Case No. 2413460/2020
2402756/2021
2415177/2021

EMPLOYMENT TRIBUNALS

Claimant: Mr Arif Mehmood

Respondent: The Secretary of State for Justice

Heard at: Manchester **On:** 5-30 June 2023 and in chambers 19-21 September, 27 October and 22-23 November 2023.

Before: Employment Judge McDonald
Ms J Williamson
Ms V Worthington

REPRESENTATION:

Claimant: In person
Respondent: Ms C Knowles (Counsel)

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's complaints that he was subjected to direct race discrimination fail and are dismissed.

2. The claimant's complaints that he was subjected to direct religion or belief discrimination fail and are dismissed.

3. The claimant's complaint that he was subjected to race-related harassment fails and is dismissed.

4. The claimant's complaint that he was subjected to religion or belief related harassment fails and is dismissed.

5. The claimant's complaints that he was subjected to victimisation in breach of section 27 of the Equality Act 2010 fail and are dismissed.

REASONS

Introduction

1. This was the hearing of three Employment Tribunal claims brought by the claimant alleging direct race and/or religion or belief discrimination; harassment and victimisation. The complaints are set out in full in the Annex to this judgment.

Preliminary Matters

2. On Day 1 of the hearing we identified a number of preliminary decisions which needed to be made. These related to redactions and to "corrections" to the Annex to Employment Judge Buzzard's Case Management Order sent to the parties on 6 July 2022 which identified the claims the Tribunal was deciding ("the Annex"). Having heard initial submissions from the parties we took the afternoon of Day 1 to read the claimant's statements and other key documents to enable us to decide those preliminary issues.

3. On the morning of Day 2 we gave our decisions in relation to the first two preliminary issues.

Redaction

4. The respondent had sought redaction both of prisoners' names and what were referred to as "comparators". Those comparators were actual comparators for some of the claimant's discrimination claims. They were not alleged to have discriminated against the claimant and it was not proposed that they give evidence at the final hearing. After hearing submissions we decided to make an anonymity order in relation to the prisoners and in relation to comparators BB and CC. We decided it was not appropriate to anonymise the other comparators. In reaching our decision we took into account the interests of justice, the competing Convention rights under Article 8 and Article 10 and the requirement under rule 50 of the Employment Tribunal Rules to give due weight to the principle of open justice. We gave oral reasons for our decision on the day. Neither party requested those reasons in writing.

Corrections/amendments to the Annex

5. Employment Judge Buzzard had sent the Annex to the parties with his Case Management Order on 6 July 2022. On 15 July 2022 the claimant had written in seeking corrections to the Annex. It appears from the Tribunal file that the respondent was asked for and provided comments, but it does not appear that the matter was ever referred to or decided by an Employment Judge. Ms Knowles and her instructing solicitor were not at the previous preliminary hearing, albeit the respondent's comments reflected the recollection of counsel for the respondent who had been at that hearing.

6. Having reviewed the documents which Employment Judge Buzzard had before him in the preliminary hearing bundle, we decided it was appropriate to make the corrections and allow the amendments to the Annex which the claimant asked for. The one exception to this was the addition of "humiliated" to allegation D45. That did not appear in the documentation before Employment Judge Buzzard at the preliminary hearing.

7. The amendments to the Annex are reflected in the version attached to this Order. For the avoidance of doubt, they are:

(1) The addition of a fourth protected act, namely the claimant's first Employment Tribunal claim.

(2) The addition of actual comparators to allegation D44 and the addition to that allegation of the claim that correct procedure was not followed in relation to one absence.

(3) In relation to D45, amendment to the wording of the allegation.

(4) In relation to D47, the addition of Mr McKevitt as an actual comparator.

8. We gave oral reasons for our decision and neither party asked for those reasons in writing.

Documents which the respondent wanted to add to the bundle

9. There was an agreed bundle ("the Bundle") of 2768 pages to which we added some documents during the hearing. There was a discrepancy in the numbering between the paper and the electronic versions. References in this judgment are to page numbers in the electronic version of the Bundle except where the pages referred to are to documents added during the hearing.

10. During our reading on the afternoon of Day 2 we identified a document referred to in the witness statement by Governor Johnson that we could not locate in the bundle. We asked the parties to help us locate it in the bundle or explain why it was not included. Overnight the respondent's solicitors sent that document to the Tribunal and to the claimant. The claimant on the morning of Day 3 confirmed that he did not object to that document being introduced. It was the Equalities Summary Report from August 2020 commissioned by Governor Johnson. We added it at pages 2769-2771.

11. At 10.15am on the morning of the third day the respondent emailed a further document. That was notes of a meeting in June 2020 between Governor Johnson, Deputy Governor Horridge, the Equalities Adviser and others. The claimant had not seen that document before that morning of the hearing. The claimant objected to the document being admitted in evidence. We heard submissions from both parties and decided it was in accordance with the overriding objective to allow that document to be added to the bundle. We gave oral reasons which the claimant asked for in writing. They were provided on Day 3 of the hearing.

12. The claimant had not been aware of the meeting on 18 June 2020 before the notes of that meeting were added to the Bundle. We gave him permission to add allegations V9 to V16 which were allegations that he had been victimised by the conduct of Governor Johnson at that meeting.

13. The hearing bundle had contained 2,768 pages. We added two documents to that as detailed above, taking the total number of pages to 2,774.

14. In addition, on Day 3 we were provided with four CCTV clips. One related to the alleged sexual assault on 27 April 2020; one to the incident involving a prisoner on 10 November 2020; and two related to an incident at the prison gate office on 17 May 2021.

15. On Day 6 of the hearing (Monday 12 June 2023) we added a further document. This was the formal grievance brought by Officer Seminerio against the claimant on 3 September 2020. The claimant had asked for that document to be included. It is referred to in Officer Seminerio's witness statement. The claimant had asked for the document to be disclosed so it could be included. He made that request on Day 5 of the hearing. On Day 6 the document was produced. Neither party objected to its inclusion. We added it at pages 2775 onwards.

Further documents which the respondent wanted to add to the bundle

16. At the start of the afternoon of the hearing on Day 7 Ms Knowles indicated that the respondent wanted to add further documents relating to the claimant's new victimisation claims to the bundle. The claimant had not had an opportunity to see those documents. We agreed that we would conclude the cross examination on Day 7 so the claimant could consider those documents overnight. The Tribunal would then hear submissions from the parties on the morning of Day 8 as to whether those documents should be allowed in evidence.

Day 8 decision on admissibility of documents

17. On Day 8 we decided to grant the respondent's application to add further documents to the bundle. These were prisoner complaints against the claimant and responses to those. They were added at p.2790 onwards. We gave oral reasons for our decision (Annex B attached).

Respondent's notetaker talking to Officer Bennison while he was under a witness warning

18. Mr Bennison gave evidence on Day 8. At the lunch break he was given the usual witness warning with the Judge explaining that he should not discuss his evidence with anybody during the break. After the lunch break Ms Knowles reported to the Tribunal that the respondent's notetaker had had a conversation with Mr Bennison. We are satisfied on the report of that conversation that he did not discuss the substance of his evidence with the notetaker. The Judge explained to the claimant what had happened, and the claimant confirmed that he had no problem with what had happened. The witnesses were reminded of the importance of

observing the witness warning. Ms Knowles confirmed that she had explained to the respondent's notetaker why this was important and what could and could not be done.

Day 10 – Admission of further documents

19. During Governor Johnson's evidence it became apparent that there was a dispute between the parties as to who had commissioned the management enquiry into the claimant carried out by Mr Atton (allegations D9 and D13). In her evidence Governor Johnson referred to emails which she had received from Deputy Governor Horridge which she said instructed her to commission a managerial enquiry. We gave the claimant an opportunity to consider those emails in a break during the evidence. He confirmed that he did not object to those documents being added to the bundle.

Respondent's application on Day 17 for Mr B Khan to give evidence

20. On the morning of Day 17 the respondent applied for permission for Mr B Khan to give evidence. Mr Khan was the alleged harasser in the one incident of harassment which is part of this case. We heard submissions from Ms Knowles and from the claimant. We decided to grant permission for Mr Khan to give evidence. However, we limited his evidence to the email already in the bundle at pages 2650-2652 on the basis that the claimant had seen that document at the latest by the end of April 2023 when the Bundle was prepared and so would be aware of its contents. We did not allow the respondent to introduce the witness statement prepared for Mr Khan because it included matters not included in the email in the bundle which the claimant would therefore not have had notice of. We also agreed that we would not require the parties to attend the Tribunal on Day 17 (Wednesday 28 June) to give the claimant an opportunity to prepare his cross examination of Mr Khan as well as working on submissions. We gave oral reasons for our decision after lunch on Day 17. Neither party requested the reasons in writing.

The decisions taken by Employment Judge Buzzard about time limits

21. The claimant submitted that there were no longer any time limit issues because Employment Judge Buzzard had definitively decided those time limit issues at the preliminary hearing on 14 June 2022 when he had decided to strike out some of the claimant's claims but not others.

22. We have found that none of the claimant's complaints succeed. In those circumstances the time limits issues are academic. For the avoidance of doubt, however, we are satisfied that what Employment Judge Buzzard did was decide that not all of the claimant's claims which were ostensibly out of time should be struck out on the basis that there was no reasonable prospect of the claimant establishing that they were in time. Had any of the complaints of discrimination, harassment or victimisation which were potentially out of time succeeded, we would have had to go on to decide whether they were in time or (if not) whether any extension of time should be allowed so that they could be heard.

Evidence

23. We heard the claimant's evidence on Days 4, 5, 6, 7 and the morning of Day 8. He was cross examined by Ms Knowles and answered questions from the Tribunal. The claimant also had an opportunity to clarify some of his evidence by way of or in lieu of re-examination.

24. On Day 8 we started hearing the respondent's witnesses' evidence. On Day 8 we heard from Mrs Dearden and Mr Bennison.

25. On Day 9 we heard evidence from Mr Atton, Mr Wright and started hearing the evidence from Miss Johnson. Miss Johnson's evidence continued on Days 9, 10 and into the morning of Day 11.

26. After finishing Miss Johnson's on the morning of Day 11 we heard evidence from Mr Thomas Donnelly and Mrs Angela Barrett.

27. On Day 12 we heard evidence from Mr Simon Eve, Mr Anthony Green, Mr Mark Barber and Miss Fiona Patterson.

28. On Day 13 we heard evidence from Mr Simon Horner, Mr Andrew Morgan and Mr Ben Hesketh.

29. On Day 14 we heard evidence from Mr Gary Cross, Mr Peter James Berry, Miss Daniella Seminerio and Miss Lisa England.

30. On Day 17 after hearing and granting the respondent's application to allow Mr Khan to give evidence, we heard from three more respondent's witnesses. They were Mr Carl Roberts, Mr Mark Butler and Mr Simon Westaway.

31. As part of granting the respondent's application to allow Mr Khan to give evidence, we agreed that the parties would not attend the hearing on Day 18. Instead, they were to spend that time preparing submissions and, in the claimant's case, preparing his cross examination of Mr Khan. The Tribunal spent Day 18 reviewing the evidence in preparation for hearing submissions.

32. At 14:35 on Day 18 the respondent emailed the Tribunal and the claimant to report that Mr Khan would no longer to be giving evidence to the Tribunal. We emailed the parties to say that we would therefore hear submissions on Day 19 with the respondent giving submissions from 10.00am until 12.00pm and the claimant giving submissions from 2.00pm until 4.00pm. We directed that any written submissions the parties wanted us to read should be sent to the Tribunal by 9.00am on Day 19. The directions made clear to the parties that if they objected to the proposed timescale (for example, if more time were needed to prepare submissions) they should first discuss to see whether a timetable for submissions could be agreed between the parties and email the Tribunal with any agreed timetable or, alternatively, with an application to vary that proposed timetable if agreement could not be reached.

<u>Watching the CCTV of incidents</u>

33. There was CCTV footage of three incidents. These were the alleged sexual assault on 27 April 2020, the incident involving the alleged assault on the claimant by a prisoner on 10 November 2020 and the incident at the gate on 17 May 2021. There were two clips of that "gate" incident.

34. The Tribunal watched all four CCTV clips as part of their reading of the witness statements and documents prior to hearing oral evidence.

35. On Day 8 the Tribunal, parties, representatives and witnesses watched the CCTV footage relating to the incident on 27 April 2020 (the alleged sexual assault by Mr Bennison). That footage consisted of CCTV footage from four different angles of the same incident. During the claimant's cross examination of Mr Bennison, we stopped that CCTV footage at various points indicated by the claimant.

36. On Day 12 during Mr Green's evidence we again watched footage of the incident on 27 April 2020.

37. On Day 13 during Mr Horner's evidence we watched the two CCTV clips of the incident at the gate on 17 May 2021.

38. On Day 14 during Mr Berry's evidence we watched a CCTV clip of the incident at the gate on 17 May 2021.

Relevant Law

The Equality Act 2010

39. The complaints of race discrimination and religion or belief discrimination, harassment and victimisation were brought under the 2010 Act. Section 39(2)(d) prohibits discrimination against an employee by subjecting him to a detriment. Section 39(4)(d) prohibits victimising of an employee by subjecting him to a detriment. Section 40(1)(a) prohibits harassment of an employee. Conduct which constitutes harassment cannot also constitute a "detriment" (section 212(1)), meaning that it can only be pursued as a harassment complaint.

40. The 2010 Act provides for a shifting burden of proof. Section 136 so far as material provides as follows:

> **"(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 subsection (2) does not apply if A shows that A did not contravene the provision."**

41. This means that it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the 2010 Act. If the claimant establishes those facts, the burden shifts to the respondent to show that

there has been no contravention by, for example, identifying a different reason for the treatment.

42. In **Hewage v Grampian Health Board [2012] ICR 1054, SC**, the need to avoid an overly technical approach to the application of section 136 was emphasised. Lord Hope observed that the burden of proof provisions will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.

43. That means that where there is "room for doubt", the approach s.136 lays down provides a valuable tool for determining whether the inference of discrimination should be drawn. In **Field v Steve Pye & Co [2022] IRLR 948 EAT** HHJ Tayler emphasised that if there is evidence that could realistically suggest that there was discrimination it is not appropriate to just add that evidence into the balance and then conduct an overall assessment, on the balance of probabilities, and make a positive finding that there was a non-discriminatory reason for the treatment.

44. He said that “where there is evidence that could indicate discrimination there is much to be said for properly grappling with the evidence and deciding whether it is, or is not, sufficient to switch the burden of proof. That will avoid a claimant feeling that the evidence has been swept under the carpet. It is hard to see the disadvantage of stating that there was evidence that was sufficient to shift the burden of proof but that, despite the burden having been shifted, a non-discriminatory reason for the treatment has been made out.”

45. He also said that where a claimant contends that there is evidence that should result in a shift in the burden of proof they should state concisely what that evidence is in closing submissions.

