comparator of a white man he saw entering the barracks before him, or in the alternative, an hypothetical comparator.
- (ii) In relation to the other allegations, a hypothetical comparator.

32. If so, was this because of the Claimant's race?

#### Victimisation

33. Did the Claimant do the following?

- (i) Make oral allegations on the 20<sup>th</sup> July 2021 about LCpl Stott and SSgt Flowers
- (ii) Make oral complaints in the meeting on the 22<sup>nd</sup> July 2021 that his treatment on the 20<sup>th</sup> July amount to victimisation, direct race discrimination and/or race-related harassment and that the pursuit of disciplinary action against him amounted to the same.
- (iii) Make written complaints on the formal AGAI papers submitted on the 29<sup>th</sup> July 2021 to the same effect.

34. If so, were these protected acts for the purpose of the Equality Act 2010?

35. Further, did the Respondent believe the Claimant would do a protected act; namely make a service complaint about discrimination and/or make a report to the press about the same?

36. If so, did the Respondent subject the Claimant to the detriments as set out in paragraphs 30.1(a)(ii)-(v) above?

37. If so, was that done because of the protected acts, or the Respondent's belief that the Claimant would carry out protected acts?

#### Harassment related to race

38. Did the Respondent carry out the acts set out in paragraphs 30.1(a)(ii)-(v) above?

39. If so, was that unwanted conduct?

40. If so, was it related to race?

41. If so, did it have the purpose or effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment?

### Jurisdiction

42. Given that the Claimant was a member of the armed forces at the time of the incidents, there was a further issue for the tribunal to consider; that of jurisdiction. A tribunal can only hear this type of claim if they have first been the subject of a Service Complaint.

43. Sections 120 and 121 of the EqA provide as follows:

#### s.120 Jurisdiction

(1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—

(a) a contravention of Part 5 (work);

...

#### s.121 Armed forces cases

(1) Section 120(1) does not apply to a complaint relating to an act done when the complainant was serving as a member of the armed forces unless—

(a) the complainant has made a service complaint about the matter, and  
(b) the complaint has not been withdrawn.

44. The reference to a “service complaint” is to a complaint brought by a member of the Armed Forces within the statutory service complaints process (the SC process) set out in the Armed Forces Act 2006 (AFA) and the accompanying Armed Forces (Service Complaints) Regulations 2015 (the 2015 Regulations). Service complaints are made to a specified officer (SO) whose decisions are subject to a limited power of review by the Service Complaints Ombudsman (SCO).

45. The parties accepted that a Service Complaint had been made and had not been withdrawn. The Respondent accepted that the Service Complaint covered the claims, save for.

- a. The claim that the making of complaints about the Claimant’s conduct at the gate on the 20<sup>th</sup> July 2021 amounted to direct race discrimination.
- b. The claims of victimisation

## **The Law**

### Direct discrimination

46. Section 13 of the Equality Act 2010 states:

(1) 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.

47. In **Shamoon v Chief Constable of the Royal Ulster Constabulary** (2003) ICR 337, Lord Nicholls in the House of Lords (NI) said that the Tribunal should focus on the primary question which was why the complainant was treated as he or she was? The issue essentially boiled down to a single question: did the complainant, because of a protected characteristic, receive less favourable treatment than others? At paragraphs 7 of his judgment we find the following passage:

"Thus the less favourable treatment issue is treated as a threshold which the Claimant must cross before the tribunal is called upon to decide why the Claimant was afforded the treatment of which she is complaining.

48. And further at paragraph 11:

"Employment Tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the Claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will be usually no difficulty in deciding whether the treatment, afforded to the Claimant on the proscribed ground, was less favourable than was or would have been afforded to others."

49. In **Nagarajan v London Regional Transport** (1999) ICR 877, a case concerned with the definition of direct discrimination under the previous legislation of the Race Relations Act 1976 (which referred to treatment 'on racial grounds'), the House of Lords considered the proper approach to dealing with discrimination cases. In that case Lord Nicholls said:

"a variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds... had a significant influence on the outcome, discrimination is made out'. The crucial question, in every case, was 'why the complainant received less favourable treatment..?'"

50. In **Chief Constable of West Yorkshire Police v Khan** (2001) ICR 1065 the House of Lords made it clear that in a case of alleged subjective discriminatory treatment the test to be adopted was: a tribunal must ask itself why did the alleged discriminator act as he or she did? What, consciously or unconsciously, was his or her reason?

51. In the case of **Stockton on Tees Borough Council v Aylott** [2010] ICR 1278, CA, Mummery LJ (at paragraph 49) said:

'Direct discrimination claims must be decided in accordance with the evidence, not by making use, without requiring evidence, of a verbal formula such as "institutional discrimination" or "stereotyping" on the basis of assumed characteristics. There must be evidence from which the employment tribunal could properly infer that wrong assumptions were being made about that person's characteristics and that those assumptions were operative in the detrimental treatment.'

## Harassment

52. Section 26 of the Equality Act 2010 states;

"(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.

(2) A also harasses B if—

- (a) A engages in unwanted conduct of a sexual nature, and
- (b) the conduct has the purpose or effect referred to in subsection (1)(b).

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.”

53. In **Richmond Pharmacology v Dhaliwal** [2009] ICR 724, EAT, Mr Justice Underhill P gave guidance on the elements of harassment as defined under the Race Relations Act 1976 (which was in slightly different terms to section 26 EA 2010). Underhill LJ revised that guidance as it applies to section 26 in the case of **Pemberton v Inwood** [2018] ICR 1291, CA, as follows (at paragraph88):

“In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of subsection (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances—subsection (4)(b)..... The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant’s dignity or creating an adverse environment for him or her, then it should not be found to have done so.”

54. In **GMB v Henderson** [2017] IRLR 340, the Court of Appeal said that in deciding whether the unwanted conduct ‘relates to’ the protected characteristic the Tribunal would need to give consideration to the mental processes of the putative harasser.

### Victimisation

55. Section 27 of the Equality Act provides as follows:-

(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.

56. In a victimisation claim there is no need for a comparator. The Act requires the tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830**:-

“The primary objective of the victimisation provisions...is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so”.

57. The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof.

58. To get protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the Tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says “Detriment does not ... include conduct which amounts to harassment”. The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** is applicable.

59. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see **South London Healthcare NHS Trust v Al-Rubeyi EAT0269/09**. Once the Tribunal has been able to identify the existence of the protected act and the detriment the Tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent’s state of mind. Guidance can be obtained from the cases of **Nagarajan v London Regional Transport [1999] IRLR 572**, **Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830**, and **St Helen’s Metropolitan Borough Council v Derbyshire [2007] IRLR 540**. In this latter case the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see **R (on the application of E) v Governing Body of JFS and Others [2010] IRLR 136**. In **Martin v Devonshires Solicitors EAT0086/10** the EAT said that:

*“There would in principle be cases where an employer had dismissed an employee in response to a protected act but could say that the reason for dismissal was not the act but some feature of it which could properly be treated as separable.”*

60. In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, **Nagarajan**. In **Owen and Briggs v James [1982] IRLR 502** Knox J said:-

*“Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly*



*desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination.”*

61. In **O’ Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615** the Court of Appeal said that, if there was more than one motive, it is sufficient that there is a motive that is a discriminatory reason, as long as this has sufficient weight. Conscious motivation is not a prerequisite for a finding of discrimination. It is therefore immaterial whether a discriminator did not consciously realise they were prejudiced against the complainant because the latter had done a protected act. An employer can be liable for discrimination or victimisation even if its motives for the detrimental treatment are benign.

### Burden of Proof

62. Section 136 of the Equality Act 2010 states:

“(1) This Section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.

(5) This Section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to –

(a) An Employment Tribunal.”

63. Guidance has been given to Tribunals in a number of cases. In *Igen v Wong [2005] IRLR 258* and approved again in ***Madarassy v Normura International plc [2007] EWCA 33***.

64. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of ***Madarassy*** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: “They are not, without more, sufficient material from which a tribunal ‘could conclude’ that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination”.

65. In the case of **Strathclyde Regional Council v Zafar [1998] IRLR36** the House of Lords held that mere unreasonable treatment by the employer “casts no light whatsoever” to the question of whether he has treated the employee “unfavourably”.

66. In **Law Society and others v Bahl [2003] IRLR 640** the EAT agreed that mere unreasonableness is not enough. Elias J commented that

*“all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour...Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way ... The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable.”*

67. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator.

### **The hearing**

68. At the start of the hearing, the Claimant raised a preliminary issue regarding disclosure. The Claimant claimed that the protection of legal and professional privilege did not apply to some of the documents alluded to but not included in the bundle.

69. The Claimant relied upon the principle of collateral waiver as some potentially privileged documents had been included in the bundle, but documents that they referred to had not been disclosed.

70. After hearing oral representations from both parties, Employment Judge Singh accepted the Claimant’s arguments and ordered that the documents be disclosed and included in the bundle.

71. The preliminary issues took a day to deal with. The second day of the hearing was spent by the tribunal reading. The tribunal then heard evidence from the parties from day three. The tribunal heard from the following witnesses

#### For the Claimant

- Himself

#### For the Respondent

- Lance Corporal (LCpl) Stott
- Simon Flower (via CVP)
- Corporal (Cpl) Rana
- Lance Corporal (LCpl) Singh
- Captain (Cpt) Mason
- David Buckles
- Captain (Cpt) Smith
- Lieutenant Colonel (LtCol) Hunter
- Lieutenant Colonel (LtCol) Haw

72. All witnesses appeared either in person, or via CVP, to be cross examined.

## Conclusions

73. After considering all the evidence presented to them, the tribunal made the following unanimous findings on each of the issues

### Direct Race Discrimination

#### Allegation 1

74. *The manner in which LCpl Stott spoke to the Claimant on the 20<sup>th</sup> July 2021 on the Claimant's return to the barracks.*

75. It was the Claimant's position that, when he attempted to return to the barracks, LCpl Stott was sceptical when the Claimant stated that he had left his pass in the barracks. The Claimant also alleged that LCpl Stott was patronising and condescending in the manner in which he addressed him. The Claimant alleged that he was not called "*Sir*" which he should have been done by LCpl Stott, as any unidentified visitor to the barracks should be.

76. The Claimant goes on to allege that he identified himself and then LCpl Stott enquired with his colleagues in the barracks to confirm the Claimant's identity. The Claimant alleges that LCpl Stott said "*this gentleman thinks that he's left his ID in here, does anyone know him?*" and when doing so emphasised the word "*gentleman*" as if air quotes were being used- that is that LCpl did not consider the Claimant to be a gentleman.

77. The Claimant then alleges that when he identified himself, LCpl Stott said "*well I don't know who you are and I don't need your attitude*".

78. In contrast, LCpl Stott denied the Claimant's assertions. His evidence was that the Claimant did not identify himself and instead that he challenged LCpl Stott, raised his voice and tried to push past him.

79. Whilst the Claimant's actions are not one of the issues to be determined, this point was posited by LCpl Stott as he says that because of the Claimant's actions, he did not have time to call him Sir, nor to enquire in the guardroom as suggested by the Claimant. LCpl Stott denied using a patronising or condescending tone.

80. There was a clear conflict in evidence here. No one else was present to witness the incident and the Respondent denied that there was video evidence of the incident, despite confirming that there were CCTV camera's which would have covered part of the area where the incident occurred. The tribunal therefore had to make a decision based on which of the two witnesses it considered more credible. It decided that it preferred the Claimant's version of events.

81. The Claimant was consistent throughout his recollection of the events. That not only included in the tribunal documents and the cross examination during the hearing, but also in the documents in the bundle that had been created as part of the investigations carried out by the Respondent.

82. In contrast, LCpl Stott was extremely inconsistent. Under cross examination, LCpl Stott could not recall giving a statement as part of the investigation of the service complaint in July 2022. This cast doubt on the veracity of that statement in the bundle, but also about LCpl Stott's ability to recall events in 2021 if he couldn't recall something that happened in 2022.

83. LCpl Stott was also inconsistent when recalling what the Claimant's was wearing when he allegedly tried to barge past him. He could not remember accurately as to whether the Claimant was wearing a uniform or not.
84. LCpl Stott also contradicted one of the Respondent's other witness. Cpl Rana stated in his statement that he identified the Claimant but LCpl Stott says that is not what he recalls happening. Given that not even the Respondent's witnesses were consistent with each other, this cast doubt on credibility of LCpl Stott's evidence.
85. LCpl Stott also stated that he was surprised by the Claimant when he approached him, which is why he did not address him as Sir, but this seemed at odds with the fact that his duty was to look out for people approaching the barracks to assess any potential security risk.
86. In his statement LCpl Stott said that the Claimant said in the first interaction that he had been treated disrespectfully by LCpl Stott because he had dreadlocks and was wearing a Caribbean shirt, however under cross examination, LCpl Stott also accepted that previously he had said that this comment hadn't been made until the second interaction.
87. The tribunal was further persuaded to find that the Claimant's version of the event was true by a recording produced by the Respondent. This was a recording made covertly, without the Claimant's knowledge, of a conversation the Claimant had with LCpl Thoppil-Kezakthil, another member of the guardroom, immediately after the incidents on the gate.
88. In that recording, the Claimant's stated what had just happened to him and it is consistent with the version given in the claim and his witness statement. Given this was taken at the time and without the Claimant's knowledge, it was considered to be good evidence by the tribunal and brought credibility to the Claimant's version of events.
89. In light of this, the tribunal decided that LCpl Stott had not called the Claimant "Sir" (which he accepted), that LCpl Stott had been patronising and condescending to the Claimant and, emphasised the word "gentleman" when referring to the Claimant in a disrespectful way.
90. As to whether this amounted to direct race discrimination, the tribunal first of all considered whether or not this amounted to less favourable treatment.
91. In relation to this allegation only, the Claimant relied upon an actual comparator of a white man he saw entering the barracks before him, who the Claimant says was being spoken to respectfully by LCpl Stott.
92. The Respondent denied such an individual had been present. LCpl Stott denied any person had been spoken to by him.
93. However Cpl Rana stated in his evidence that during the time of the original incident (when the Claimant first tried to re-enter the barracks) he was dealing with a "customer". Cpl Rana confirmed that this term referred to anyone who was not Army personnel. The tribunal decided that it was more likely than not that this was the person the Claimant was referring to as no other person was mentioned by any other witness as having entered the barracks before the Claimant.
94. Further, given that the tribunal had decided that LCpl Stott's recollection of this incident was not true, the tribunal accepted the Claimant's version of events over his. The tribunal therefore found that there was a white man who had entered the barracks before the Claimant and that he was an actual comparator who was treated more favourably than the Claimant.

95. As the tribunal had determined there had been less favourable treatment, they then needed to decide whether this treatment was because of the Claimant's race. The tribunal needed to ask why LCpl Stott had spoken the Claimant in such a way.
96. The tribunal took into account LCpl Stott's description of the Claimant during this incident. In particular, at paragraph 5 of his witness statement for this hearing, LCpl Stott referred to the Claimant as wearing a "Caribbean Shirt". The shirt was presented in evidence and appeared quite innocuous. No explanation could be given by LCpl Stott as to why he would call it a "Caribbean" shirt.
97. In the second interaction, LCpl Stott stated that the Claimant said "...because I had a Caribbean shirt and dreadlocks". The Claimant stated in evidence that he would not have referred to the shirt as a "Caribbean" shirt (because it was not) and would not have referred to his hair as "dreadlocks" as this phrase has a specific meaning to him which was not applicable to him.
98. The tribunal accepted the Claimant's position on this as credible and that those elements (Caribbean and Dreadlocks) must have been added by LCpl Stott. It was therefore apparent to the tribunal that the Claimant's race was at the forefront of LCpl Stott's mind during his interactions with the Claimant. This, the tribunal felt, was sufficient to at least establish a prima facie case of discrimination, which, in the absence of any other non-discriminatory explanation by the Respondent, the tribunal could conclude that race was the reason for the treatment.
99. The Respondent provided no other explanation for LCpl Stott's actions, given that they denied the actions had taken place in that way at all. In the absence of any such alternative explanation, the tribunal concluded that the reason for the treatment was race and that therefore the claim for direct discrimination in relation to this allegation succeeded.