46. As for what is required to discharge the burden at the first stage, that must be something more than a difference in the relevant protected characteristic and a difference in treatment; see **Madarassy v Nomura International plc [2007] ICR 867, CA**. That said, the something more required at the first stage need not be a great deal; see **Deman v EHRC [2010] EWCA Civ 1279**.

47. A finding that an employer has behaved unreasonably, or treated an employee badly, will not, however, be sufficient, of itself, to cause the burden of proof to shift; **Glasgow City Council v Zafar [1998] ICR 120**.

Direct race discrimination

48. The definition of direct discrimination appears in section 13 of the 2010 act and so far as material reads as follows:

> **“(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”.**

49. The concept of treating someone "less favourably" inherently requires some form of comparison, and section 23(1) provides that:

> **"On a comparison of cases for the purposes of section 13 … there must be no material differences between the circumstances relating to each case".**

50. A protected characteristic need only have a material influence in detrimental treatment for discrimination to be established: **Nagarajan v London Regional Transport [2000] 1 AC 501**.

Harassment

51. The definition of harassment appears in section 26 of the 2010 Act which so far as material reads as follows:

> **"(1) A person (A) harasses another (B) if -**
>
> **(a) A engages in unwanted conduct related to a relevant protected characteristic, and**
>
> **(b) the conduct has the purpose or effect of**
>
> **(i) violating B's dignity, or**
>
> **(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B…**
>
> **(4) In deciding whether conduct has the effect referred to sub-section (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."**

52. The Equality and Human Rights Commission gives more detail on the factors relevant in deciding whether conduct has the effect referred to in s.26(1)(b) at paragraph 7.18 of its Statutory Code of Practice on Employment ("the EHRC Code"):

> "7.18 In deciding whether conduct had that effect, each of the following must be taken into account:

a) The perception of the worker; that is, did they regard it as violating their dignity or creating an intimidating (etc) environment for them. This part of the test is a subjective question and depends on how the worker regards the treatment.

b) The other circumstances of the case; circumstances that may be relevant and therefore need to be taken into account can include the personal circumstances of the worker experiencing the conduct; for example, the worker's health, including mental health; mental capacity; cultural norms; or previous experience of harassment; and also the environment in which the conduct takes place.

c) Whether it is reasonable for the conduct to have that effect; this is an objective test. A tribunal is unlikely to find unwanted conduct has the effect, for example, of offending a worker if the tribunal considers the worker to be hypersensitive and that another person subjected to the same conduct would not have been offended."

Victimisation

53. S.27 of the 2010 Act makes victimisation unlawful:

"(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."

54. This means that for a victimisation claim to succeed, the claimant has to show three things. First, that they did a protected act; second, that they were subjected to a detriment; and third that they were subjected to that detriment because of the protected act. The claimant does not have to show “less favourable treatment” so there is no absolute need for a tribunal to construct an appropriate comparator in victimisation claims.

55. S.27(1)(a) refers to detriment because of a protected act but does not refer to “less favourable treatment”. There is therefore no absolute need for a tribunal to construct an appropriate comparator in victimisation claims. The EHRC Code at para 9.11 states: ‘The worker need only show that they have experienced a detriment because they have done a protected act or because the employer believes (rightly or wrongly) that they have done or intend to do a protected act’.

56. Where it is not entirely obvious that the claimant has suffered a detriment, the situation must be examined from the claimant’s point of view. **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL**, established that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage. In **Derbyshire and ors v St Helens Metropolitan Borough Council and ors [2007] UKHL 16** the House of Lords stressed that the test is not satisfied merely by the claimant showing that he or she has suffered mental distress: it would have to be objectively reasonable in all the circumstances. Accordingly, the test of detriment has both subjective and objective elements. The situation must be looked at from the claimant’s point of view but his or her perception must be ‘reasonable’ in the circumstances. This means the employee’s own perception of having suffered a ‘detriment’ may not always be sufficient to found a victimisation claim.

57. The question in any claim of victimisation is what was the 'reason' that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, the employer is liable for victimisation; and if not, not. There will in principle be cases where an employer has subjected an employee to a detriment in response to the doing of a protected act but where it can, as a matter of common sense and common justice, say that the reason for the detriment was not the complaint as such but some other genuinely separable feature of the complaint (such as the unreasonable or offensive manner in which it is made) (**Martin v Devonshires Solicitors [2011] ICR 352 ("Martin").**

58. In **Martin [para 22],** the EAT acknowledged that it would be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had say, used intemperate language or made inaccurate statements. An employer who purports to object to “ordinary” unreasonable behaviour of that kind should be treated as objecting to the complaint itself. Tribunals should be slow to recognise a distinction between the complaint and the way it is made save in clear cases.

59. In the Court of Appeal in **Kong v Gulf International Bank (UK) Ltd 2022 EWCA Civ 941, CA, at para 58,** Underhil LJ, revisiting his judgment in **Martin**

confirmed that **Martin** does not establish a rule of law that so long as there is no more than "ordinary" unreasonable behaviour by the person doing a protected act any detriment will be treated as being because of that act. There is no objective standard against which behaviour must be assessed to determine whether the separability principle applies in a particular case, nor any question of requiring behaviour to reach a particular threshold of seriousness before that behaviour or conduct can be distinguished as separable from the making of the protected disclosure itself.

60. The key question is one of fact, i.e. what were the reasons for any detrimental treatment. Once the reasons have been identified, the Tribunal must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn. Were this exercise not permissible, the effect would be that whistle-blowers would have immunity for behaviour or conduct related to the making of a protected disclosure no matter how bad, and employers would be obliged to ensure that they are not adversely treated, again no matter how bad the associated behaviour or conduct.

61. In **Fecitt and others v NHS Manchester [2011] EWCA Civ 1190, [2012] ICR 372,** (a whistleblowing case cited in **Kong**) Elias LJ said in the Court of Appeal that where the whistleblower is subject to a detriment without being at fault in any way, the Tribunal will need to look with a critical - indeed sceptical - eye to see whether the innocent explanation given by the employer for the adverse treatment is indeed the genuine explanation. The detrimental treatment of an innocent whistle-blower necessarily provides a strong prima facie case that the action has been taken because of the protected disclosure and it cries out for an explanation from the employer.

62. That does not mean, however, that in the case of such an innocent whistleblower there could be no explanation which the employer could offer in these circumstances which would relieve him from liability. In **Fecitt**, that meant that the need to resolve a difficult and dysfunctional situation could provide a lawful explanation for imposing detrimental treatment on an innocent whistleblower."

<u>Findings of fact where witnesses do not give "live" evidence</u>

63. In relation to the harassment allegation against Officer Khan we had no live evidence from Officer Khan but his written account form the time of the alleged incident. In **Hovis Limited v Mr W Louton EA-2020-000973-LA** the respondent did not call the witnesses to the claimant's alleged conduct to give evidence at the Tribunal. In **Hovis** the EAT held that the Tribunal had erred in law by deciding that it could not make a finding that the claimant in that case had been guilty of the alleged repudiatory conduct in the absence of evidence in person from one of the witnesses to the alleged conduct. Instead, the Tribunal should have assessed the written "hearsay" evidence from those witnesses before it and should also have assessed the claimant's credibility as a witness in deciding whether the alleged conduct had occurred. It should have decided what weight to give to that "hearsay" evidence bearing in mind the witnesses were not available to be cross-examined at the

Tribunal hearing. That might mean it should be given less weight than "live" evidence but such evidence should not automatically be discounted. Although Hovis is not a case involving a discrimination claim there is no indication that what it says about assessing evidence would not apply in a discrimination claim when a Tribunal is deciding whether an event occurred as alleged.

Findings of Fact

64. We set out our findings of fact below. We have not made findings about every single matter on which we heard evidence, only those necessary to decide the complaints made by the claimant.

The claimant's credibility as a witness and the reliability of his evidence

65. We find the Claimant was not a credible witness and found his evidence unreliable. He contradicted himself, denied matters which appeared self-evident in the documentation and denied that evidence he had given shortly before at the Tribunal itself. The most glaring example was on afternoon of Day 4 (first day of his evidence) when the claimant clearly said (as recorded by the Tribunal's notes) that he felt SO Bennison's "palm of his hand on his back". A few minutes later he said his palm was on his buttock. When challenged by the Judge, he insisted he had not said "on his back" a few minutes earlier. The Tribunal were clear that is what he had said.

66. The claimant on more than one occasion gave evidence which contradicted the documentation, including emails he himself had written. For example, when it came to the first written version of his complaint about the alleged sexual assault on 27 April 2020 he stated the first written version of that was his email to Governors Robinson and Johnson at 12:12 on 27 April 2020. That refers to the claimant having "requested CCTV", i.e. having done so prior to sending the email. However, the claimant was not willing to accept that meant he had completed the CCTV request form prior to sending the email. That unwillingness to accept matters which we find were clearly evidenced on the face of the documents further undermined the claimant's credibility as a witness and the reliability of his evidence.

67. When it was pointed out to him that documents contradicted his version of events he also had a tendency to suggest that documents or evidence were fabricated or tampered with, allegations not made before being confronted with the inconsistencies at the Tribunal.

68. The claimant also seemed completely unable (both in the events in the case and at Tribunal) to accept that others might have a valid but different interpretation of events. If they did have a different version of events, he quickly resorted to saying they were not being honest, were liars, or were fabricating things.

69. The unreliability of the claimant's evidence means that (except in some minor matters) we preferred the evidence of the respondent's witnesses to his about the events which occurred.

Background

70. The claimant is a Pakistan national and a Muslim. At the time of the events giving rise to the complaints he was employed as a Band 3 prison officer at HMP Manchester.

Policies inc. Grievance and separate non staff on staff policy for reporting discrimination incident and what a management enquiry is versus disciplinary

71. This case involved complaints raised by and against the claimant by colleagues and prisoners. Different policies and procedures applied to different kinds of complaints.

Prison Service Order 8550 on Staff Grievances ("PSO 8550")

72. PSO 8550 (pages 2314-2321) applied to workplace grievances by staff. Paragraph 1.3 makes it clear that PSO 8550 does not apply in certain circumstances. That includes where dismissal is a potential outcome, where there are already separate appeal procedures and in matters concerning conduct and discipline issues.

73. Section 2 of PSO 8550 sets out Key Principles which include:

- that grievances will be dealt with at the lowest possible level within the respondent;
- before raising a formal grievance, members of staff are encouraged to raise routine queries and issues informally with a manager;
- mediation should be considered for resolving grievances at the earliest possible opportunity. If mediation is to be used, both parties must agree to enter into the process which is confidential;
- the manager addressing the grievance is responsible for ensuring that any action agreed to address the grievance is undertaken.

74. Section 3 sets out Stage 1 of the formal grievance process. In summary it provides that:

- the written grievance should explain the nature of the grievance and how the employee thinks it should be resolved;
- it should normally be submitted to the employee's line manager even where this concerns the actions of the line manager;
- if the grievance is about the actions of someone who is outside the employee's direct line management chain and is more senior, that person should respond to the grievance;
- if the grievance is about the actions or decisions of someone of the same grade then that person's line manager should respond to the grievance;

- where it would be inappropriate for the line manager or the other person's line manager to hear the grievance, the member of staff should initially raise the grievance with the manager's manager to decide whether they should hear the grievance;

- the expectation is that the grievance would be managed wholly within the establishment or group from where the grievance originated. It should only be heard outside that establishment or group where it is clear the grievance concerns the direct actions or decisions made by the Area Manager or Director or where the grievance originated from a governing governor or Head of Group.

- the manager must invite the member of staff to a grievance meeting on a mutually convenient date within 20 working days of receipt of the written grievance (that can be postponed if the staff member's chosen representative cannot attend the original date but should be rearranged within 5 working days of the original date wherever possible);

- following the grievance meeting the manager must inform the employee of their response to the grievance and set out any actions. If possible that should be sent to the member of staff within ten working days of the meeting.

75. Section 4 deals with Stage Two of the process - the appeal. It provides that:

- the member of staff should inform the manager who heard the stage one grievance of their intention to appeal and set out the grounds for doing so as soon as is practicable following receipt of the stage one response, ideally within ten working days;

- the expectation is that the grievance will be managed wholly within the establishment or group from where the grievance originated. A stage two appeal should only involve managers from outside of the establishment or group where it is clearly appropriate for the governor to hear stage one or where the grievance was raised by a deputy, governing governor or Head of Group;

- appeals are heard by a local appeal panel chaired by a more senior manager than at stage one (usually the line manager of the manager considering the stage one grievance), usually supported by a local trade union representative with a representative from HR. The staff member can opt not to have a trade union member sitting on the appeal panel;

- the manager handling the appeal must, wherever possible, arrange a meeting on a mutually convenient date within 20 working days of receipt of the notification of intention to appeal a mutually convenient date within 20 working days of receipt of the written grievance (that can be postponed if the staff member's chosen representative cannot

attend the original date but should be rearranged within 5 working days of the original date wherever possible);

- wherever possible the manager should inform the member of staff of their conclusions in writing within ten working days of the appeal meeting, setting out where applicable the actions they intend to take to resolve the grievance. If it is not possible to reply within that timescale then the member of staff should be given an explanation for the delay, including when a reply can be expected;

- the decision made by the manager chairing the appeal panel is final.

76. We find that in practice formal grievances were made on a standard form SOP-GRV1 ("the GRV1"). In Part A of that form the employee sets out their grievance, including the requested outcome. That part of the form included a number of tick boxes to indicate the nature of the grievance. That included boxes which could be ticked to indicate that the grievance was about harassment, discrimination, bullying or victimisation relating to the protected characteristics under the Equality Act 2010. Part A also included a section for requested outcome. Part B was completed by the grievance manager to record the date the grievance was received. The manager was then required to submit the form to SSCL (the respondent's Central Services function). Part C was completed to set out the date of the grievance meeting and the response, outcome and actions. Part D of the form could be completed by the employee wishing to appeal against the original grievance outcome. Part E was completed by the appeal Panel Chair to acknowledge receipt of the grievance appeal. Part F was the appeal outcome and actions section.

PSI 32/2011 and Discrimination Incident Reporting Forms

77. PSI 32/2011 is titled "Ensuring Equality" (pp.2440-2469). It sets out the framework for the management of equalities issues in prison (except for issues relating to the equal treatment of employees which was covered in PSI 33/2011).

78. Section 6 and Annex F deal with Discrimination Incident Reporting. Section 6 mandates the use of a Discrimination Incident Reporting Form ("DIRF") to report incidents of discrimination, harassment or victimisation on the basis of the protected characteristics in the Equality Act 2010. It could be used by prisoners, visitors or staff. However, as section B of the form made clear, it was not to be used for staff-on-staff incidents. The complaints or grievance process should be used for that.

79. Annex F para 6 says that if the incident involved misconduct by staff it should be reported via the reporting wrongdoing process. F.7 makes it clear that other forms of reporting may be appropriate alongside filing a DIRF, e.g. a disciplinary report or Security Information report ("SIR"). F.8 says that DIRFs submitted by staff should be reviewed by a manager to ensure the action taken was appropriate and to identify any further action necessary and ensure it was completed. DIRFs were to be logged and the outcome reviewed (F.14). [IN practice logged with who at HMP Manchester

IR forms

80. IR forms were used to report intelligence about incidents by prisoners or staff. They could form the basis of management enquiries or other action.

Management Enquiry – commissioned into 27 April 2020 on 7 May 2020

81. A management enquiry could be commissioner by a Governor. Its purpose is to establish facts and to advise if further management action is required. An officer is tasked to carry it out with terms of reference setting out the scope and approach. The officer reports back to the commissioning manager who makes a recommendation for a senior governor to consider. Depending on the outcome, a management enquiry can lead to other action, e.g. disciplinary action against an officer.

Findings of Facts about the alleged incidents of discrimination, harassment and victimisation

82. The usual practice in Tribunal judgments is to set out the findings of fact in chronological order. The claimant's complaints involved numerous threads which ran parallel or in some cases interweaved over time, e.g. grievance appeals or grievances about the way previous grievances had been dealt with which were still ongoing when the claimant raised fresh grievances about other matters. In setting out our findings of fact, we decided it was easier and clearer to set out all our findings about each allegation or group of related allegations rather than set out a chronological narrative. We have used the reference number of the allegations used in the Annex to cross refer to them (e.g. "D1" or "V2").

The claimant's grievances

83. The claimant raised numerous grievances against colleagues and managers during the period which we are dealing. The claimant appealed against the outcome of many of those grievances. There was some confusion because not all those grievances are specifically identified in the Annex. Ms Knowles identified 17 grievances in the list she provided at the start of the hearing. The claimant identified 18 in his list dated 1 April 2022 (not in the Bundle but at p.260 of the preliminary hearing bundle for 14 June 2022). The grievance dated 28 May 2019 against SO Stewart is missing from Ms Knowles's list.

84. The claimant's victimisation claim relies on 5 protected acts. PA2 and PA5 are "cumulative" protected acts, both consisting of a series of grievances. At the case management stage, the claimant identified the grievances in a list dated 1 April 2022. The Annex refers to some but not all those numbered grievances. PA2 consists of grievances identified by the claimant as grievances 1-7. PA5 consists of those grievances identified as grievances 1-8 by the claimant.

85. Based on the claimant's list dated 1 April 2022, we find the relevant grievances forming part of PA2 and PA5 are as follows:

- Grievance 1: the grievance against SO Stewart submitted on 28 May 2019 ("the Stewart Grievance")

- Grievance 2: the grievance against Officer Unsworth (as she then was) submitted on 29 June 2019 ("the First Unsworth Grievance")

- Grievance 3: the grievance against CM Smith submitted on 28 May 2019 against CM Smith dated 25 September 2019 ("the Smith Grievance")

- Grievance 4: the grievance against CM Fahie submitted on 25 September 2019 ("the Fahie Grievance")

- Grievance 5: the grievance against Officer Bennison submitted on 25 November 2019 ("the First Bennison Grievance")

- Grievance 6: the grievance against Officer Bennison submitted on 16 January 2020 ("the Second Bennison Grievance")

- Grievance 7: the grievance against Officer Bennison submitted on 2 May 2020 ("the Third Bennison Grievance")

- Grievance 8: the grievance against CM Atton and Governor Carly Johnson submitted on 8 June 2020 ("the Atton/Johnson Grievance").

86. In addition to those, the claimant raised subsequent grievances against various fellow prison officers. They are not said to be part of the protected acts relied on. We set out those grievances which were referred to in the complaints. There were also subsequent grievances but they do not form the basis of the complaints we are considering They are:

- Grievance 9: the grievance against the 3 officers who had given evidence to CM Atton about the Ramadan incident submitted on 10 June 2020 ("the Ramadan Grievance")

- Grievance 10: the grievance against Officer Seminerio submitted on 29 August 2020 ("the Seminerio Grievance")

- Grievance 11: the grievance against CM Barrett submitted on 10 October 2020 ("the Barrett Grievance")

- Grievance 12: the grievance against CM Horner and SO Hesketh submitted on 24 February 2021 ("the Assault Enquiry Grievance")

- Grievance 13: the grievance submitted against OSG England and OSG Saunders on 17 May 2021 ("the Gate Grievance").

- Grievance 14: the grievance submitted against Officers Seminerio, Green and Rothwell on 21 May 2021 ("the Annex A Grievance")

- Grievance 15: the grievance submitted against Governor Johnson on 10 June 2021 ("the Johnson Annex A Grievance")

- Grievance 16: the grievance submitted against SO Unsworth on 30 November 2021 ("the Second Unsworth Grievance")

87. Below we set out our findings of fact relevant to the complaints in the case.

Governor Horridge's failure to respond to the claimant's grievance against CM Fahie (D1)

88. The claimant says that Governor Horridge discriminated against him by failing to deal with the Fahie Grievance. CM Fahie was the claimant's line manager in 2019 when the claimant was working on H & I Wing. By the date of his grievance the claimant had moved from H & I wings to Visits/Croft Group but in his grievance said he still felt that CM Fahie was his Line Manager.

89. In the Fahie Grievance the claimant alleged that CM Fahie had failed to take action on complaints the claimant had raised against other officers. Those complaints included formal grievances the claimant had raised against SO Stewart on 28 May 2019 and against Officer Jodie Unsworth on 29 June 2019. By the time he raised the grievance against CM Fahie, the claimant had withdrawn his grievance against SO Stewart. He did so on 1 July 2019 because he had learned that SO Stewart had handed his notice in and was due to leave the Prison Service on 25 July 2019 (p.343).

90. In the Fahie Grievance the claimant alleged that CM Fahie's failure to act on his complaints contributed to the claimant being off with work related stress for 2 weeks in May 2019. He also alleged that the only difference between him and other staff on H & I wing was that he was Muslim and Asian and alleged that that was why CM Fahie "did not bother to take my complaint seriously and take appropriate action." The claimant ticked boxes in parts 2-4 of the GRV1 Form to indicate that his grievance was one of discrimination, bullying or victimisation linked to race/ethnic origin and religion or belief.

91. On 25 September 2019 the claimant sent an email to the respondent's Shared Services ("SSCL") attaching the Fahie Grievance and another GRV1 raising a formal grievance against CM Smith. PSO 8850 and the GRV1 Form itself are clear that a formal grievance should be sent to the employee's line manager, even where the grievance is against that line manager. If that is inappropriate, the GRV1 should be sent to the line manager's manager to decide whether the line manager should hear it.

92. Deputy Governor Horridge was not CM Fahie's manager. CM Fahie was Band 5 and Deputy Governor Horridge was Deputy Governor of the whole prison and line managed band 7 or 8 Governors. Neither PSO 8850 nor GRV1 says the person raising the grievance should send it to SSCL. The way the claimant raised the Fahie Grievance did not follow the procedure in PSO8550.

93. The subject heading for the claimant's email to SSCL was "GRV1". Deputy Governor Horridge was copied into that email. We accept Deputy Governor Horridge's evidence that he received around 200 emails a day. The claimant's

covering email said “Hi Governor. Please find attached GRV1 forms. Best Regards. Arif” (p.384). The wording of that email does not make it clear that he was looking to Deputy Governor Horridge for a direct response as opposed to copying him in for information. We find there was no reason for Deputy Governor Horridge to understand from that wording that a Band 3 officer was expecting him to deal personally with a grievance which should have been raised that officer’s Band 4 line manager. There was no evidence that the claimant chased Deputy Governor Horridge for a response to his email.

94. We accept Deputy Governor Horridge’s evidence that he did not deliberately ignore the claimant’s email and the Fahie Grievance because it came from the claimant. That finding seems to us consistent with what happened next. The claimant brought the failure to deal with the Fahie Grievance to Deputy Governor Horridge’s attention at the meeting with him, Ellen Astin (HR Business Partner) and Governor Carly Johnson on 13 February 2020.

95. We accept Deputy Governor Horridge’s evidence (corroborated by his email to the claimant on 13 February 2020 at pp.505-506) that he was “taken aback” that the Fahie Grievance had not been dealt with and that he apologised to the claimant for that. Once alerted to the issue, Deputy Governor Horridge took action. He confirmed that the grievance against CM Fahie would be addressed by a “please explain” meeting with Governor Robinson, Head of Residence.

96. Governor Robinson and the claimant then met on 10 March 2020 and on the 17 April 2020 to discuss the claimant’s issues relating to SO Stewart, Officer Unsworth and CM Fahie. Governor Robinson apologised for the failure in management action and confirmed a number of action points including advising CM Fahie on the correct managerial actions to implement when receiving a staff grievance.

97. On 24 April 2020 the claimant emailed Governor Robinson (copying Deputy Governor Horridge) (p.573) to thank him for sending him the revised meeting note from 17 April 2020 and convey his “respect for the time you gave me for these two meetings”. He said, “it’s time for me to move on from these issues”. Given that email, we find that by the 24 April 2020 Governor Horridge would reasonably have understood that the claimant’s grievance against CM Fahie had been resolved by means of the “please explain” meetings with Governor Robinson. The claimant in his witness statement suggested he had only dropped the matter because he felt he was not being listened to but there is nothing in his email of 24 April 2020 to suggest to Deputy Governor Horridge that that was the case.

98. The claimant identified 4 actual comparators.

99. The first comparator was Officer Callum Davies. We find that he did not submit a grievance under PSO8550 in relation to the claimant. He submitted an IR (i.e. Intelligence Report) to the Corruption Prevention Unit (“CPU”) reporting that on the morning of 28 April 2020 the claimant had made a racist comment about male Muslim prisoners in the context of Ramadan. On 7 May 2020 Governor Carly Johnson had directed CM Atton to carry out a Management Enquiry into an alleged

racial comment made by the claimant about Officer Bennison (p.609). On 13 May 2020 CPU forwarded the IR submitted by Officer Davies to Governor Johnson. On the same day she extended the terms of reference of the Management Enquiry to cover the allegation it made (p.673). We find that was her decision. Deputy Governor Horridge's role was limited to approving the extension of the terms of reference (p.674).

100. The second comparator was officer BB. In the first week of May 2020 Officer BB raised concerns with their line manager about personal comments the claimant had made to them about toileting habits. It was not a complaint and certainly not a formal grievance. The matter was dealt with informally by CM Howard who spoke to the claimant about the matter on 6 May 2020 (p.601). There was no evidence that Deputy Governor Horridge had any involvement in that matter.

101. The third comparator was Officer Seminerio. We find she brought a formal grievance against the claimant on 3 September 2020. On 11 December 2020 it was allocated to Governor Barber to be heard. The grievance meeting took place on 23 December 2020 and the outcome was sent to Officer Seminerio on 9 February 2021 (pp.2775-2781). By way of comparison, the claimant submitted a formal grievance against Officer Seminerio on 29 August 2020 (pp.1052-1054). It was acknowledged by CM Barrett on 29 August 2020. She held a grievance meeting on 24 September 2020 and sent the claimant the outcome on 12 October 2020.

102. The fourth comparator was Senior Officer Unsworth. She filed a formal grievance against the claimant at the end of 2021 relating to the incidents which are the subjects of allegations V3-V7. SO Unsworth's grievance was not in the Bundle and we heard limited evidence about it. The claimant referred to it as a "counter grievance" to the grievance he filed against Senior Officer Unsworth dated 30 November 2021 (pp.2144-2148). We find that neither Officer Seminerio nor SO Unsworth sent their formal grievances to SSCL, copying in Deputy Governor Horridge. They submitted them to the relevant line manager in accordance with PSO8850.

<u>D2: A Mediation did not occur as a resolution to a grievance (grievance 6) because Officer Bennison would not engage with the process.</u>

<u>D3: No alternative resolution was offered [this was before the alleged sexual assault by Officer Bennison]. Failure to offer alternative resolution was by CM Dearden</u>

<u>D18: Resolutions of a grievance (grievance 6) from the meeting of 15/6/20 never took place i.e. apology form Officer Bennison and mediation. This allegation is against Officer Bennison and Governor Patterson (who decided on this outcome).</u>

103. The claimant said allegations D2 and D3 related to the First Bennison Grievance (Grievance 5) whereas Ms Knowles for the respondent said they related to the Second Bennison Grievance (Grievance 6). The date of the alleged acts of discrimination for D2 and D3 is given in the Annex as 16 January 2020. That is the date the Second Bennison Grievance was lodged and it is referred to as grievance 6 in the Annex. However, there was no recommendation for mediation in the Second

Bennison Grievance outcome until the appeal outcome on June 2020. D3 makes it clear that the alleged discrimination happened before the alleged sexual assault in D4, so before 27 April 2020. There was a recommendation for mediation in the First Bennison Grievance outcome in December 2019 and that was the grievance dealt with by CM Dearden, who was not involved in dealing with the Second Bennison Grievance. On balance, we decided that the claimant was correct that allegations D2 and D3 relate to the First Bennison Grievance and should have been referred to as Grievance 5 in the Annex. Allegation D18 relates to the Second Bennison Grievance appeal outcome but it is convenient to deal with our findings about it with our findings about D2 and D3 because it also relates to proposed mediation between the claimant and Officer Bennison.

The "sleeping on duty" incident on 28 November 2019

104. The First Bennison Grievance was about an incident between the claimant and Officer Bennison which took place on 28 November 2019. It is not alleged the incident itself was an act of discrimination.

105. The claimant accepted that around 14:50 on that day he reported Officer Support Grade ("OSG") Lord to SO Hurst because he suspected her of falling asleep on duty. OSG Lord was spoken to about that complaint by her SO. She was upset by that.

106. In his witness statement and in the First Bennison Grievance the claimant said that Officer Bennison had approached him at around 16:10 that day in the visits hall when prisoners' families were present. He said Officer Bennison had confronted him in an aggressive and unprofessional way about reporting OSG Lord. However, in cross examination he appeared to change his version of events, saying that the confrontation had taken place in the office with 4 persons present and suggesting it was pre-planned to intimidate him. We prefer Officer Bennison's version of events. We found his evidence more reliable that then claimant's.

107. We find that when Officer Bennison went to the office to return his radio, he saw that OSG Lord was upset. She explained to him what had happened. Mr Bennison approached the claimant when the claimant came into the office to return his radio and asked him why he had reported OSG Lord to the SO instead of speaking to her first. We accept his evidence that he was not shouting at the claimant but that the claimant became confrontational with him. We find that there was nothing pre-planned about what Officer Bennison did. He acted as he did because a junior colleague was upset. He felt it was appropriate for him as an experienced officer to give guidance to the less-experienced claimant about how things were done. Given the subsequent "snitch" incident we find that what he was doing was telling the claimant that it was not the done thing to "tell" on a colleague to a more senior officer. We accept that Officer Bennison was not senior to the claimant in terms of grade (being on the same Band 3 as the claimant) and was not his line manager.