### Allegation 2

100. *(Former) SSgt Flower's conduct on the 20<sup>th</sup> July 2021, including (a) saying "oh, if you're going to turn this into a racial thing then I'm not interested."; (b) walking away from the Claimant; (c) accusing the Claimant of 'playing the race card'; and (d) encouraging or permitting the Claimant to be bundled out of the guardroom.*
101. Following the first incident, the Claimant put on his uniform and returned to the guardroom to speak to LCpl Stott. That is dealt with below. In that incident, LCpl asked former SSgt Flower to be present. Mr Flower was in charge of the guardroom at the time the incident happened.
102. The Claimant alleges that he redressed LCpl Stott about the way he had spoken to the Claimant and said that LCpl Stott had the perception that the Claimant didn't look like a soldier so can't have been in the Army. The Claimant states that he then said that if he had been a 53 year old white man he would have been treated differently.
103. All parties accept that LCpl Stott then said *"if you are going to play the race card, I am not going to speak to you"*.
104. The Claimant alleges that LCpl Stott began to ignore the Claimant and then Mr Flower said that he took exception to what the Claimant was saying *"if you are going to turn this into a "racial" thing then I'm not interested."*

105. The Claimant alleges that he then asked Mr Flower what it was he was not interested in, to which Mr Flower replied “*you called him a racist*”. The Claimant then repeated that he felt that if he had been a white man that he would have been treated differently. Mr Flower then was dismissive to the Claimant and said “*not interested*” and walked away back to the guardroom area.
106. The Claimant followed Mr Flower to explain again that he felt he would have been treated differently if he had been white and at that point Mr Flower is alleged to have accused the Claimant of “*playing the race card*”.
107. The Claimant was by that point in the guardroom with Mr Flower and other Army personnel. At that point, the Claimant alleges that he was “bundled out” of the guardroom. The Claimant explains that he means that someone put his hands on him and firmly escorted him out of the guardroom.
108. Mr Flower’s recollection of the incident in his witness statement is slightly different. Mr Flowers says that the second incident with LCpl Stott and the Claimant took place outside the barracks on the gate. He says accepts that he was asked by LCpl Stott to be a witness to that.
109. Mr Flower says that, in relation to the allegation that he said “*if you are going to turn this into a “racial” thing then I’m not interested*”, he does not remember saying that but it is possible he did.
110. Mr Flowers says that the conversation between him and the Claimant in the guardroom was one sided with the Claimant continuing to reference his race. Mr Flower says that he tried to reassure the Claimant that him being challenged at the gate had nothing to do with his race.
111. He does not mention whether or not he accused the Claimant of “*playing the race card*” in his witness statement for the hearing, but in the statement given for the service complaint investigation, included in the bundle, Mr Flower states the he told the Claimant that he was “playing the race card”. He then accepted in cross examination that his witness statement was wrong and that he did make this comment outside the guardroom.
112. He accepts that the Claimant was taken out of the guardroom by another person, however he says that the Claimant was “encouraged” to leave the guardroom and go outside.
113. In his statement, Mr Flowers says he recalls this person but does not know who he was. The man appears in the CCTV footage the tribunal was shown of the events immediately after the Claimant left the guardroom.
114. It was very frustrating that no-one from the Respondent was willing or able to identify the individual and that no statement was ever taken from him. As an independent witness to the incident, his version of the events would have been very useful. The tribunal were extremely sceptical that no one from the Respondent knew who this was. It was particularly worrying that the Armed forces could have someone on the barracks that no one knew. The tribunal was surprised that this was not dealt with as a much bigger security issue than the Claimant forgetting his pass.
115. Mr Flower states that he followed the Claimant outside the guardroom. He says that the Claimant began gesticulating towards him outside the guardroom and was aggressive towards him. The Claimant does not deny that he was aggressive.
116. Mr Flower accepts in his witness statement that he then tried to walk away from the Claimant. He says that this was because he was worried that the Claimant was going to be

violent towards him. In the service complaint statement, Mr Flower states that when the Claimant began shouting at him that

*“I can’t recall what he was saying, I just took myself away”.* (page 244)

117. In cross examination, Mr Flower was confused as to whether he accepted that LCpl Stott said the “race card” comment, before eventually accepting that he did. He then went on to say that he did not criticise LCpl Stott’s comments, which the tribunal found surprising, given the clearly discriminatory nature of the comment.
118. Mr Flower also accepted that he may have used the words “I’m not interested”. However a few minutes later he then stated he can’t remember saying those words. This was only one example of his inconsistent evidence.
119. Mr Flower stated in cross examination that the correct procedure when someone is making a complaint is to listen to them and take the details to pass them up the chain of command. However, he was clear that he did not do this and in fact tried to dismiss the Claimant’s concerns as having no merit.
120. In light of all this evidence, the tribunal made the following findings;
121. In relation to the allegation that Mr Flower said *“if you are going to turn this into a racial thing, then I’m not interested.”* The tribunal finds that this incident did occur. The Claimant was again consistent with his evidence both in his witness statement and in the statements given throughout the Respondent’s investigations. Mr Flower firstly accepted that this comment ‘might’ have been made and then later under questioning said he did say that phrase..
122. In relation to the allegation that Mr Flower walked away from the Claimant, the tribunal finds that this happened. The CCTV footage shows Mr Flower walking away from the Claimant outside the guardroom and Mr Flower accepts that he did this. It is also consistent with the words he used (that he is not interested in what the Claimant had to say).
123. In relation to the allegation that Mr Flower accused the Claimant of *“playing the race card”*, the tribunal finds that this did happen. Again, Mr Flower admitted making the comment in some places and denied it in others. The Claimant’s consistent evidence was found to be more credible than Mr Flower’s inconsistent evidence.
124. Finally, in relation to the allegation that Mr Flower’s permitted or caused the Claimant to be “bundled out” of the guardroom, the tribunal finds that this incident occurred. Again, the CCTV shows some physical contact with the mysterious stranger and the Claimant and given the Claimant’s manner in the footage, it is more likely than not that he was forced to leave the guardroom rather than leaving of his own accord.
125. Again, after finding that the incidents had occurred, the tribunal then needed to consider whether or not the acts amounted to less favourable treatment and whether that treatment was because of the protected characteristic of race.
126. The tribunal considered the principles in the case of **Shamoon** in which Lord Nicholls stated that in some cases it may be unnecessarily difficult to separate out the issue of less favourable treatment and whether the reason for the treatment was race. He said *“Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues intertwined.”* We found that was the case in these proceedings.

127. In relation to this allegation, the Claimant had no actual comparator and instead relied upon a hypothetical comparator. This would be a white person who was placed in materially similar circumstances to the Claimant.

128. It was the tribunal's finding that a hypothetical white comparator would not have been treated in the same manner by Mr Flower. It was clear from the wording used; "going to turn this into a racial thing" and "playing the race card" that the Claimant being black was at the forefront of Mr Flower's mind and it seems inconceivable that he would have used such words to a white person and it therefore seemed likely that his entire approach to the interactions with the Claimant were influenced by race. As stated, this finding was intertwined with the finding relating to the reason for the conduct. The wording used by Mr Flower made it clear that race was the reason for his conduct towards the Claimant.

### Allegation 3

129. *LCpl Stott's conduct on the 20<sup>th</sup> July 2021, on the Claimant's return to the guardroom, including accusing the C of "playing the race card".*

130. There was a conflict in the evidence between the Claimant and LCpl Stott in relation to whether this comment was said or not.