The First Bennison Grievance, its outcome and appeal

108. The claimant submitted the First Bennison Grievance on 29 November 2019 (p.408). He ticked the box to say said the nature of the grievance was "other" namely "Bullying and Victimisation". He did not tick the box to say the grievance was about "Diversity & Equality" nor did he tick any of the boxes to say the grievance was about harassment or discrimination related to race or religion or belief. The claimant set out his version of what happened and said the requested outcome was that appropriate action should be taken against Officer Bennison for "humiliating interfering and unprofessional approach towards me". He did not suggest that Officer Bennison's behaviour was linked to race or religion (pp.417-420).

109. The grievance was dealt with by CM Dearden who was then the claimant's line manager. Her grievance outcome was dated 19 December 2019 (p.423). Having interviewed witnesses present when Officer Bennison spoke to the claimant on 28 November 2019, she concluded that at no point was Officer Bennison inappropriate or disrespectful in his behaviour towards the claimant. She accepted Officer Bennison did not have a remit for speaking to the claimant (because he was the same grade as him rather than more senior) but decided he did so because OSG was so upset by the allegation made against her by the claimant. She did not uphold the grievance. However, she recommended that mediation take place between the claimant and Officer Bennison to help maintain a positive working relationship between them. Other than mediation she recommended that no further action was required.

110. It was not in dispute that the recommended mediation did not take place. There was a dispute about why it did not. The claimant's position was that he had wanted mediation, but Officer Bennison had refused. The respondent's case is that the claimant himself declined mediation.

111. We accept Officer Bennison's evidence that he was approached by CM Dearden while on duty and agreed that he would take part in mediation. We find he did so reluctantly given the grievance against him and not been upheld. We find that the claimant did not at that point agree to mediation. Instead, on 23 December 2019, he appealed against CM Dearden's decision. His appeal made it clear that he wanted action (i.e. disciplinary action) taken against Officer Bennison and criticised the investigation undertaken by CM Dearden (p.495-496).

112. The appeal was dealt with by Governor Patterson. She held an appeal meeting on 20 January 2020. Both the grievance appeal outcome and the covering letter sending that outcome to the claimant on 27 January 2020 record the claimant as refusing mediation. In her letter Governor Patterson made it clear that if the claimant wished to reconsider his refusal of mediation, he should let her know and she would make the necessary arrangements to facilitate it. There was no evidence that he did so.

113. As at the end of January 2020, we find the position was that Officer Bennison had agreed to mediation but the claimant had not. The claimant could not be forced to agree because PSO 8550 makes it clear mediation is voluntary. The claimant's refusal to agree meant the mediation could not go ahead. That remained the position

until the meeting with Deputy Governor Horridge on 13 February 2020 which we deal with below.

The "snitch" incident and the Second Bennison Grievance

114. By 20 January 2020 when the appeal meeting with Governor Patterson took place, the claimant had lodged the Second Bennison Grievance. That resulted from an incident on 16 January 2020 during a staff briefing. At that briefing, an SO had briefed staff about the new Governing Governor and warned everyone to be on their best behaviour. Officer Bennison accepted that he said that officers should be careful of what they said in front of other officers as they might get reported, pointing at the claimant. We find that was a reference to the claimant having reported OSG Long to SO Hurst for being asleep on duty.

115. SO Oliver challenged Officer Bennison about what he had done at the time and he apologised to her. She also documented the matter and he was challenged about it by the relevant Head of Function. Officer Bennison accepted in evidence at the Tribunal that he should not have said or done what he did. He denied he did what he did because of the claimant's race or religion. The claimant said he was the only Asian officer present at the briefing. Based on the appeal outcome we find that that he was not the only ethnic minority officer present (p.850).

116. The claimant submitted the Second Bennison Grievance on the day of the incident (pages 658-661). He gave his version of the incident and said that Officer Bennison had humiliated him in front of colleagues and painted him as a grass or snitch. The claimant said this was bullying, pointed out he had submitted a previous grievance against Officer Bennison and said he found him to be "a racist as he is always pick me for bullying". He said he felt he picked on him "because I am the only Asian officer in the group and he does not like me being here."

117. The Second Bennison Grievance was dealt with by CM Andrew. Although he received it on 28 January 2020 the grievance meeting did not happen until 12 May 2020 because both the claimant and CM Andrew had periods of self-isolation due to COVID.

What happened about the mediation January to March 2020

118. We have already referred to the meeting with the claimant, Deputy Governor Horridge and others on 13 February 2020. We find that was an attempt by Deputy Governor Horridge to gather together the various grievances, outcomes and outstanding issues raised by the claimant so they could be dealt with consistently and effectively and to avoid matters escalating. When it came to the First Bennison Grievance, Deputy Governor Horridge instructed at that meeting that there be an independent mediation session completed by the independent mediation services. In his email to the claimant confirming the actions from the meeting he noted that "all parties have to agree to partake in the mediation for it to achieve its aim". He hoped that it would be organised within the next couple of weeks. He also directed that the

Second Bennison Grievance be dealt with as soon as possible so that the same mediation could potentially deal with the outcome of that (p.505).

119. We find that as a result, CM Dearden contacted PAM Wellbeing to set up the mediation. On 2 March 2020, Ms Bracegirdle of PAM emailed the claimant and Officer Bennison to confirm that the mediation meeting had been confirmed for 23 March 2020. At 14:47 on 17 March CM Dearden emailed PAM to cancel the mediation because of the impact of the COVID 19 pandemic (p.824).

120. By the 17 March, Officer Bennison had sought the advice of his trade union representative, CM Dave Smith, about the proposed mediation. We find that having done so, Officer Bennison did not understand why he was being asked to take part in the mediation and was very reluctant to do so. That was primarily for the reasons set out by CM Smith in his email to Deputy Governor Horridge at 11:11 on 17 March 2020 (p.533), i.e. because the grievance outcome was that there was no case to answer and because his understanding was that Mr Mehmood had also refused to mediate (which we find had been the case prior to the February meeting with Deputy Governor Horridge). We also find that by this point, Officer Bennison was aware that the claimant had brought the Second Bennison Grievance against him and that also played a part in forming his position.

121. We accept Officer Bennison's evidence that at that point he had not categorically decided not to take part in the mediation. We find that it is clear from CM Smith's email to Deputy Governor Horridge, however, that he had to all intents and purposes done so. That was the message conveyed by CM Smith in his email and that was certainly Deputy Governor Horridge's understanding. He was, however, keen for the mediation to go ahead, if at all possible, to stop matters escalating. At 13:20 he emailed HR to ask for advice on CM Smith's email.

122. The advice from HR to Deputy Governor Horridge was sent in an email timed at 15:27 (p.533). It was that if the claimant [we think that should possibly refer to Officer Bennison] was refusing mediation then the best thing to do was to give advice to the line manager to speak to those involved.

123. The claimant put it to CM Dearden in cross examination that the real reason she had cancelled the mediation was because she had seen the email conversation between CM Smith and Deputy Governor Horridge. The suggestion appeared to be that she had attempted to hide that the true reason for cancelling was Officer Bennison having refused mediation. We found her evidence reliable and accept that she cancelled the mediation because of COVID. That evidence was consistent with the emails. There was no evidence that Deputy Governor Horridge had copied CM Smith's email to her before he sought HR advice on it. He did not receive the advice from HR until after CM Dearden had cancelled the mediation.

March 2020 to June 2020 – the Second Bennison Grievance outcome and refusal of mediation

124. On 7 May 2020, CM Andrew held a grievance meeting in relation to the Second Bennison Grievance. In his outcome decision dated 12 May 2020 (pp.844-

845) he partially upheld the grievance. He accepted that Officer Bennison was wrong to act as he had done at the briefing meeting on 16 January 2020. However, he found no evidence that that was due to the claimant's religion or race. He decided that no further action was needed given that Officer Bennison had already been challenged and advised as to any future behaviours. He did not recommend mediation.

125. On 19 May 2020 the claimant emailed CM Dearden asking for an update about the proposed mediation. She replied to explain that because of COVID, outside agencies were no longer coming into the prison and that she had not heard from PAM since the cancellation.

126. We find that CM Dearden emailed Deputy Governor Horridge to check whether the mediation was still to go ahead and then spoke to Officer Bennison. He confirmed that he was no longer willing to participate in the mediation. That was due to the time that had passed since the original incident on 28 November 2019 and due to the claimant submitting the Second Bennison Grievance. We find that by the time that conversation took place around late May 2020 Officer Bennison was also aware that the claimant had made what we have found was an unfounded accusation of sexual assault against him on 27 April 2020 (allegation ***D4***).

127. On 2 June 2020 CM Dearden emailed the claimant to confirm that the mediation would no longer be taking place (p.751). On 15 June 2020 Governor Patterson heard the claimant's appeal against the outcome of the Second Bennison Grievance received on 29 May 2020. The appeal outcome decision dated 22 June 2020 partially upheld the appeal, recommending that Officer Bennison provide a written apology and that mediation was undertaken.

128. The claimant chased Governor Patterson on 16 August 2020 to seek an update on the appeal outcome actions. By then the claimant had submitted the Third Bennison Grievance about the alleged sexual assault. Governor Patterson was uncertain whether the recommended outcomes were still appropriate given the passage of time since the original incident in January 2020 and the further allegations. We find that the impact of the recommendation being pursued on Officer Bennison's health and wellbeing was something that Governor Patterson took into account. By that point he was under the care of the Care Team because of the impact of the allegations and grievances brought against him. She sought HR Advice and the advice of Deputy Governor Horridge.

129. As a result, we find that Governor Patterson spoke to Officer Bennison on 27 August 2020. We find that he explained that he had apologised to the SO for the disturbance he had caused. He was not willing to provide an apology to the claimant. He said he stood by the comments he had made. He also confirmed he was not willing to participate in mediation. He felt that would only escalate matters given the other complaints the claimant had raised against him. He also pointed out that by that point he and the claimant were no longer working together. The claimant had been moved from visits (where Officer Bennison was based) to B Wing in April 2020 and to A wing in June 2020 (p.974).

130. Governor Patterson informed the claimant of Officer Bennison's position by email on 21 September 2020. She suggested she could advice from an HR caseworker about the way forward. He responded by asking whether she still had any doubts that Officer Bennison was a racist individual who was too proud to apologise (p.975). Governor Patterson sought further advice from HR. She ultimately concluded that it was not possible to implement the recommendations given Officer Bennison's refusal to apologies or mediate and the breakdown in the relationship between him and the claimant evidenced by the further grievances and allegations made by the claimant.

131. It was put to Officer Bennison in cross examination that he would have apologised to the claimant if he was white. He adamantly denied that was the case. We found his evidence on this point convincing.

132. Amongst the points raised by the claimant at the appeal meeting was what he said was a failure by CM Dearden to comply with para 2.6 of PSO 8550 by failing to ensure that any action agreed to address the grievance (i.e. the First Bennison Grievance) was undertaken (p.823). CM Dearden's evidence was that she was no longer the claimant's line manager by March 2020 and her involvement was limited to responding to his query about the proposed mediation.

<u>D4: The claimant claims that he was sexually assaulted by Officer Bennison because of his race and/or religion.</u>

133. The claimant alleged that on 27 April 2020, Officer Bennison sexually assaulted him on the landing in B Wing

134. Our findings about this incident are based on our repeated viewings of the CCTV of the incident and our findings about the relative credibility of the claimant's and Officer Bennison's version of events. In short, we prefer Officer Bennison's version of events. We did not find the claimant to be a credible witness nor his evidence reliable. We find there was no sexual assault or assault of any kind.

135. We find that on the 27 April, Officer Bennison was working on A Wing in the morning. 3 prisoners from that wing were moved to different wings. 1 was moved to B Wing and the other 2 to D Wing. Their lunch arrived on A Wing after they were moved and Officer Bennison volunteered to take it to them. The lunches consisted of 3 sandwiches and 3 pints of milk.

136. At around 11:35, having dropped off one sandwich and pint of milk, Officer Bennison walked along the landing in B wing to make his way to D Wing. His coat was open. He had the 2 remaining sandwiches in his left hand. The 2 remaining pints of milk were in the right-hand coat pocket. Because the coat was open, their weight caused the right hand side of the coat to flap to and fro as Officer Bennison walked along the landing.

137. The claimant was standing on the landing about half way along facing toward the opposite landing. As Officer Bennison walked along the landing, Officer Bennison talked to and gestured towards two of his fellow officers who were on the opposite

landing. He did that just before he reached the claimant. Officer Bennison then put his right band behind him and turned his left shoulder forward slightly to go past the claimant. We find that there was some contact in that Officer Bennison's coat brushes against the back of the claimant. We accept Officer Bennison's evidence that the claimant would have felt the contact because it would have come from the pints of milk in the pocket brushing against the claimant. We do not accept that Officer Bennison touched the claimant with the palm of his hand or in any way sexually assaulted the claimant.

138. After Officer Bennison had gone past the claimant, we find that the claimant said "did you touch me?". Mr Bennison, who had gone a few yards further along the landing, turned around and walked back towards the claimant and said, "pardon?" and "leave me alone". We accept Officer Bennison's evidence that that is what he said rather than the claimant's allegation that he said something like "if I had touched you, you would be on the ground". Officer Bennison then walked away up the landing again. When he had nearly reached the end of the landing, the claimant turned round and said loudly (because Officer Bennison was further away) "you touched me/did you touch me?". We find that Officer Bennison walked back and said to the claimant "just leave me alone" then turned and walked away, leaving B Wing.

139. Given the significance of this incident for the claimant and Officer Bennison, we feel it is important to address the points the claimant made in support of his version of events.

140. First, the claimant suggested that Officer Bennison had deliberately initiated contact with him. Based on the CCTV footage and what we were told about the width of the landing, we do not accept (as the claimant suggested) that there was plenty of room for Officer Bennison to pass him. The claimant suggested that Officer Bennison could have avoided him by walking along the left-hand side of the landing. He compared what had happened with what happened later on the CCTV footage. In that later incident, a prisoner does pass the claimant on the landing without touching the claimant. We made the following findings of fact in relation to this. First of all, when Officer Bennison goes past we find the claimant is standing nearer to the centre of the landing than he is when the prisoner goes past. There was more room for the prisoner to pass. Secondly, the prisoner was much slimmer than Officer Bennison in that he was more slight in build but also not wearing a jacket.

141. Second, the claimant stated that after the incident, he had remained in position on the landing whilst other members of staff came past him, to see if they could pass him without touching him. He said they could do so, which was evidence that Officer Bennison had deliberately initiated contact with him. The evidence given by Officer Decre to Deputy Governor contradicted this. In his evidence to Deputy Governor Horridge on 7 May 2020, Officer Decre said that when the claimant then asked him to walk behind him on the landing it was hard to do that without touching him. Given our other findings, we find Officer Decre's version of events more reliable.

142. Third, the claimant suggested that this was an example of Officer Bennison deliberately targeting him. He said that he could easily have walked down the other

side of the landing where the two officers with whom Officer Bennison was friendly were stood. Officer Bennison said he could not really explain why he had gone down that side of the landing rather than the other. He could only think that he had gone down that landing because the buzzer for the gate to be let out of that wing was at the end of that landing. We accept his evidence on that point. We also accept his evidence that he would not have known that the claimant was working on B wing when he volunteered to take the sandwiches to the prisoners. We do not, in short, accept the claimant's suggestion that this was part of Mr Bennison in some way "hunting him down" or persecuting him in order to cause more trouble with him.