131. However, Mr Flower accepted, when cross-examined, that he had heard LCpl Stott say this. As such, it was decided by the tribunal that this comment was said.

132. Again, the tribunal found that the reason for the treatment was race and that a comparator would not have been treated the same way because of the nature of the words used. It did not seem likely at all that a white person in the Claimant's circumstances would have been accused of playing the race card. Further, the nature of the comment is irrefutably connected with race and as such, race must have been the reason for the treatment.

### Allegation 4

133. *The making of complaints or reports about the Claimant's conduct on the 20<sup>th</sup> July 2021.*

134. Although it wasn't clear who exactly had raised this issue with Lt Col Hunter, it was clear that a complaint had to have been made as Lt Col Hunter was prompted to instruct Capt Mason to investigate the Claimant's conduct and this eventually led to the Service Charge. We could see that statements had been collected on the day, presumably by someone in the guardroom and these focused on the Claimant's actions, rather than what had led to that.

135. It was noted that the Respondent failed to produce any evidence regarding who actually made a complaint about the Claimant nor did they give any excuse or explanation for not providing such evidence.

136. We were satisfied that, given the findings of harassment and discrimination towards the Claimant by Stott and Flowers, a prima facie case is established that shifts the burden of proof. The Respondent produced no explanation for this and as such we found that this amounted to direct discrimination.

### Allegation 5

137. *Pursuing disciplinary proceedings against the Claimant on various occasions from 21 July to 21 October 2021, in particular in deciding to abandon any effort at informal mediation*



*(or failing to progress it), deciding not to pursue minor AGAI action, and instead deciding to formally charge the Claimant with a service offence.*

138. As stated above, it is a fact that disciplinary proceedings were pursued by the Respondent against the Claimant. At first this was Minor AA and then there was a conscious decision not to pursue Minor AGAI action and instead pursue the more serious Service Charge.
139. In order to determine whether this amounted to direct race discrimination, it is necessary to unpick in detail the sequence of events.
140. Following the incidents with Stott and Flowers, the Claimant went to see the Commanding Officer of the Garrison, Lt Col Hunter. There were 2 meetings with Lt Col Hunter, although there is a dispute as to whether they took place on the same day or not. Whether they were on the same day or not is not a point relevant to the issues so we have not decided on that.
141. The key point to note though is that during the conversations, the Claimant raised with Lt Col Hunter the details of the incidents and that he felt that he had been subjected to racism. Lt Col Hunter initially denied there was any mention of race at all in an original version of his witness statement but then produced an updated version stating that there had been a discussion about race discrimination. Lt Col Hunter stated that he had been the one to initiate this and it was in more general terms. The tribunal didn't accept this as being credible. It made no sense for the Claimant not to mention the racial aspect of the treatment he was aggrieved about when he had done so to Stott and Flowers and others already. It was the tribunal's finding that the Claimant had mentioned that he felt he had been subjected to race discrimination in his meetings with Lt Col Hunter.
142. The Claimant had chosen to go to Lt Col Hunter as he was the perpetrators' commanding officer. Lt Col Hunter had oversight of the LCpl Stott and Mr Flowers, but decided not to take any action against them when an allegation of racism had been made against them.
143. Instead, Lt Col Hunter's next step was to contact Lt Col Haw about the incident. However, his focus was not on the treatment that the Claimant had received but the Claimant's conduct. Lt Col Hunter's view was that the Claimant's conduct had fallen below standards and that an investigation should be carried out to decide whether disciplinary action should be taken against him.
144. This demonstrated to the tribunal that there was no concern for the Claimant's wellbeing or what he had been subjected to. It was clear that the senior personnel were less concerned with tackling racism and more concerned with upholding conduct standards. Also, it appeared they wilfully ignored the fact that discrimination (and by definition racism) is against the Army's code of conduct.
145. There is an unfortunate trope of black men and women being accused of being aggressive in situations or circumstances when other races would not. The tribunal felt that this stereotype was being applied by Lt Col Hunter. His evidence focuses on the Claimant failing to follow conduct standards. Lt Col Hunter has interpreted the Claimant's actions in the most negative way possible and completely ignored the mitigating factors which led to this.
146. Lt Col Haw was the Commanding Officer of the Bands at the time of the incident. As such, he was ultimately in charge of the Claimant's section.

147. He confirmed in his evidence that he had known the Claimant for some time and that he believed the Claimant to be of good character.
148. He also confirmed he knew little about LCpl Stott. The one interaction he mentions of having with LCpl Stott was a negative one. However, despite that, he seems to side with other officers over the Claimant in respect of this incident.
149. He stated he had known Mr Flower for a number of years as well, but this appeared to be a passing knowledge of him, rather than the intimate knowledge he would have had of someone who worked under his command.
150. Following the conversation between Hunter and Haw, Col Haw contacted Captain Mason, the Claimant's chain of command superior. His instructions, according to Cpt Mason's statement, was to initiate an investigation into Major AGAI action against the Claimant. This is important, in the tribunal's view, as it shows the perception from the beginning was to take serious action against the Claimant.
151. Col Haw was starting from the 2<sup>nd</sup> highest sanction he could give. He did not, as he could have done, tell Captain Mason that there had been an incident and that he should investigate and take whatever action was appropriate. That would have let Captain Mason have free rein and, if he wanted to, take no action at all if he didn't think the Claimant had done anything wrong. However, instead, the perception from the beginning was that the Claimant was in the wrong.
152. It was the tribunal's finding that Col Haw was applying a stereotype to the Claimant's actions by making a pre-determination that the Claimant was guilty of conduct that warranted serious disciplinary action.
153. In his witness statement, Lt Col Haw states that he saw the video footage (although later he states that this was an excerpt of it only) and describes the Claimant as being "aggressive", "confrontational" and "a clear example of insubordination and showed a complete breakdown in discipline". He states that there was not audio on the footage but he makes a conclusion that the Claimant was speaking in a raised voice. He also says that the Claimant was pursuing Mr Flower, when in fact, having viewed the footage ourselves, the tribunal can see Mr Flower purposely walking towards the Claimant.
154. The description given of the footage by Lt Col Haw betrayed that he had labelled the Claimant to be aggressive and fitting into the "Angry Black Man" stereotype. Lt Col Haw had no other examples of the Claimant acting in such a way in all the time he had known him and as such, there was no other basis for him drawing conclusions about the Claimant in this negative way apart from applying a stereotype.
155. It does not appear that Lt Col Haw stopped for even a second to think that there may be a reason for the Claimant to be acting in such a way that needs to be considered. Instead, he was ready to throw the book at him for his actions, dismissing out of hand any mitigating factors and ignoring the actions of anyone else.
156. A copy of the Administrative Action policy was provided in the bundle and in it, 4 types of action are set out. Minor and Major, which are self-explanatory, but also FW and RFA which are described as non-sanctioning actions. That is to say they are informal. However, Col Haw did not even consider these or appear to give Captain Mason the freedom to consider one of these actions. Again, there was a presumption that the Claimant had done something serious and wrong and that he should be punished.