143. The claimant suggested that the CCTV of the alleged sexual assault had been tampered with, a black spot being added on the CCTV where Officer Bennison's hand would be to blur out any contact. When questioned about why the CCTV would have been tampered with or by who, the claimant asserted it was to protect Officer Bennison because he was a white officer. We did not find that assertion plausible. The footage was viewed on 28 April 2020 and on a number of occasions subsequently, including by a police officer and a number of Governors whose evidence we found reliable. The conclusion of everyone other than the claimant was that it did not show any sexual assault. The claimant did not raise any issues of the CCTV having been tampered with at the meeting.

D5: The claimant was not supported following his reporting that he had been sexually assaulted. The claimant says this was the Care Team.

D6: The claimant was told on 28 April 2020 not to report the sexual assault on him to the police. The claimant will say he was told this by Governor Johnson and Governor Wright.

144. These allegations relate to what happened on 27-29 April 2020 in the immediate aftermath of the alleged sexual assault.

145. The claimant spoke to SO Lloyd about the incident. SO Lloyd advised him to ask for the CCTV of the landing. The claimant filled in a CCTV request form. It is singed and dated by him on 27 April 2020. In his description of the incident on that form the claimant said that he was "inappropriately touched by Officer Bennison, which is continuous harassment from him. If the contact was accidental but the response from him was inappropriate" (p.575).

146. At 12:12 on 27 April 2020 the Claimant emailed Governor Robinson (copying Governor Johnson) about the incident. He wanted the matter to be investigated up to it standards, i.e. to instigate a managerial enquiry or investigation. He said that he felt that Officer Bennison had touched him inappropriately. He alleged that when he challenged him, Officer Bennison had said "you won't be standing I have touched you". He alleged this was continuous harassment by Officer Bennison and referred to the fact that he had put 2 grievances and an appeal in against Officer Bennison and "nothing had happened". He again said that "if the contact was accidental but the response was inappropriate". He confirmed he had spoken to SO Lloyd and requested the CCTV of the incident.

147. Governor Robinson responded at 13:43. He said he was unsure what the claimant meant by "inappropriate touching" and how he said that what Officer Bennison said was part of "continuous harassment". He suggested that the claimant contact the managers who dealt with the grievances if he was unhappy with the outcomes and said that prior to instigating such an investigation they needed to establish whether an act of unprofessional behaviour had occurred or been perceived to have occurred. (p.577).

148. The claimant responded by email the following morning at 8:40. This time he copied Deputy Governor Horridge as well as Governor Johnson, who was his Head of Function. He said that Officer Bennison "touched my ass while passing behind me which was deliberately". He said that when challenged by the claimant, Officer Bennison responded by saying "you are still standing, if I had touched you, you would be on the floor". The claimant said that if it was any other officer he would have said it was an accident but with Officer Bennison who he had put 2 grievances and 1 appeal against "it was not an accident". He repeated that he felt it was continuous harassment by Officer Bennison (p.578). That email was the first time that the claimant had categorically said the contact was deliberate – his CCTV request form and the initial email to Governor Robinson both appeared to accept that the contact might be accidental.

149. At 10 a.m. on 28 April 2020 a "Challenge and Support Meeting" was held with the claimant. It was attended by Governor Wright, Governor Johnson, the claimant, Terry Mooney and, later, Detective Constable Martin Riley of Greater Manchester Police ("GMP"). Mr Mooney was the prison's Police Liaison Officer. He was the prison officer who was responsible for ensuring that crimes committed in HMP Manchester were reported to GMP. DC Riley was his equivalent in GMP, part of the team at GMO to which crimes or potential crimes committed at the prison were referred.

150. In making our findings about what happened at that meeting we took into account the notes of the meeting in the Bundle. During the Tribunal hearing the claimant alleged that he never received the notes of that meeting and disputed their accuracy. However, we find that he both received them and signed them (p.2767-2768). We accept them as an accurate record of the meeting.

151. Governors Wright and Johnson and Mr Mooney had viewed the CCTV footage and invited the claimant to view the footage with them. The Governors' view was that the CCTV did not show evidence that the claimant had been inappropriately touched). Instead, they found that the CCTV showed that Officer Bennison had touched the claimant with his keys. (As we have made clear, that was also our view, although we are satisfied it was pints of milk in Officer Bennison's coat pocket rather than keys).

152. The claimant insisted that Officer Bennison had put his hand on the claimant's backside. Because DC Riley was already in the prison dealing with another incident, he was asked to join the meeting to view the footage. Having done so, he too concluded that there was no sexual assault or any assault of any kind.

153. The claimant made it clear he would be taking the matter to the police to get a crime number and would be pursuing the matter outside the establishment. There is no reference in the notes to the claimant being told not to report the matter to the police. We find that did not happen. We do accept that DC Riley, as the GMP representative present, did say that if the matter was reported to GMP it would be referred to him (since he was the officer who dealt with alleged crimes at the Prison) and he would give the same answer as he already had, i.e. that based on the CCTV footage there was no assault of any kind and so no crime to prosecute.

154. Governor Wright signed the claimant's CCTV consent form at the meeting. The CCTV was downloaded and saved. The claimant did not suggest at this meeting that the CCTV had been tampered with.

155. At the date of the alleged sexual assault, the claimant's line manager was CM Costello. CM Costello's unchallenged evidence was that on 28 April 2020 he met with the claimant and explained the avenues of support open to him. Although the claimant said in cross examination evidence that he could not remember that discussion we find it happened as CM Costello described. In his follow up email on 29 April 2020, CM Costello told the claimant to speak to him or to any B-wing staff if he needed support (p.581). The claimant responded by email later that morning to thank CM Costello for his support and to say "yes, I will" (i.e. speak to him if he needed support).

156. The claimant did not suggest that he had followed this up by asking for support and been refused it. Instead, as we understand it, he suggested that he was treated less favourably by not being proactively referred to the respondent's Care Team or Occupational Health. He referred to an actual comparator, Officer CC.

157. Based on Governor Johnson's evidence (which we found reliable) we find that CC was a white officer who had been sexually assaulted by a fellow officer by being touched on the buttocks. We find that the CCTV in CC's case confirmed that the assault had taken place. The resulting police action led to the perpetrator accepting a caution.

158. The claimant suggested that CC had received more support than he did. In cross examination evidence, he confirmed that his information about the incident involving CC and what happened afterwards had come from the perpetrator of the assault against CC. The claimant had not spoken to CC and was not able to provide any reliable evidence that CC had been proactively contacted by the care team.

<u>D7: The claimant will say that he was asked for a meeting by Deputy Governor Horridge after he reported his sexual assault to the police.</u>

<u>D8: The claimant asked for sight of CCTV footage. His request was refused by Deputy Governor Horridge – The claimant has made numerous such requests granted without difficulty in the past.</u>

159. These allegations relate to events on 30 April 2020. The claimant relied on CC as an actual comparator for allegation D7.

160. By 30 April 2020 the claimant had reported the alleged sexual assault to GMP (p.587). On 30 April he emailed Governor Officer Knight (copying Deputy Governor Horridge) to ask for a copy of the CCTV footage. He said he wanted an "independent expert report" on the CCTV because as Governors Wright and Johnson had denied that a crime had been committed but he had felt Officer Bennison's right hand on his private parts (the claimant confirmed at Tribunal meant his backside) "which is enough for me to report a crime" (p.585).

161. Deputy Governor Horridge replied on 30 April to deny the request because it was clear there was no crime to report. He made it clear that the respondent fully supported any allegations of "wrongdoing" especially if there was an allegation of Sexual Assault. In the claimant's case he noted that DC Riley, an independent police officer, had looked at the CCTV footage and told the claimant that no crime had been committed and he would not be pursuing the case. Deputy Governor Horridge said his opinion was that the information given to the claimant was very clear "yet you have seen fit to carry on the allegation, even reporting it again to the police". He ended his email by saying "it has now come to the point, Arif, that there needs to be some quite clear dialogue with you, your manager and myself" (p.587). The claimant responded to ask Governor Horridge to arrange a meeting.

162. There was no evidence about whether CC had been asked to attend a meeting with Deputy Governor Horridge after they were sexually assaulted or not.

<u>V1: Bullied by governors for reporting sexual assault to the police (Deputy Governor Horridge). This was alleged to be on 7 May 2020</u>

163. The meeting resulting from the 30 April 2020 emails took place on 7 May. By then a number of other things happened which are relevant to put that meeting in context.

Events from 1 May 2020 to the meeting on 7 May 2020

164. On 2 May 2020 the claimant submitted the Third Bennison Grievance to CM Costello. CM Costello was on leave for a few weeks so on 4 May 2020 the claimant resubmitted it to CM Howard who was managing B wing in his absence.

165. The grievance was about the incident on the 27 April 2020 (pp.702-705). The claimant ticked the boxes to indicate that the grievance was about "Harassment-Other", Bullying lined to ethnic origin and religion and victimisation because of his past grievances against Officer Bennison. The claimant gave his version of what happened alleging the CCTV showed "concrete evidence of [Officer Bennison] touching my ass" and requested that the matter be investigated and that strict disciplinary action be taken against Officer Bennison.

166. Deputy Governor Horridge carried out further enquiries into the claimant's allegations. On 5 May he emailed the 2 officers who had been identified as being across the landing from the incident on 27 April 2020 asking what they had witnessed, specifically what the claimant had shouted which caused Officer Bennison to come back down the landing to remonstrate with the claimant (p.607). Their evidence corroborated Officer Bennison's version of events.

167. On 6 May the claimant was spoken to informally by CM Howard because Officer BB was upset and had raised concerns with him that he had challenged a colleague about her toilet habits. The claimant does not raise a complaint about this, but the matter was discussed at the 7 May meeting. CM Howard had copied Governor Johnson, CM Costello and Governor Barber into his email to the claimant summarising what had happened. The claimant did likewise when he set out his version of events (p.601).

168. On 6 May 2020, Officer McKevitt had raised a DIRF relating to a comment made by the claimant about Officer Bennison on 18 April 2020. We deal with that below. Deputy Governor Horridge referred to this DIRF at the meeting on 7 May 2020 and confirmed it would be investigated.

The meeting on 7 May 2020

169. The meeting between Deputy Governor Horridge and Governor Johnson took place on Thursday 7 May at 10:30 a.m. The claimant had asked to be accompanied by a representative from the Community union (rather than the POA). Although Governor Johnson made it clear that the meeting was an informal one it was agreed that the claimant could be represented at the meeting by Chris Cross from the Community Union. Ellen Austin from the respondent's HR also attended.

170. We find the meeting was recorded. The transcript was at pp. 610-657. Although the claimant suggested that it did not cover everything that was discussed, he was unable to explain what was missing. He seemed unwilling to accept in cross examination that the meeting had been recorded although it is clear from its contents that it was. We find that the transcript of the meeting in the bundle was just that, i.e. an accurate transcript of the recording of that meeting.

171. The first part of the meeting dealt primarily with the incident on 27 April 2020. The CCTV footage was watched again. Mr Cross had not seen it before. Deputy Governor Horridge relayed the evidence of the witnesses about what was said, specifically that there was no threat from Officer Bennison to the claimant (i.e. the "you would have been on the floor" comment). He explained again that GMP had said there was no crime. He said that unless the matter could be put to bed, the only other thing was for him to instigate a formal investigation into the incident. Mr Cross asked for a break to have a discussion with the claimant. After that break, he confirmed that the claimant did want the matter investigated. Deputy Governor Horridge confirmed that in those circumstances he would commission a managerial enquiry. Mr Cross said that was probably the only way to deal with the grievance given that an investigation was the desired outcome from the claimant.

172. Deputy Governor Horridge then handed over the meeting to Governor Johnson. She had by that date only been at the Prison for some 8 weeks. We find that as Head of Residence she had an overview of the situation and attempted to understand why the claimant was involved in so many complaints and grievances about colleagues. In addition to the grievances forming part of this case, there were clearly other complaints raised by the claimant against colleagues. We find that this was a genuine attempt on Governor Johnson's part to find out what was going wrong for the claimant and what support could be offered. She asked whether the claimant was unhappy in his job and whether he was getting the support he needed.

173. She also gave her honest assessment which was it did not seem to her that the claimant was trying to resolve matters at the lowest level (as PSO 8550 requires) and that he tended to escalate matters and complain when he did not get the answer he wanted. She said that the majority of the complaints she had seen from the claimant seemed to be in response to feedback received that he was not on the landing supporting but was off in an office somewhere. We find that view consistent with our findings. A number of the incidents in this case involved the claimant refusing to carry out tasks allocated to him by senior officers; "disappearing" during shifts to do emails; or wanting to finish early rather than helping out colleagues. When criticised for that, the claimant did, as Governor Johnson said, tend to respond by claiming the officers involved had treated him in a humiliating and abusive manner and, more often than not, issuing a formal grievance against them. She said that her honest view was that people did not trust the claimant and that was an issue in a job where everyone needed to be a team player. Again, we find this was an honest and justifiable view based on the evidence. The claimant does not allege that Governor Johnson's behaviour at this meeting was bullying.

174. The claimant during the meeting talked in a great deal of detail about specific matters which had already been dealt with. Deputy Governor Horridge asked him to explain why he said these things were happening. He made it clear that the respondent treated everyone equally and, we find, gave the claimant every opportunity to say that he was being treated differently because of his race or religion and explain why felt that way. The claimant did not do so. The closest he came was saying that Officer Bennison was a "Holy Cow" who was being protected. That was his explanation for everyone (including DC Riley) refusing to accept there had been a sexual assault on 27 April 2020.

175. The meeting was wide ranging. The claimant had a tendency to want to dive into the detail of past incidents and seemed to have difficulty grasping the bigger picture and identifying what the underlying problem was. There was a discussion of possible solutions including the claimant being moved to a different wing (again). The main outcome of the meeting that a management enquiry would be carried out into the allegation of a sexual assault by Officer Bennison.

176. The claimant's allegation is that Deputy Governor Horridge bullied him at this meeting. There is no evidence in the transcript that the claimant or Mr Cross raised concerns about the way the meeting was conducted. The claimant was asked in

cross examination to identify those parts of the transcript which amounted to bullying. He was not able to do so. We gave him a break during his evidence to re-read the meeting transcript. After doing so he was not able to identify matters which we find could be described as bullying.

177. To the extent that the allegation related to Deputy Governor Horridge's demeanour, we find based that the transcript that he was at times frustrated by the claimant's inability to understand either the broader perspective or others' points of view. We do not find the way he conducted himself at the meeting was bullying. He was straightforward and no-nonsense, but we find based on his emails and evidence that that was consistent with the way he communicated. He gave the claimant and his representative every opportunity to participate in the meeting. We find that Deputy Governor Horridge did not bully the claimant at the 7 May 2020 meeting.

178. Following the meeting, CM Costello was commissioned to carry out a Managerial Enquiry into the alleged sexual assault. We set out our findings about that below.

D9: At a meeting to discuss a DIRF raised against the claimant additional allegations were raised by CM Atton. This was on 15 May 2020

D13: The Management Enquiry report written by CM Atton and dated 3.6.20 was biased and had not been investigated impartially as shown by the conclusions reached

179. CM Atton was also commissioned to carry out a management enquiry into an incident reported by Officer McKevitt in a DIRF he submitted on 6 May 2020. In it, Officer McKevitt alleged that on 18 April 2020 he and the claimant were having a conversation and got on to the topic of Officer Bennison. The claimant said he thought Officer Bennison was a bully. McKevitt replied to say he had always been very good with him. Officer McKevitt reported that the claimant was alleged to have said "well he would you're White and British" (p.604).

180. The claimant's case was that Governor Johnson had initiated this Management Enquiry as part of what he called "building a case against him". Based on the email exchange between them on 7 May 2020 we find that Governor Johnson commissioned the Management Enquiry on that date on the instructions of Deputy Governor Horridge. He set the initial terms of reference which were limited to the incident reported in Officer McKevitt's DIRF.

181. On 13 May 2020, Governor Johnson was alerted to an IR having been submitted alleging that the claimant having made allegedly racist remarks in relation to prisoners who were fasting for Ramadan. He was alleged to have said that he could tell by looking at them who was fasting. Governor Johnson extended the terms of reference of the Management Enquiry to add that second allegation, tasking CM Atton with looking at both the allegations together. That was not CM Atton's decision. CM Atton's evidence (which we accept) was that he explained to the claimant on 13 May 2020 about the extension to the terms of reference. We find CM Atton had to investigate the allegations set out in the terms of reference.

182. CM Atton had emailed the claimant on the 13 May 2020 to invite him to an informal meeting on 15 May 2020 "to enquire into the DIRF submitted on 6 May 2020". The claimant responded that same day to ask that he have a chance to speak to Deputy Governor Horridge. He said that he felt he had been the "victim of institutionalised discrimination. Where Prison service have different policies for ethnic minorities."

183. We find this was a reference back to what happened when the claimant submitted a DIRF against SO Stewart in May 2019 alleging he had been treated differently because of race and religion. He had been told by CM Fahie that he could not submit a staff-on-staff DIRF and should file a grievance instead. As a result the claimant had submitted the Stewart Grievance. We find that CM Fahie had acted on the advice of Kathleen Eldridge, who was responsible for logging DIRFs. She had pointed out to him that DIRFs cannot be used in staff-on-staff incidents.

184. We find Ms Eldridge raised the same issue with Deputy Governor Horridge in relation to Mr McKevitt's DIRF. In his email to Governor Johnson commissioning the Managerial Enquiry he explained that "the grievance process will not meet the protected characteristic test nor satisfy the claimant and so he told her the only other alternative was to commission a Managerial Enquiry". (pp.2812-2813)

185. Mr Atton acknowledged that the claimant felt aggrieved but after consulting with Deputy Governor Horridge confirmed he would continue the Management Enquiry. He explained by email on 14 May 2020 that the matter was not being dealt with through the DIRF process but through a Management Enquiry. The claimant subsequently raised this issue with Governor Johnson on 25 May 2020 and it was discussed at the meeting she, CM Costello and the claimant had on 3 June 2020. It was also the subject of the Atton/Johnson Grievance.

186. CM Atton met with the claimant on 15 May 2020 to get his version of events. He spoke to Officer McKevitt about the 18 April 2020 incident. He found that their version of that incident did not differ significantly in that they both agreed that the claimant had said (even if not using that word) that Officer Bennison was racist. In his Managerial Enquiry report dated 3 June 2020 (pp.763-771) CM Atton concluded that while the claimant's comment was "not outwardly racist" it had caused offence to Officer McKevitt. He recommended mediation and that the claimant be provided with advice and guidance about how his comments can cause offence.

187. CM interviewed the claimant and Officer Davies who had submitted the IR about the Ramadan incident. He confirmed the comment made. The claimant denied making it and said he could not remember any discussion of prisoners and Ramadan. There were 4 other officers present and because the claimant denied making the remark, CM Atton interviewed 2 of them. They corroborated Officer Davies's version of events, noting that the claimant had been challenged at the time but had made excuses and left.

188. We found CM Atton a straightforward and credible witness and found his evidence reliable. The claimant challenged why he had not interviewed the other 2 officers present at the Ramadan incident. CM Atton's evidence, which we accept,

was that to do so would have been to delay the outcome of his enquiry. He felt that was unnecessary given that 3 officers present had confirmed what happened. We accept his evidence that that was the genuine reason for not interviewing the other 2 officers. That seems to us consistent with the purpose of a Management Enquiry which is a preliminary fact-finding process rather than a full-blown disciplinary investigation. In his report, CM Atton concluded on the balance of probability the claimant had made the comment alleged and that it offended those present. He decided that matter would need to be raised with the claimant and some advice and guidance given but the claimant's behaviour probably did not meet the threshold for a formal disciplinary investigation.

189. Based on those findings and recommendations, Governor Johnson on 3 June said that the claimant be provided with advice about making bold statements regarding other members of staff to others and that if he felt someone had been racist he needed to report that through the correct channels. In relation to the Ramadan incident, she said the claimant should be provided with advice and guidance in relation to his own awareness of what language he uses and how this may be perceived by others, especially of a racial nature. Deputy Governor Horridge confirmed those steps should be taken on by the claimant's Head of Function.

190. On 8 June 2020 The claimant submitted the Atton/Johnson Grievance in relation to the management enquiry. The claimant said that the Management Enquiry had not followed proper procedure because it was based on a DIRF. He also alleged that he had not been told of the Ramadan incident until the meeting. (We prefer CM Atton's evidence that he had told the claimant about it on the 13 May 2020). He also alleged that the officers who had given evidence about the Ramadan incident were officers he had previously brought complaints about. He did not deny making the comments about Officer Bennison and did not allege that CM Atton had been biased.

191. On 10 June 2020 the claimant lodged a grievance against the 3 officers who had given evidence to CM Atton about the Ramadan incident ("the Ramadan Grievance" – grievance 9) (pp.889-895). He accused them of making false allegations against him. He said this was bullying and victimisation, suggesting it was in retaliation for his having raised complaints about them. He did not tick the boxes on the grievance form to indicate that there was discrimination or harassment related to race or religion.

192. The Atton/Johnson Grievance and the Ramadan Grievance were dealt with together by Governor Fisher at a meeting with the claimant and Mr Cross on 23 July 2020. In his Grievance Appeal Outcome (pages 880-881) he upheld the Atton/Johnson grievance and quashed the management enquiry. He was satisfied there was no evidence to suggest the behaviour of both Governor Johnson and CM Atton were related to bullying, victimisation, race or religious beliefs. However, he was also satisfied the process of the managerial enquiry undertaken by CM Atton was flawed. The managerial enquiry should not have made reference to the DIRF. He accepted the claimant was right to feel disadvantaged by the managerial process, however he could find no evidence to suggest this was malicious. He noted in his outcome that his conclusion was accepted by both Officer Mehmood and his union representative.

193. When it came to the Ramadan Grievance, this was not upheld. Based on the notes of the grievance meeting we find that was because Governor Fisher made it clear to the claimant that while he was happy to recommend that the managerial enquiry into that incident be re-opened so the other 2 officers could be interviewed, there was a risk that would also re-open the outcome for the claimant. In other words, if the other 2 officers also corroborated the version already given about the claimant's behaviour, the outcome might be disciplinary action rather than advice and guidance. Having taken advice from Mr Cross, the claimant decided on that basis not to pursue a re-opening of the Ramadan incident. Although the claimant expressed some dissatisfaction with that outcome in an email exchange with Governor Fisher in August 2020, he did not appeal either grievance outcome.

D10: The claimant will say that after being told by a deputy governor (Mr Horridge) his 2/5/20 grievance (grievance 7) was on hold, it was then contrary to what Deputy Governor Wright had stated proceeded with and determined on 22 May 2020.

194. This allegation relates to the Third Bennison Grievance. It is not in dispute that Governor Wright held a grievance meeting on 22 May 2020 and sent the claimant the outcome on the same day (pp.707-708). He did not uphold the grievance because he concluded that the alleged sexual assault on 27 April 2020 had not occurred. However, he noted that due to the seriousness of the alleged incident there had been a management enquiry commissioned to look into the claimant's allegations, which would give him the opportunity to put his case forward. It was also, he noted, a more appropriate route to look at the allegation and if proven, would be the avenue for disciplinary action which a grievance is not.

195. In his email to Governor Wright on 20 May 2020, responding to the invitation to the grievance meeting, the claimant said the comment by Deputy Governor Horridge was alleged to have been made at the meeting on 7 May 2020. There is nothing in the transcript of that meeting so support the claimant's allegation that Deputy Governor Horridge said the Third Bennison Grievance would be put on hold. We find the opposite is true-it is clear the intention was to progress the grievance. We find Deputy Governor Horridge had not said that the Third Bennison Grievance would be put on hold.

D11: CM Costello did not respond to an email of complaint from the claimant dated 25/5/20 – The claimant cannot recall what was in the email

196. The claimant emailed CM Costello on 25 May 2020 with the subject heading "B Wing Issues". He raised a number of issues about prisoners and colleagues (p.742). CM Costello replied the following day providing guidance and advice. The claimant's subsequent email on 28 May 2020 did not suggest that he wanted to pursue any of the specific matters raised. He did raise the possibility of being moved. CM Costello responded in an email of 2 June asking the claimant to submit a separate email about that because it would need to be discussed at the next workforce planning meeting.

D12: The management enquiry report (compiled by CM Costello) into the sexual assault on the claimant was sent to the claimant on 25/5/20, but it did not deal with all the issues.

197. On 13 May 2020, CM Costello was commissioned by Governor Johnson (on Deputy Governor Horridge's instructions) to undertake a management enquiry into the alleged sexual assault on 27 April 2020 (pp.717-720). The Terms of Reference ("TORs") set out what the enquiry should consider. That included viewing the CCTV of the incident; interviewing the claimant; and considering the statements provided by the 2 officers across the landing (Officers Decre and Riching). The TORs did not suggest interviewing Officer Bennison or interviewing Officers Decre and Riching. The TORs referred to the minutes of the meeting on 28 April which could be requested if appropriate.

198. CM Costello interviewed the claimant on 19 May 2020. He viewed the CCTV, read the statements from Officers Decre and Riching and the minutes of the meeting on 28 April 2020. In his report dated 19 May 2020 he concluded that there was no evidence to support the allegation made by the claimant. He was unable to make any recommendations beyond noting that the claimant had taken the matter to GMP as he was entitled to do. On that basis, Governor Johnson on 21 May 2020 recommended no further action. Deputy Governor Horridge on the same date agreed with that decision on the basis that all avenues for looking into the incident had been exhausted. He suggested moving forward that the claimant and Officer Bennison carry out their duties and remain professional at all times.

199. Governor Johnson met with the claimant on 25 May 2020 to discuss the outcome of this management enquiry and emailed him a copy of CM Costello's management enquiry report the same day. We accept her evidence that the claimant had no questions about that aspect of the discussion. We find his focus was on CM Atton's managerial enquiry into the DIRF raised by Officer McKevitt. The claimant did not raise a grievance against the outcome of CM Costello's Management Enquiry.

D14: The claimant says he was referred to OH without his consent, for making repeated complaints and presenting multiple grievances. The grievances presented were 1-7. This was by CM Costello. (The only issue is that there was no consent for the referral).

D19: Governor Johnson is alleged to have told the claimant that OH had lied to the claimant about the reason for the referral of the claimant. The claimant says that Governor Johnson lied to the claimant.

The claimant is clear that "lied" is an appropriate description of Governor Johnson's conduct. The claimant also says that CM Costello lied to him on the same basis.

D20: The claimant sought but was denied access to the OH referral form. This was by CM Costello.

D21: The claimant says that Governor Johnson failed to contact him to discuss the OH referral, which is what Governing Governor Knight had stated would happen.

V2: Claimant referred to OH by CM Costello, respondent says because of repeated grievances (the fact that consent was not sought is irrelevant for victimisation).

200. These allegations are all about the claimant's referral to Occupational Health ("OH") on 4 June 2020. The relevant events start with a meeting on 3 June 2020 between the claimant and Governor Johnson and CM Costello (then the claimant's line manager).

201. To put that meeting in context, by 3 June 2020, both CM Atton's and CM Costello's management enquiries had reported their conclusions and recommendations. The First Bennison Grievance and its appeal had concluded. Cm Deaden had informed the claimant on 2 June that the proposed mediation with Officer Bennison would not be taking place. The claimant's appeal against the outcome of the Second Bennison Grievance dated 29 May 2020 was pending. The Third Bennison Grievance had been dealt with by Governor Wright on 22 May 2020 and was not being appealed. The claimant had raised his concerns about with CM Costello (on 13 May) and Governor Johnson (on 25 May) about the way his DIRF about SO Stewart had been dealt with compared to the way Officer McKevitt's DIRF about him had been dealt with. In his email to CM Atton he had described this as "institutionalised discrimination". The claimant had requested a move on 28 May 2020. In addition, the claimant had raised various complaints about colleagues and prisoners in emails to CM Costello and Governor Johnson.

The meeting on 3 June 2020

202. We find the primary purpose of the meeting on 3 June was to discuss the outcome of CM Atton's Managerial Enquiry and provide the claimant with the advice and guidance he recommended as an outcome. We find that Governor Johnson confirmed she was looking into the issue the claimant had raised about the apparently inconsistent way in which his DIRF about Officer Stewart and Officer McKevitt's DIRF about the claimant had been dealt with. We find she also raised the fact that a prisoner had submitted a DIRF alleging the claimant had made inappropriate comments and that the prisoner had been told to submit a complaint form. CM Costello was going to look into that but in the meantime the claimant agreed to be moved to A Wing to ensure the claimant's safety. We accept that CM Costello and Governor Johnson were genuinely seeking to understand and resolve the situation the claimant found himself in.

203. There was no dispute that on the day after the meeting, CM Costello referred the claimant to OH. There was a dispute about why that happened.

204. The claimant denied that he had said at the 3 June meeting that he was stressed. His case was that he was told at a later meeting on 12 June that he was stressed and would be referred to OH (allegation D17). That is not consistent with the fact that the referral having already been made on 4 June.

205. We prefer the evidence of Governor Johnson and CM Costello. We found their evidence more reliable than the claimant's. We also found it more consistent with the contemporary documentation including the notes of the meeting and the

claimant's email the following day in which he confirms that he is feeling stressed. We find that when asked by Governor Johnson towards the end of the 3 June meeting how he was feeling, the claimant said he was stressed and disclosed he was receiving support and medication from his GP for anxiety. We find it was agreed the claimant would be referred to OH and that he was provided with information about other sources of support such as the respondent's employee helpline provided by PAM and the care team.