157. Although Captain Mason stated in evidence that he had the final decision as to whether Major or Minor AGAI action was appropriate, the tribunal questioned whether he was truly free to so. Captain Mason was asked whether or not a presumption was being placed in his mind that Major action should be the outcome. He said he was trained to use his own judgment but then went on to say that the fact that Col Haw called him to tell him to start the process made him aware as to how serious that was. Captain Mason said that if it was a minor incident the instructions would most likely not have come from Col Haw. The tribunal therefore found that Captain Mason was intending to take Major action from the beginning and this was likely in his mind throughout.
158. What happened in the meeting between Cpt Mason and the Claimant is important to the case also.
159. It was clear that this did not go the way Captain Mason had wanted or expected it to go. Prior to the meeting, Cpt Mason had called the Claimant to invite him to attend. In the meeting, Captain Mason accused the Claimant of having been aggressive during that phone call
160. The Claimant was upset by this accusation. During cross examination Captain Mason acknowledged that his phone call with the Claimant was shortly after the incident and that the Claimant would be understandably still be upset or stressed. Captain Mason confirmed that the part he felt was aggressive was that when he explained he wanted to meet with the Claimant, the Claimant said the matter was “all being dealt with, why are you getting involved?”. The Claimant was under the impression that Col Hunter was dealing with the matter for him. This, to the tribunal did not seem an aggressive comment. Even if there was emotion in it, that would be understandable given how close in time it was to the incident.
161. Captain Mason’s decision to accuse the Claimant as being aggressive was telling. Again it appeared Cpt Mason was applying the stereotype of an Angry Black Man. Instead of acknowledging the Claimant was upset or even enquiring why the Claimant had acted that way his instant reaction was to deem the Claimant as being aggressive and call him out on this.
162. Despite what Captain Mason might say about his fairness or objectivity, his reaction to the Claimant showed that he was stereotyping the Claimant and this must have influenced how he treated the Claimant. The nature of the incident that he was being asked to investigate was about an apparent aggressive act and so immediately labelling the Claimant as an aggressive black man makes the tribunal question whether Captain Mason really had an objective mind when it came to approaching the investigation.
163. Captain Mason accepted that, in the meeting, the Claimant raised that he felt he had been subjected to race discrimination in the incidents with Stott and Flowers. The tribunal questioned Captain Mason as to why he didn’t take this into consideration or feel that it was necessary to investigate their actions.
164. Captain Mason stated under cross examination that he agreed he had a duty to investigate the racism incidents but said he believed Col Hunter was dealing with it. However, Captain Mason appeared to take no steps to find out what action Col Hunter was actually taking. Captain Mason said that he did make an enquiry through his Adjutant but there is no record or evidence of this and given it wasn’t mentioned in his statement, the tribunal did not accept that this happened.
165. Again there is demonstrated within the officer ranks a conscious decision to ignore or dismiss allegations of racism or discrimination.

166. When investigating the incident outside the guardroom, Captain Mason stated that, it was important to take into account all the circumstances, which would include what had caused the incident to happen. He then went on to say that sometimes things are serious enough on their own, regardless of the context. This we felt was contradictory and the latter statement to be against the principles of natural justice. The entire point of an investigation is to look behind what can be seen to find what the cause or justification of it is and make a decision based on that. It was very surprising that the mention of an act of racism did not change things for Captain Mason and make him question as to whether it was right to continue or not.
167. Captain Mason said that it didn't change things for him. He said he had a duty to uphold the army's values and standards and that the mention of the racism didn't change that the Service Test had been breached. This was difficult for the tribunal to understand. Captain Mason appeared to be saying that no explanation or excuse would make a difference if he found that there was an act that breached the Service Test. If that was the case, what was the point of an investigation?
168. Despite Captain Mason saying that the Claimant's mention of racism didn't change things for him, he does eventually send to the Claimant a Minor AGAI recommendation, instead of a Major AGAI as he had been asked to do by Lt Col Haw. Although it is right to say he dropped the sanction down a level, Cpt Mason did not choose one of the informal options available to him under the AGAI policy, or even choose to stop or pause the investigation into the Claimant's conduct whilst the race discrimination allegations could be investigated.
169. The form sent to the Claimant says "on the balance of probabilities, Major AGAI Action was not appropriate in this case- especially given the mitigation provided". However there is no specific mention as to what that mitigation is. Captain Mason makes a conscious decision not to mention the racially charged comments that were made to the Claimant. Again, the tribunal felt this was telling of Captain Mason's view of the Claimant and what he had been subjected to. Either he didn't believe the incidents were racist so didn't think specific mention of that needed to be made, or he didn't want to acknowledge they were and decided to omit mention of them to save face for the Army.
170. The form makes it clear that the recommendation is to "Revert to Minor Administrative Action". It was therefore clear to the tribunal that the starting point was Major AGAI Action.
171. The Claimant is asked to sign the form and return it to Captain Mason. The Claimant refuses to sign it and he writes on the form that he feels aggrieved that he is being punished whereas those who were the perpetrators of the racist incidents against him are facing no consequences.
172. The Administration Action policy makes it clear that one of the grounds for action is Discrimination, yet no decision was taken to look into the allegations of discrimination by the Claimant against Flowers and Stott.
173. The policy states that the AGAI form should be signed by the Service Personnel who is the subject of the action. It goes on to say where the individual refuses to sign the form "it should be noted, initialled by a third party and the process continued."
174. However this is not what happened in the Claimant's case. It is clear from the policy that not signing the form does not stop the Minor AGAI. It was within Captain Mason's power to have the form initialled by a third party and a Minor AGAI sanction could have been administered, whether or not the Claimant had accepted what was written on the form.

175. However, this is not what happened. The Claimant met with Captain Mason and said that he was contemplating making a Service Complaint (a form of grievance for armed forces personnel) or speaking to the press. I will deal with the impact of those comments in the victimisation section below.
176. Instead, the Claimant was subjected to formal disciplinary action, in the form of a Service Charge. The first he was made aware of this was in September when he was told to provide his payroll details so that he could be charged and a deduction be made from his salary. He was notified he would have to attend a summary hearing chaired by Lt Col Haw. The nature of that hearing was not to hear the Claimant's version of events but to deliver the summary decision that had already been made, without the Claimant's input.
177. The tribunal was able to determine what happened between the Claimant refusing to sign the Minor AGAI and the summary Service Charge hearing by hearing the evidence of Lt Col Haw and Captain Mason.
178. In his evidence, Captain Mason felt that, when the Claimant returned with the unsigned AGAI form and stated he was intending to either pursue a service complaint or go to the press, he felt bullied got upset. This reaction seems strange given no allegations were being made against Captain Mason. The tribunal felt the reaction was because of Captain Mason again stereotyping the Claimant as an Angry Black Man.
179. Captain Mason also explained that he didn't want the Army to be exposed in the press as that undermined their objectives and impeded their operational effectiveness.
180. On the 4<sup>th</sup> August 2021, Captain Mason emails Captain Smith to request advice in light of the fact the Claimant has not signed the AGAI form. In that email, Captain Mason states that "I am feeling very uneasy about continuing this Minor AGAI action". Captain Mason suggests that if Minor AGAI is continued then the Army should also consider action against the others involved (that is Stott and Flowers).
181. There is an email on the 4<sup>th</sup> August 2021 from a Charlotte Cole to request advice from the Legal Branch. In that email she confirms that disciplinary action (which must mean the Minor AGAI as that is the only action live at the time) can still proceed, even if the Claimant chooses not to engage. This is in line with what the tribunal had seen written in the policy.
182. A reply was given by the Captain K Matthews on the 13<sup>th</sup> August 2021. Initially only a redacted version was provided in the bundle but the Respondent was ordered to provide an unredacted version on the basis that they had waived privilege regarding this advice by providing the other emails in the chain and they could not waive privilege selectively. They had also not disclosed those other emails by mistake.
183. In that advice Captain Matthews says that there is sufficient evidence for a disciplinary charge to be brought against the Claimant. This is more serious action than the Administrative Action being currently considered, but the key point for the tribunal was that all Captain Matthews is saying that a disciplinary charge is a possible course of action. There was no instruction from Captain Matthews that it had to be pursued and that it was not appropriate to continue with a Minor AGAI.
184. Captain Matthews goes on to say "My view is that the CO may wish to consider charging LSgt Pile-Grey with misconduct..." Again, the words "may wish" show that all that was being set out was a possible course of action.