The OH referral and other events 4 to 12 June 2020

206. CM Costello made the OH referral on 4 June 2020. (p.775). We find the "referral details" part of the form had a number of drop down boxes completed by the referring manager. For "reason for referral" CM Costello put "repeated complaints". Under "workplace matters" he explained that "[the claimant] has been referred for OH input due to my perception that he is under some pressure at work…. And that [the claimant] appears to be a serial complainant against his colleagues with no substantive outcomes in regards to this. I am concerned that the amount of complaints he has and is continuing to submit is linked to his mental health". He noted that the complaints had severely damaged the claimant's relationship with colleagues in nearly every area of the prison. The Referral confirmed that the claimant was aware and had agreed to the referral. We find that to be the case.

207. The claimant's allegation ***V2*** is that the OH referral was made because of protected act PA2 namely grievances 1-7. We find that the reasons for referral given by CM Costello in the OH form were genuine. The primary reason was concern about the claimant's mental health. We find that arose from his confirmation at the meeting on 3 June 2020 that he was stressed, that he had been prescribed medication or anxiety and that he was under the care of his GP. It is clear from the wording of CM Costello's referral that the number of grievances and complaints the claimant had raised and was raising (both by way of formal grievances but also informally by email to CM Costello and Governor Johnson) was also part of the reason for the referral.

208. We do not find that the fact that some of the complaints alleged race or religious discrimination played any part in making the referral. Instead, it was the number of the complaints and the inability on the claimant's part to accept any conclusion or outcome which he did not agree with even in the face of overwhelming evidence (e.g. the alleged sexual assault or the incident where he accepted having implied to Officer McKevitt that Officer Bennison was racist). That was coupled, we find, with a seeming inability on the part of the claimant to accept any kind of feedback which he viewed as negative. That in turn caused him to raise complaints about his colleagues and managers with a frequency which meant Governor Johnson spent a significant proportion of her time in May-July 2020 in managing issues raised by the claimant. He had by this point been moved 3 times in the last 12 months and was about to be moved again There was understandable concern about the impact that was having on the workplace in terms of relationship with colleagues and managers and on the time spent in managing him given that this was the time of the COVID pandemic. We find CM Costello's assessment in the referral form that the claimant's complaints had severely damaged the claimant's relationship with

colleagues in nearly every area of the prison to be entirely accurate. We find CM Costello (and to an even greater extent Governor Johnson) were genuinely trying to understand what was going wrong for the claimant which meant he felt he needed to raise so many complaints, grievances and appeals. Exploring whether there were reasons relating to his mental health which could provide an explanation was one avenue. Another was seeking advice from the Equalities Team for Long Term and High Security Prisons.

209. On 4 June the claimant emailed Governor Johnson to set out his disagreement with the Atton Management Enquiry outcome. He asked that that the issue be "written off" and not "go on his file". On 5 June Governor Johnson replied to explain than a management enquiry was not a process which could be appealed but one where advice and guidance is given and the employee can choose not to accept it. In response the claimant filed the Atton/Johnson Grievance and the Ramadan Grievance on 8 and 10 June respectively.

210. On 12 June 2020 there was a further meeting between the claimant, CM Costello and Governor Johnson. We deal with below in relation to allegations ***D15-17***.

211. On 18 June 2020 the meeting between Governor Johnson, Deputy Governor Horridge and colleagues and the Equalities Lead took place. held the meeting with the equalities team. We deal with below in relation to allegations ***V9-16***.

Incidents relating to the OH referral form from 9 July 2020

212. On 9 July 2020 the claimant was called by OH in relation to the referral. The claimant's evidence is that OH told him he had been referred because he had been putting complaints in against staff. On 13 July the claimant emailed CM Costello to say that said he felt the referral had been made maliciously and that it was victimisation. He said he would follow the complaint procedure for victimisation.

213. On the following day, Governor Johnson replied to advise the claimant to try and deal with the matter informally rather than go straight to a grievance. CM Costello also replied to refute the allegations and to confirm the referral had been triggered by what the claimant had told him and Governor Johnson at the 3 June meeting.

214. The claimant alleges that on 14 July 2023 Governor Johnson told him that OH had lied to him about the reason for referral. He says that Governor Johnson and Claimant Costello lied to him (**D19**). Governor Johnson's evidence was that she had told the claimant that she would be happy to share the wording of the referral. We find that consistent with her subsequent request to the OH provider for the referral. We accept her evidence that she had told the claimant that she could not be responsible for how the OH provider presented the information in the referral from to the claimant during their phone conversation with him. We find she did not say that the OH referrer had lied to the claimant about the reason for the referral. We find that is another example of the claimant distorting what was said to him.

215. We do not find that Governor Johnson or CM Costello lied to the claimant about the reason the OH referral was made. We understand the claimant's case to be that the OH referral proved that the real reason for the referral was the claimant having made repeated complaints. As we have said, we find the primary reason for the referral was concern about the claimant's mental health given what he said at the meeting on 3 June 2020.

216. The claimant responded by asking CM Costello for a copy of the OH referral form. We find that CM Costello did not have the referral form because the referral was completed on an online portal and did not generate a "form" for the referrer. We find he contacted OH to request the referral on 23 July. There were delays by OH in supplying it and Governor Johnson repeated the request on 28 July.

*The claimant's meeting with Governor Knight (allegation **D21**)*

217. In the meantime, the claimant had requested and received a printout of the OH referral from the OH provider. His view was that its contents confirmed he had been referred because he had raised grievances. He contacted Governor Knight (the prison's Principal Governor's office to ask for a meeting about the OH referral. There was a short informal meeting between the claimant and Governor Knight on 20 July. The claimant's unchallenged evidence was that Governor Knight told him that Governor Johnson would contact him to discuss the OH referral. It is accepted Governor Johnson did not do so. We accept Governor Johnson's evidence that she was not aware that Governor Knight had said this to the claimant.

D15: a complaint was made about the claimant having submitted grievances on 8 June and 10 June (grievances 8 and 9). This complaint was by Governor Johnson).

D16: The claimant was told that the respondent could not deal with the number of grievances he was submitting, and the respondent stated a third party would be brought in "to decide about the claimant" (not OH). This was said by Governor Johnson agreed by Mr Costello).

D17: The claimant was told that he looked stressed and therefore he would be referred to OH. This was said by Governor Johnson).

218. On 12 June 2020, CM Costello and Governor Johnson had an informal meeting with the claimant. By that point, the OH referral had been made and the claimant had submitted the Atton/Johnson grievance (Grievance 8) and the Ramadan Grievance (grievance 9).

219. We prefer CM Costello and Governor Johnson's evidence about what happened at that meeting. We found their evidence more reliable than the claimant's. Given the claimant's tendency to distort information we treated his notes of the meeting with caution. In any event, those notes do not support the allegations that there was a "complaint" about the claimant having submitted grievances or his being told that he could not raise any further grievances.

220. We find that at the meeting Governor Johnson and CM Costello were trying to support the claimant and get to the bottom of why he felt the need to raise so many grievances. We do not accept this is correctly characterised as "complaining" about the claimant putting in his grievances or that there was any suggestion that he was told he was not allowed to put in grievances. We accept there was a reference to the number of grievances the claimant had raised. We find that Governor Johnson repeated the point made previously about seeking to resolve matters at the lowest possible level.

221. We do not accept that Governor Johnson told the claimant that the respondent could not deal with the number of grievances he was submitting. There is no record in the claimant's notes of the meeting of that being said and we find it was not. We do find that Governor Johnson did explain that because of the number of issues the claimant was raising, she would be asking the Head of Equalities of the Prison Service as a third party to look at some of his complaints and issues from an objective and equalities standpoint. We accept Governor Johnson's evidence that this was a genuine attempt on her part to ensure she was not missing anything. We find she was genuinely struggling to understand how to resolve the issues the claimant was having and was seeking to understand whether anything could be done to support the claimant more effectively given that his perception was that most of his issues related to his race and religion. We do not accept Governor Johnson said that a third party would be brought in "to decide about the claimant". That is completely odds with the steps she actually took and with her approach to the claimant in general.

222. When it comes to allegation ***D17*** we find that this did not happen at the 12 June 2020 meeting. The decision to refer the claimant to OH was made at the meeting on 3 June 2020. We have recorded our findings about this meeting above. We find it was the claimant who said he was stressed when asked how he was feeling. He was not told he looked stressed as alleged.

V9: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that there was no racial aspect being raised by the claimant, which the claimant says was untrue.

V10: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the claimant did not have positive relationships in the prison, that he actively distanced himself and refused to build relationships.

V11: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that she referred the claimant to Occupational Health to find out if there were underlying issues.

V12: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the team had done all of the internal processes and that the personal impact for all involved was significant and building, and the claimant says that it was untrue to say that all process had been followed.

V13: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the claimant's behaviour remained the same and was mirrored in the community and this did not seem to be repairable.

V14: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that there was no-one the claimant could trust, and they had even tried matching him with staff but he was stand-offish and refused to engage which was upsetting all the staff, when the claimant says this was wrong and was said to paint him as a bad person.

V15: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the way the claimant communicates with prisoners, who feel the claimant targets them.

V16: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that she was now struggling to do her job as she was spending all her time on these matters.

223. These allegations all relate to the information conveyed by Governor Johnson at the meeting with the Anita Saigal, Equalities Lead for Long Term and High Security Prisons on 18 June 2020. We find that Governor Johnson had instigated that meeting because she wanted to seek the view of a third party with expertise in equality issues on the situation. We find that she was genuinely seeking to identify a way forward given the number of complaints the claimant had raised (at that point some 16 over a 2-year period, some predating the subject matter of this Tribunal case).

224. In addition to Governor Johnson and Ms Saigal, the meeting was attended by Deputy Governor Horridge, Carolyn Lund (Head of LTHSPG & Executive Director's Office Long Term and High Security Prisons), Caroline Kennedy (HR Business Partner) and a note taker.

225. The allegations are based on quotes from the minutes of the meeting. Governor Johnson did not dispute that the comments were made. We find that Governor Johnson did make the comments set out in allegations V9-V16. We find the information she conveyed was her genuine reflection on the situation as it then stood.

226. We find that the information was conveyed in the context of Governor Johnson setting out an overview of events involving the claimant. That included an acknowledgment that some previous grievances were mismanaged which had been addressed by Governor Robinson in April (see our findings about allegation ***D1***). We find that viewed objectively, what Governor Johnson said about the claimant's working relationships with colleagues, the impact on her workload and the reasons for referring the claimant to OH were factually accurate.

227. When it comes to the comment that there was "no racial aspect" to the claimant's complaint (***V9***) we find the context for that comment is important. The minutes record Ms Lund asking how the racial aspects are being raised. Governor

Johnson's response is recorded as "it isn't, this was brought up at a meeting as it isn't being evidenced. When questioned, [the claimant] did not bring up race." We do not find that Governor Johnson was denying that the claimant was alleging race discrimination. She was saying that when asked the claimant could not provide any evidence to support that allegation. We find that accurately reflected the discussions which the claimant and Governor Johnson had had with the claimant, e.g. at the meeting on 7 May 2020.

228. Ms Saigal provided her report headed "A review of documentation and lessons learnt" on 3 August 2020. She acknowledged the complexity of the situation. She found that a number of the complaints made by the claimant did not have merit. However, she also found there were organisational failings in the way that complaints were dealt with. She referred to the failure to investigate a grievance in time as a "serious organisational failing" (which we take to be a reference to the subject matter of the Fahie Grievance). She referred to a lack of clarity about the appropriate use of DIRFs and set out lessons to be learned, in particular from the way that Mr McKevitt's DIRF against the claimant and the Ramadan incident had been investigated and dealt with. The report explained how previous lived experience of discrimination may have heightened the claimant's sensitivity to potential discrimination, making it more important that professionalism was maintained and policies and procedures adhered to.

229. The report acknowledged that the manner in which concerns had been raised had made for a difficult working situation for all concerned and the situation could not be allowed to continue for any length of time. With the benefit of hindsight, she suggested that had matters been dealt with appropriately in the early days they would not have reached the stage they had then reached. The report recommended a better understanding of how to define particular behaviour in relation to what is racist and discriminatory (e.g. whether alleging someone else is racist is itself racist) and suggested considering whether all allegations of discrimination should be dealt with by someone external to the team but still within the organisation. It suggested the claimant should be asked where he was at and what he wants going forward.

230. We find the report was a considered and balanced one. The claimant accepted in cross examination that it was balanced. No allegation of discrimination or victimisation was made in relation to the report itself.

D22: The claimant had complained about Officer Seminerio (grievance 10) who was then temporarily promoted by CM Barrett. This resulted in the claimant bring forced to work under Officer Seminerio.

D23: The claimant says that CM Barrett should not have been allowed to deal with the grievance about Officer Seminerio on 12/10/20 (grievance 10) because he had presented a grievance against CM Barrett on 9/10/20 (grievance 11). The claimant says that Governor Johnson should have appointed someone different and CM Barrett should have recused herself.

231. By August 2020 the claimant was working on A wing. His line manager from June 2020 was CM Anita Barrett. On 29 August 2020 the claimant raised the

Seminerio grievance regarding the conduct of Officer Seminerio (pp.1052-1067). It was submitted to CM Barrett as is line manager. It related to an incident between them at around 8.45 a.m. on 29 August 2020. The claimant alleged that Officer Seminerio spoke to him rudely in the movements office when he went back into the office to get the names of prisoners for the gym and that she then started shouting at him telling him to "get out of my office". The claimant's desired outcome was "disciplinary action for humiliating me and throwing me out of the office". The claimant ticked the boxes on the grievance form to say that the nature of the grievance was bullying related to ethnic origin and religion or belief. There was no explanation in the grievance of why he said Officer Seminerio was related to his race or religion.

232. On 3 September 2020, Officer Seminerio lodged a grievance against the claimant. She said that since moving to A wing the claimant appeared to have taken an instant dislike to her. She said that he challenged her and questioned her decisions even on occasions when she was acting SO. Her desired outcome was "a better working relationship where [she] felt respected by the claimant. She ticked the box on the grievance form to say that the nature of the grievance was gender-based bullying, discrimination and victimisation. In the grievance she said that she believed that having observed the claimant's attitude to male officers, the claimant's attitude to her would be different if she was male.

233. There is no complaint in the Annex about the incident itself. The claimant's complaint is that CM Barrett temporarily promoted Officer Seminerio after he submitted the Seminerio Grievance. The way he put it in the Barrett Grievance which he submitted on 8 October 2020 was that he was penalised for raising his grievance.

234. It is accepted that Officer Seminerio was on occasion chosen to act up as an SO when there was a shortage of SOs. When she was acting up that meant she was senior to the claimant. We find that Officer Seminerio had acted up in that way before the claimant submitted the Seminerio Grievance. Her grievance against the claimant refers to he having been acting up on 27 July 2020.