185. The advice goes on to say that that Mr Flower's behaviour in using the phrase "race-card" was "unattractive but does not disclose sufficient evidence to bring a disciplinary charge". The tribunal was extremely surprised at this advice. There appeared to be a clear decision to dismiss as frivolous something serious and clearly racially charged. This was completely at odds with the Respondent's protestations that they take discrimination issues seriously. The tribunal felt that this revealed the Respondent's dim view of allegations of racism.
186. Lt Col Haw confirmed that when the Claimant refused to sign the AGAI form, the matter was referred back to him.
187. In his witness statement, Lt Col Haw says that he was aware that the Claimant had been accused of playing the "race card" (and indeed he would have been as the phrase was relayed in the statements taken at the time of the incident which he confirmed he had seen) yet also states that that in his view there was no evidence to suggest that there had been any act of discrimination. The tribunal was again surprised by this conclusion. The phrase "race card" even if not considered racist itself by Lt Col Haw should have alerted him that there may have been discrimination that warranted further investigation into what happened. However, instead, as stated, he decides to solely focus on subjecting the Claimant to more serious disciplinary action.
188. Under questioning by the tribunal panel, Lt Col Haw was asked what it would have taken to decide not to proceed with any action at all. He stated that if there was evidence of discrimination. It was then put to him that the "race card" comment was evidence of discrimination and he accepted that it was and that, on reflection, he should have pursued it and determined the truth of that first.
189. In an attempt to defend his actions, Lt Col Haw said that he used his "military judgement". The tribunal found that this phrase had no technical or special meaning but instead was a phrase used by Lt Col Haw to explain that his thinking was based on his own training and experience. As stated above, this is how everybody bases their thinking and reasoning and so it was not seen as an adequate explanation.
190. Lt Col Haw said that he used this "military judgement" to figure out what had happened. He decided at the time that although the phrase "race card" had racist undertones, he didn't believe Mr Flowers was intending to be racist.
191. There was no basis whatsoever for Lt Col Haw drawing that conclusion. He hadn't interviewed Mr Flowers or asked him what his thinking was. Instead he had made a snap judgment to defend Mr Flowers and not believe the Claimant. As stated above, given he had a stronger relationship with the Claimant than he had with Mr Flowers, this seems illogical and irrational.
192. Another defence Lt Col Haw put forward for not taking action against Stott and Flowers was that they weren't in his command. However, he acknowledged that different sections co-operate and communicate all the time. Indeed it was seen in this particular case when Lt Col Hunter spoken to Lt Col Haw about taking action against the Claimant. We therefore did not accept that this was a valid explanation why no action was taken against Stott and Flowers.
193. Further, Mr Flowers was instead treated as a victim. In his email of the 9<sup>th</sup> September 2021, Lt Col Haw asks that someone keep Mr Flowers and his team updated as to what the status of the investigation was and "reassure SSgt Flower that I am dealing with the issue and that appropriate action is being taken". Clearly there is a difference in how Lt Col Haw views Mr Flower and the Claimant (who is only being treated as the aggressor, even though he has

expressed that he feels he has been discriminated against). This the tribunal felt went towards showing the clear preference for a white soldier over a black one.

194. Lt Col Haw tried to justify this treatment by saying he had had legal advice that Mr Flower was the victim. However, it was seen in the documents that this wasn't the case. That advice came later and the advice he had at the time of that email in September was that Mr Flower should undergo retraining; that is, that Mr Flower was in the wrong. However, Lt Col Haw chose not to see him as the person in the wrong.
195. In cross examination, Lt Col Haw stated that he was familiar with the AGAI and Disciplinary processes of the Army, but preferred not to use them and deal with matters informally where possible. However, in this case, Lt Col Haw decides to depart from his usual course of action and go down a formal route.
196. Lt Col Haw also said he was familiar with the Respondent's Dignity and Inclusion policy and the fact that personnel can access Dignity and Inclusion advisors in situations where they feel there has been discrimination. Although Lt Col Haw accessed a D&I advisor, he did not refer the Claimant to one. In his opinion the Claimant should accessed this himself. The tribunal did not feel that Lt Col Haw had sufficiently discharged his obligations to make sure discrimination issues are being dealt with and those who believe they are the subject of discrimination are supported. When this was put to Lt Col Haw, he accepted this.
197. In his witness evidence, Lt Col Haw stated that he was of the firm view that staff in the guardroom would not have been discriminatory. When questioned about this, he stated that this was his very first conclusion. Again, this belies that he could not even contemplate that there may have been discrimination and that he was approaching the matter with a closed mind, disadvantaging the Claimant.
198. Lt Col Haw then emails on the 9<sup>th</sup> September to say that although the Captain Mason suggested a Minor Sanction, he wants to proceed with a disciplinary charge. Lt Col Haw said in his witness evidence that this was because that is what the legal department had told him to do but as we saw, that was not correct. The legal advice at the time was that a service charge was only a possible course of action. Further, Lt Col Haw stated that the decision was ultimately his and the advice was just that- advice. It was not an instruction or order.
199. Captain Mason was then stationed overseas and so had to step out of the process and relinquish it to Captain Smith on the 7<sup>th</sup> September 2021.
200. On the 9<sup>th</sup> September we see that Captain Smith sends a witness statement from Stott and the CCTV footage to Lt Col Haw. The tribunal raised questioned why LCpl Stott's statement had not been sent when the other statements had?
201. In the bundle at pages 361-366 were witness statements taken, purportedly, on the same day of the incident. One of these was by LCpl Stott.
202. In his email in which he request the statement, Lt Col Haw says "you have all the statements here less LCpl Stott- please obtain it".
203. This brought into question whether or not the statement in the bundle supposedly taken from LCpl Stott on the day of the incident was actually taken that day or not. If it had been, why had it not been included in the batch that had been sent to Lt Col Haw? It is one of the most important statements so it would be a grave error to miss it out. Captain Mason, in his email of the 7<sup>th</sup> September, also confirms he doesn't have LCpl Stott's statement with the other statements.

204. Further, why has Lt Col Haw said “please obtain it” rather than “please forward it” or words to that effect. The wording used by Lt Col Haw suggests that this statement (and potentially the others) were only being taken now. If that was the case, then this calls into question the credibility of the statement. If LCpl Stott has lied about when he gave the statement, then the tribunal has difficulty accepting that he is a truthful witness more generally.
205. In relation to the CCTV footage, Lt Col Haw says that he has been shown an excerpt of the footage already. He confirmed that in his oral evidence. He stated that he had viewed it on “someone’s” phone, but couldn’t recall who. The impression given that it was a clip that was being circulated that he was shown and not something official that had been brought to his attention to deal with. The tribunal was also surprised by this. Firstly, it was surprising that a serious incident like this was being circulated casually and secondly, given he had later underlined the seriousness of the incident warranting action being taken against the Claimant, why had he not pressed for that when viewing the original excerpt of the footage?
206. In his email of the 9<sup>th</sup> September Lt Col Haw says that the OC (who would be Captain Mason) has “indicated that a Minor Sanction may be awarded”. However, he goes on to say “I have reviewed the evidence and I am of the view that there is sufficient grounds for a disciplinary charge against LSgt Pile-Gray”. It is clear then that Lt Col Haw is ignoring the recommendations from Captain Smith and Captain Mason to only go to Minor AGAI action and instead wants to escalate this to a more serious disciplinary.
207. When questioned, and in the email, Lt Col Haw stated that this was in line with the legal advice he had received, however, as stated already, that advice was just advice as to what possible courses of action could be taken.
208. He had therefore made a conscious decision himself to escalate the matter without any clear and obvious reason why that he could point to. The only conclusion that the tribunal could draw was again, his perception and labelling the Claimant as aggressive and angry.
209. In his witness evidence Lt Col Haw focused a lot on how he felt that the Claimant had been intimidating or bullying towards Captain Mason. This again seemed to paint the Claimant as an aggressive or angry person. The reality of the situation was that the Claimant had reacted to being called aggressive by Captain Mason, had refused to sign the AGAI form as he felt aggrieved that he was being punished but his harassers were not and raised that he intended to potentially to make a Service Complaint or go to the press. Even if these actions were deemed as aggressive, with some inquiry Lt Col Haw could have seen the justification behind them. However, instead he had a picture in his mind of the Claimant as the aggressor and stuck with that.
210. Based on these findings the tribunal applied the test for direct discrimination in relation to the allegation of pursuing disciplinary proceedings against the Claimant between July and October 2021.
211. The first stage of this is the Lt Col Hunter instructing Captain Mason to investigate a Major AA against the Claimant.
212. In doing this, Lt Col Hunter ignores the Claimant’s mitigating factors and treats him as guilty. He also ignores the Respondent’s policy to investigate complaints of discrimination. The AA policy also allows for a wider variety of actions, including informal action. Instead, Lt Col Hunter instructs Cpt Mason to look at the highest possible AA.



213. In light of all this, the tribunal made a finding that a hypothetical white comparator in the Claimant's situation would have been treated more favourably. There is a clear policy that should have been followed but was not in the Claimant's case and the tribunal concluded it would have been applied in other cases.
214. As to whether the reason for this treatment was race, we feel that the conclusions drawn about the stereotype on an angry black man being applied to the Claimant show that the reason for this treatment must have been race. The Respondent put forward no other reasonable non-discriminatory reason for the treatment.
215. The next step is Cpt Mason deciding to issue a Minor AGAI. Again, we found that the Captain's actions were a departure from the policy. As stated, there were a wide variety of lesser options available to Cpt Mason, including dropping the action completely. Cpt Mason acknowledged the Claimant had mitigating factors which he was aware of. The tribunal was not satisfied that he had given reasonably given due weight to them when deciding what to do.
216. As such, we considered that this was sufficient to conclude that the Claimant had been treated less favourably than a hypothetical white comparator would have been by Cpt Mason in deciding to issue the Minor AGAI.
217. Further, again we see the stereotype of an angry black man being applied to the Claimant by Cpt Mason, evidenced with his interactions with the Claimant and the repeated referral to him as being aggressive and intimidating. As such, we again find that the reason for the treatment was race. Again, no reasonable non-discriminatory reason was given by the Respondent.
218. Finally the decision by Lt Col Haw to proceed with a Service Charge. Again there seems to be no justification for this action and it is a departure from the standard course of action.
219. The Respondent's policy makes it clear that if the AGAI form has not been signed, AA can still continue. It was not necessary to proceed to a Service Charge.
220. The legal advice received also makes this clear. Although the advice says that a Service Charge is a possible course of action, there would need to be reason to depart from the current AA to the Service Charge and we found that none had been provided that we could accept.
221. As such, we found that a hypothetical white comparator would not have been treated this way. It was more likely than not that the ordinary policy would have been applied and the AGAI continued without that person's signature.
222. In relation to the reason for the treatment, we again find that Lt Col Haw perceived the Claimant to be aggressive and angry. This is telling from the way he describes the incident and the Claimant's interactions with Cpt Mason. Again, given that Lt Col Haw knew the Claimant well and knew this was not his normal character, we felt that a stereotype was being applied and that therefore the reason for the treatment must be race.
223. No other reasonable reason was put forward which we could accept. We did not accept that Lt Col Haw had to take more serious action because he had been instructed to do so by the legal department as he confirmed this was advice only.
224. We did not accept that Lt Col Haw did not have any evidence of race discrimination and as such there were no mitigating factors for the Claimant. He admitted that he knew of the "race card" comment.

225. We did not accept that his “military judgement” was sufficient to justify the Service Charge. This was just him applying his ordinary judgement which seemed to be flawed. He made assumptions that Mr Flowers was not intending to be racist without any reason to think that. He knew the Claimant better than Mr Flowers but still sided against him.

226. As such, this claim of direct discrimination succeeded.

*Deciding to abandon mediation or failing to pursue it*

227. In relation to the informal mediation, it was the Tribunal’s finding on the evidence presented that the Respondent had failed to progress it.

228. The Claimant had originally expressed that, although aggrieved with the actions of Stott and Flowers, he did not want to push for disciplinary action to be taken against them and instead was happy with mediation to be held.

229. In email correspondence with the Claimant, the Respondent stated that a mediation meeting that was scheduled would have to be rearranged because LCpl Stott had contracted covid. However, upon questioning LCpl Stott, he stated that he had never actually been told that mediation was due to take place.

230. He confirmed to the tribunal that he would not have attended mediation if offered, but that was only his position today and had not been communicated to the Respondent during the relevant time. The pertinent fact was that he was never asked. This indicated that the Respondent never intended to progress the mediation.

231. We saw in the bundle email correspondence between Captain Robert Smith (who took over after Captain Mason) in which he gave a summary of the events to an advisor and stated that and Adjutant had overseen a mediation session. This was clearly untrue. There must have been a conscious decision not to progress mediation and either tell Captain Smith (and potentially others) that it had already happened, or Captain Smith was aware that it had not happened and was misleading others that it had, so that no-one would seek to rearrange it.

232. The tribunal therefore determined that the Respondent had failed to progress the mediation and instead focused on the disciplinary action.

233. Given the Respondent’s actions were a clear departure from their policy and they misled the Claimant as to what had happened, we found that a hypothetical comparator would have not been treated this way. In any hypothetical case the Respondent would have followed the mediation through.

234. Further, given our findings about the Respondent’s stereotyping of the Claimant, we found that a prima facie case was established upon which, in the absence of any other non-discriminatory reason, the tribunal could find that the reason for the treatment was race. As the Respondent put no explanation forward, this aspect of the direct discrimination claim succeeds.

Harassment

235. The allegations of harassment were that the following acts were unwanted conduct related to race which had the purpose or effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment;

- a. Mr Flower’s conduct on the 20<sup>th</sup> July 2021.
- b. LCpl Stott accusing the Claimant of playing the “race card”.

236. I have set out our findings about whether these acts occurred above and so won't repeat that here. As stated above, we found that they all did occur as the Claimant has alleged.
237. It was quite clear to the tribunal that these acts were unwanted conduct which had the effect of violating the Claimant's dignity or creating a degrading, hostile or offensive environment.
238. It was clear from the Claimant's reaction and how he described how he felt at the time that this was unwanted conduct and it is difficult to see that anyone else viewing the case would not agree the same, taking into account all the circumstances.
239. Further, these acts were also found to be connected to race. As stated above, the words used "playing the race card" "making this a racial thing" make this clear.
240. These claims therefore succeeded.

### Victimisation

241. The Claimant alleged that he had carried out 3 protected acts for the purpose of a victimisation claim.
- a. Making oral allegations on the 20<sup>th</sup> July 2021
  - b. Making oral complaints in the meeting on the 22<sup>nd</sup> July 2021
  - c. Making complaints on the formal AGAI papers.
242. All 3 of these were admitted to be protected acts by the Respondent.
243. The Claimant alleges that he was subjected to following detriments because of those protected acts.
- a. Mr Flower's conduct towards him on the 20<sup>th</sup> July 2021.
  - b. LCpl Stott accusing him of playing the "race card".
  - c. The making of complaints about his conduct on the 20<sup>th</sup> July
  - d. Pursuing disciplinary proceedings against him.
244. In relation to the first 2 detriments, they can be dealt with together as they occurred at the same time and for the same reasons, albeit with different people involved. We have been careful not to combine the reasoning and motives of LCpl Stott and Mr Flower and treated the individually.
245. In relation to these 2 detriments, they occur after the Claimant returns to the guardroom in uniform and accuses LCpl Stott of displaying unconscious bias towards the Claimant and treating him disrespectfully/not believing him because of his appearance.
246. It is clear that this accusation was the reason that LCpl Stott says "if you are going to play the race card, I'm not going to speak to you." There is no other explanation from the Respondent as to why LCpl Stott would say this and none could be fathomed by the tribunal.
247. In relation to Mr Flower, he acts the way he does because he sees the Claimant's interaction with LCpl Stott. He himself isn't accused of being racist or biased however steps into the interaction after the Claimant turns to him and accuses someone under his command (LCpl Stott). Again, it is clear that Mr Flower's subsequent treatment of the Claimant is spurred by this. There is no other reason or explanation for it.

248. Therefore those 2 aspects of the victimisation claim succeed.
249. In relation to the third allegation of victimisation, as stated above, it was not revealed who had made these complaints or reports about the Claimant. However, it is clear that these were prompted by what took place at the guardroom on the 20<sup>th</sup> July. There is no other explanation as to why someone would make such reports or complaints.
250. The Claimant's actions at the guardroom were to make the protected acts. Everything he did is tied up to that and as such, it must follow then that the reason for the detriment was that protected act. This aspect of the claim therefore succeeds.
251. In relation to the final detriment, again it is necessary to break this down into separate sections.
252. In relation to the first step- Lt Col Hunter requesting that Cpt Mason pursue Major AA against the Claimant, it is the tribunal's finding that the reason for this was the fact that he had raised the issue of race discrimination. It was clear from the fact that Lt Col Hunter took a dismissive view of these complaints that he felt unhappy that the Claimant had even dared to raise them.
253. In relation to the decision by Cpt Mason to proceed with Minor AGAI, we find that this was because the Claimant raised issues of race in the meeting of the 22<sup>nd</sup> July with Cpt Mason. Again Cpt Mason did not appear to take those complaints seriously. He also had already labelled the Claimant as aggressive and confrontational. He made it clear in his evidence that it was important to him that Army standards were maintained and it is more likely than not that a soldier accusing others of discrimination would not be in line with this.
254. Finally, in relation to Lt Col Haw taking Service Charge action against the Claimant, we find that this was because of the protected acts. Lt Col Haw decides to ignore the legal advice, his own experience and knowledge of the Claimant and the Respondent's policies and procedures to pursue serious disciplinary action against the Claimant. As stated, it was clear that he had painted a picture of the Claimant in his head as someone who was aggressive, angry and belligerent and it was telling from his evidence that this was influenced by the Claimant's decision to stand up against the racism he was facing.
255. It was clear from Lt Col Haw's responses that he did not think it was right that the Claimant would challenge this racial conduct. He mentioned how it was wrong to challenge a guard given they are looking out for threats to the base. He stated that he did not feel it was right for someone to talk or gesture towards a superior officer as the Claimant had done towards Mr Flowers. This was the case even though Lt Col Haw knew the reason for the Claimant acting this was because he was raising issues of race discrimination.
256. Further he also was clearly unhappy that the Claimant had challenged Cpt Mason and refused to sign the AA form. He made a great deal at how this had shaken Cpt Mason.
257. He also was unhappy that the Claimant had threatened to pursue a service complaint. Whilst he acknowledged this was within the Claimant's right, it was clearly stated that he didn't think this was the "done thing" and that this wasn't what soldiers should do.
258. As such it is clear that each of the Claimant's protected acts fed into Lt Col Haw's decision to pursue the Service Complaint and that this too was an act of victimisation.

## Jurisdiction

259. As stated, given this was a case being pursued by a former member of the armed forces against the Army, in order for the tribunal to have jurisdiction to hear the claim, we needed to determine whether or not they had first been raised within a Service Complaint.
260. The Claimant raised a service complaint on the 17<sup>th</sup> December 2021, which the Respondent accepted as a valid complaint.
261. The Respondent accepted that the Service Complaint contained the complaints of direct discrimination and harassment and so the tribunal did not need to determine whether or not it had jurisdiction to hear those.
262. The issue in dispute was whether or not the Service Complaint included the complaints of victimisation.
263. Upon first glance, the Service Complaint does not use the words "victimisation" .
264. In the box which states "What do you want to make a complaint about" The Claimant says "I would like to make a complaint about race discrimination."
265. The tribunal accepts that discrimination is a broad phrase and could potentially also mean victimisation.
266. Further, the box provides guidance that states "We don't need all the details of what happened. The purpose of a referral is simply to help you to raise your issue with the right person in your Service".
267. Such an explanation could lead someone to think they do not need to go into minute detail about their complaint and specify the types of discrimination at this stage, in the tribunal's opinion.
268. The Claimant goes on to give a brief explanation as to how his Commanding Officer is involved. Again he doesn't state victimisation or even say in plain terms that he feels that he was subjected to treatment because he had made complaints of discrimination, however the description is extremely brief and general.
269. In the section where he has to name the people he is complaining about, the Claimant names Mr Flower and Cpt Mason. Mr Flower is the person who subjected him to ill treatment for raising complaints with LCpl Stott and Cpt Mason is the person who pursued the AGAI action against him.
270. He does not state that he is complaining about Lt Col Haw or Lt Col Hunter. However at that stage he did not know that Lt Col Hunter was the person who instructed Cpt Mason to pursue the investigation.
271. The Claimant goes on to provide a statement of complaint document with the Service Complaint form. In that, he specifically details the incident with Mr Flower and with LCpl Stott that arose when he returned to raise issues of discrimination with LCpl Stott.
272. It is clear then that those aspects of the victimisation claim are included as part of the Service Complaint. It did not matter, in the tribunal's opinion, that the Claimant hasn't used the words "and this is victimisation". It is clear he is complaining about being treated badly because he came back to raise issues with LCpl Stott.

273. The Claimant goes on to detail raising discrimination complaints with Lt Col Hunter and that he made comments on the AGAI papers and also raised with Cpt Mason that he was intending to make a Service Complaint. The protected acts are all therefore specified in the document.
274. We were taken by both parties to the leading case on this issue, **Zulu & Ghu V Ministry of Defence**. Although this was a first instance decision, the findings in that case were found to be useful guidance.
275. In that case, the tribunal considered the wording of the Equality Act 2010, s121. This states that
- Armed Forces Cases  
(1) Section 120(1) [Tribunal's jurisdiction to determine complaints] does not apply to a complaint relating to an act done when the complainant was serving as a member of the armed forces unless—  
(a) the complainant has made a service complaint about the matter, and  
(b) the complaint has not been withdrawn
276. In the Zulu case the tribunal considered what the term “matter” meant. Did it mean that each specific allegation and complaint needed to be set out in a service complaint or was it wider and more general?
277. In that case the tribunal decided that the purpose of the Service Complaint was to allow complaints to be first considered by the Military. The tribunal stated that there must be sufficient detail in the Service Complaint for the Military to understand what is being complained of and respond to it. However, the tribunal in Zulu stated that that did not mean that each and every detail of the wrong complaint of must be particularised.
278. It also decided that the Service Complaint did not need to be overly legalistic given that it was a procedure outside the tribunal process. It felt that there was no reason to view the Service Complaint narrowly in order to exclude future tribunal complaints from being pursued.
279. This approach, avoiding unnecessary rigidity and narrow-mindedness was also followed in the case of **H v Ministry of Defence**.
280. We find this reasoning to be sound. The overriding objective is that cases should be dealt with fairly and justly and that unnecessary formality should be avoided. There should be flexibility in proceedings.
281. To seek to try and exclude some of the Claimant's claims because they had not been specifically spelled out in the Service Complaint would be unfair and unjust and inflexible.
282. It was clear that the Respondent was made aware of what the Claimant was unhappy about in the Service Complaint. He did not prescribe specific labels to the treatment, but there was sufficient information for them to understand what he was unhappy about and investigate and respond.
283. It did not feel that the Respondent had denied the opportunity to respond before the Claimant raised his claim to the tribunal.
284. Further, the general matter had appeared to be described in the complaint. The Claimant had described the first 2 acts of victimisation and the facts that would form the basis for the other complaints of victimisation.

285. On that basis the tribunal decided that the Service Complaint brought by the Claimant was sufficient to satisfy the requirements of s120 of the Equality Act 2010 for all of his claims and that we had jurisdiction to hear them.

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Employment Judge **Singh**

14<sup>th</sup> March 2024 \_\_\_\_\_  
Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

22 March 2024  
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FOR THE TRIBUNAL OFFICE