235. We find that it was not CM Barrett's decision who acted up as SO. We do find that all CMs had been asked to nominate Band 3 officers who were interested and could be considered toa claimant up in charge. CM Barrett had nominated Officer Seminerio. We find that was before the incident giving rise to the Seminerio Grievance. When it came to the specific occasions identified by the claimant in the Barrett Grievance, we find the explanations given by CM Morgan (who dealt with grievance) for why SO Seminerio was acting up as SO on those dates cogent and comprehensive (p.1596).

236. Allegation ***D22*** is dated 24 September 2020 which is the date when CM Barrett held the grievance meeting with the claimant relating to the Seminerio Grievance. In the Barrett Grievance the claimant alleged that at that meeting CM Barrett had told him that he either had to work under Officer Seminerio's supervision or leave the group. He also alleged that since the grievance meeting CM Barrett had forced him to work under Officer Seminerio's supervision. He alleged that CM Barrett had told him that she could not move the culprit so she would move the victim.

237. CM Barrett's version of events was that the claimant had when asked by her at the grievance meeting the claimant confirmed that he was willing to work on A Wing with Officer Seminerio. She had made it clear to the claimant that a Band 3 officer like Officer Seminerio was able to give instructions to another band 3 Officer like the claimant (and vice versa). There was then a further conversation between her and the claimant on 1 October 2020 when he made it clear that he did not want to be on A Wing when Officer Seminerio was acting up as SO and so in charge. CM Barrett explained that she could not prevent that happening. (We find that is accurate because she did not decide when Officer Seminerio was acting up as SO). The claimant raised a concern that Officer Seminerio would be vindictive towards him. CM Barrett said that the claimant needed to decide whether he could continue to work on the wing and the claimant said he could not and needed to work elsewhere while grievance was ongoing. He expressed a wish to work on E Wing whilst the grievance was going ahead. CM Barrett had said she could not promise but that she would speak with Governors Barber and Johnson the following day. She confirmed she would detail the claimant on E Wing the following day and then sort out longer term plans.

238. We prefer CM Barrett's version of events. We found her a credible witness and her evidence to be reliable. We do not find that she penalised the claimant in the way suggested.

239. CM Barrett had set out her version of events in an email to the claimant dated 1 October 2020. The claimant responded the same day to say he "knew where this was going", to set out his version of events and say that he was "in the process to submit grievance for continuously being penalised." CM Barrett responded on 2 October to say she was sorry he felt that way, that she had checked and that Officer Seminerio would be away for 2 weeks and asking whether he wanted to stay on A Wing in those circumstances. We accept CM Barrett's evidence that she did not understand that the claimant's reference in his email to raising a grievance meant he was going to be raising a grievance against her.

240. By 9 October the claimant had submitted the Barrett Grievance. We find that CM Barrett was aware by 11 October 2020 that he had done so. She refers to it in her email of 11 October 2020 to HR when sending her grievance response for review. We accept her evidence that although at that point she knew the claimant was bringing a grievance against her she had not seen it and did not know what allegations were made in it. We find that she did not know that the claimant had alleged that she was biased and that he was seeking that disciplinary proceedings be taken against her as an outcome to his grievance.

241. We find that by the time CM Barrett became aware of the grievance against her she had concluded the grievance process and substantially written up her conclusions. There was no evidence to substantiate any allegation that she had changed her findings or conclusions because of the Barrett Grievance. There was also no evidence that HR had advised her that she should recuse herself from dealing with the Seminerio Grievance. The Seminerio Grievance outcome was signed off on 12 October 2020.

242. When it comes to Governor Johnson's involvement with the Barrett Grievance we accept her evidence in cross examination that she told the claimant when he filed the grievance that she was on leave for a week and that she allocated it to CM Morgan on her return on 20 October 2020 (p.1081). We also accept her evidence that she did not tell CM Barrett about the grievance against her. There is no evidence that she was involved in the Seminerio Grievance.

D24: The claimant had made written complaints about SO Derbyshire and CM Brown (this was a formal complaint by email, not a grievance). The claimant chased up his complaints on 17/2/21 and was not given any resolution. The claimant will say an email sent to Governor Johnson about this.

243. This allegation relates to an email sent by the claimant to Governor Johnson on 14 October 2020 (p.1133) about 2 incidents when he was told that he needed to work until the end of his allotted shift time.

244. We find that where an officer was "roll dependent" they could finish work earlier than the end of their scheduled shift time once the roll count of prisoners (to account for their whereabouts and secure lock up) was complete and correct. We find the same applied to officers assigned the "Lima 23" role. This role required staff to patrol activities on the Croft (an area of work/education/activities for the prisoners) and then return to the wing with the prisoners after activities have concluded. The respondent accepted that, where possible, once activities had concluded, staff assigned to Lima 23 were able to finish duty earlier than their colleagues. We find that staff being allowed early was always dependent on staffing levels and operational requirements so was ultimately within the discretion of supervising officers.

245. In his email the claimant reported an incident where he said he had been told by CM Brown that he could not leave his shift early because he was not roll dependent. He said that when he challenged this CM Brown said he had made a mistake and the claimant was roll dependent so he could leave once the roll was correct. The claimant said that in a separate incident, SO Derbyshire had not allowed him to finish his shift after completing Lima 23 duties. When the claimant challenged this, SO Derbyshire said it was at the SO's discretion. The claimant was not happy about this. The claimant said that Officer Wain was present when he challenged SO Derbyshire and became aggressive, leaving the office saying "fucking helmet will destroy it for all of us".

246. The claimant's email to Governor Johnson said he was "requesting clear guidance about Lima 23 duties and SO discretion. He said that Officer Wain should be investigated for his abusive behaviour.

247. Governor Johnson responded on 19 October to confirm she had copied the claimant's email to CM Barratt and CM Brown to try and resolve with him in the first instance before being escalated to her. She understood that CM Brown had already spoken to the claimant and to Officer Wain and this was sorted. She reassured the claimant that she took all allegations of suspected bullying seriously which is why CM Brown spoke to them. Her email asked CM Brown to speak to the claimant to

clear up any confusion. The claimant in his own witness statement appears to accept that Governor Johnson "may not have understood my email (para 350, WB 127)". We find that she understood the complaint to be about Officer Wain and she tasked CM Brown to address it.

248. The claimant responded on 20 October 2020 to say that matters had been sorted "until he opened his mouth again" (referring to Officer Wain's "Helmet" comment). He said that is why he had raised the matter to her. We find there had been an earlier altercation between the claimant and Officer Wain on 8 October 2020. CM Brown had had a meeting with the 2 officers who had agreed to maintain a professional working relationship). The altercation had come about because the claimant had arrived at 7.35 for an early start.

249. Governor Johnson responded on 22 October 2020 to explain she was not in the Prison that week so had asked CM Brown to speak to the claimant. CM Brown contacted the claimant about the issues raised in his email (p.1130-1131).

250. The email of 17 February 2021 asked Governor Johnson for an update "on this issue", forwarding the email which he sent her on 14 October 2020. In his email the claimant said "I have not received response from anyone" We find that is not factually accurate – Governor Johnson had replied twice in October 2020 and CM Brown had also replied.

251. In fairness to the claimant, he may have meant that he had not heard a further response since he responded to CM Brown's email on 4 November 2020 asking him to make the meeting between him and Officer Wain "official". Even that is not factually accurate however – CM Brown sent a further email on 5 November confirming that since matters should be resolved at the lowest possible level the meeting would not be official but that the claimant (and Mr Wain) could be accompanied by a McKenize friend if they so chose. Officer Wain was not at work when the email was sent but CM Brown confirmed he would speak to them both when he returned.

252. Governor Johnson pointed out to the claimant in her response on 17 February 2021 that the claimant had been off sick (as a result of the incident on 10 November 2020 which we discuss below) and Mr Wain was also off long term and had been for a while. She asked CM Brown to liaise with the claimant.

D25: The claimant asserts that the report into assault on 10/11 was biased and contained false and misleading information. CM Horner and SO Heskett prepared the report. The claimant claims that this was malicious. The report was produced sometime in or around December 2020.

D26: The claimant says that false allegations were made against him in 3 'Annex A' reports following the 10/11 incident. These were not included in the management report into that incident. Allegations by Officer Rothwell, Officer Green and Officer Seminerio, report compiled with CM Horner and SO Heskett.

D27: The claimant complains about the inclusion of the false allegations in the 3 'Annex A' reports of Officer Green, Officer Rothwell and Officer Seminerio.

D28: The claimant was not allowed (by CM Horner) to see the report into the assault on 10/11 until 12/2/21.

253. These allegations relate to the steps taken in response to an incident on the 10 November 2020. We will refer to it as "the assault" because that is the term used in the allegations in the Annex. Using that term in relation to the incident is not without its problems. GMP, for example, found that it was not clear that the claimant had been assaulted. For the avoidance of doubt, we are not by using the term "assault" making a finding that the prisoner assaulted the claimant in a technical, legal sense.

254. There is no allegation about the assault itself but there is about how it was investigated by the respondent. To decide those allegations we do not have to make our own detailed, definitive findings about the assault. We have to make sufficient findings to enable us to decide the claimant's allegations that the Annex A forms submitted about it by Officers Green, Rothwell and Seminerio contained false allegations and that the allegation that the Management Enquiry into it was biased and contained false and misleading information.

255. A number of the claimant's allegations relate to "Annex A" forms. An Annex A is a form which staff must complete whenever there has been use of force. The Annex A must set out what happened; give details of the officer's part in the use of force, any restraints/locks they applied and how the incident was finally resolved. It must give details of who authorised the use of force, as well as attempts made to de-escalate throughout the incident. The Annex A from makes it clear that the statement must be completed independently of other staff involved in the incident.

256. Based on the CCTV footage of the incident and the witness evidence, we find that it involved the claimant and a prisoner ("Prisoner A") who was categorised as high risk. That meant that Prisoner A was not allowed to have anyone in his cell with him. On the day in question, Prisoner A had been authorised to have a "listener" help him fill in a complaint form. That listener was another prisoner. He was in Prisoner A's cell. Because Prisoner A could not be in the cell with him, he was out on the landing.

257. We find that the claimant was concerned that Prisoner A was taking the opportunity to roam the landing. What exactly happened next is disputed and the lack of audio on the CCTV footage means it is not possible to say definitely what was said between them. On balance we find the claimant challenged Prisoner A to stay near his cell and Prisoner A then became agitated. That resulted in the claimant telling Prisoner A to get back in his cell and telling the listener to come out of the cell.

258. Officer Green witnessed the latter stages of the interaction. Prisoner A turned to him, appearing to appeal to him intervene. Officer Green gestured to Prisoner A to keep calm. The claimant gestured towards the cell. It is not clear whether, as he alleges, he was gesturing to the listener to come out of the cell or, as others

perceived it, gesturing to Prisoner A to get back in the cell. Prisoner A slapped the claimant's hand away. (The claimant accepted during the investigation by Governor Mielcarek that Prisoner A had not, as he had first alleged, hit or punched him). The claimant and Prisoner A then grappled, with the claimant being pushed against the railing. The alarm was sounded and Officer Green intervened to help the claimant restrain Prisoner A. Other officers arrived to assist and the claimant left the melee and walked away. Prisoner A then appeared to calm down but became agitated again when he saw the claimant along the landing. He was further restrained and removed.

259. There was clear evidence that there had been issues before between the claimant and Prisoner A. Prisoner A accused the claimant of being racist against white prisoners and alleged that he was always on his case. The claimant had made a number of reports about Prisoner A.

260. On 10 November 2020 the claimant completed his Annex A about the incident. He reported that the incident had begun because Prisoner A was wandering on the landing and called him a "fucking racist". He reported that he challenged the Prisoner and told him to get into his cell to speak to the listener. He reported that Prisoner A became aggressive and that Officer Green noticed that Prisoner A was being abusive to him. He reported that Officer Green had challenged Prisoner A and told him not to shout and to listen to the officer. He reported that Prisoner A then began arguing with Officer Green at which point the claimant reported that the claimant issued him a direct order to go inside his cell and for the listener to come out. He reported that Prisoner A refused the order and hit him on his left side. He said that after being assaulted by him he sued restrain techniques, Officer Green pressed the general alarm and helped him to restrain Prisoner A. He said that during that, Prisoner A pinned him on to the metal grill and deliberately squashed him with the intention of hurting him severely. More staff came but he said he had already sustained a rib injury, feeling a sharp pain in his ribs and struggling to breathe. He reported that he was told by officers who arrived to leave as Prisoner A was still coming for him. He then left and later went to A and E.

The Annex As

261. On 11 November 2020, Officer Manning completed his Annex A. He was one of the officers who had help restrain Prisoner A after the alarm was sounded. He said in his Annex A that while restrained Prisoner A had shouted threats at the claimant including threatening to "fucking kill [him]".

262. On 11 November 2020 SO Maudsley completed his Annex A. He responded to the alarm. He reported that Prisoner A was being aggressive and shouting verbal threats while being restrained He also confirmed there had been quite a lot of tension on A Wing in the morning because a couple of prisoners were annoyed with one of his members of staff. He did not specify whether that member of staff was the claimant.

263. The claimant was signed off as unfit for work from 12 November 2020 until 26 November 2020. The reason given on his fit note was "rib injury".

264. On 13 November 2020 Officers Green, Rothwell and Seminerio completed their Annex A forms. Officers Rothwell and Seminerio helped restrain Prisoner A after the alarm was sounded. The claimant alleged that there had been collusion between those 3 officers in preparing their Annex As. The fact they were completed on the same day is insufficient to form the basis for such a serious accusation. The claimant pointed to what he said were similarities in the Annex As. We find that simply reflects the fact that the Annex As reflected the officers' genuine recollection of events and those recollections corroborated each other. We prefer their evidence that they completed their Annex As independently. We find no evidence to support the allegation they colluded in completing their Annex As.

265. Officer Seminerio in her Annex A confirmed that she had authorised Prisoner A to have a listener so long as he would not go "jibbing about the landing" and stay in his cell. She also reported that Prisoner A had later complained to her that that the claimant was always singling him out and was walking up and down the landing "eyeballing him". She reported that she had told the prisoner not to rise to it. She reported that when they were restraining Prisoner A after he had said "get the claimant off my head and I'll clam down" so Officer Rothwell had told the claimant to leave it to the other officers which he did. She reported that matters escalated again when the claimant returned and that Prisoner A had called the claimant a racist.

266. Officer Rothwell in their Annex A also reported Prisoner A saying he would calm down if the claimant was removed from the situation so Officer Rothwell took over from him. Officer Rothwell confirmed the escalation after that because of something happening behind him. The also reported that the claimant had said that Prisoner A did not need a listener because he was getting help to complete a DIRF against the claimant. Officer Rothwell confirmed he would lock Prisoner A back in his cell when he had finished with the listener.

267. Officer Green's Annex A was more extensive because he had witnessed the build up to the assault and not just responded to the alarm. In summary, he reported that he did not hear the beginning of the argument but that he heard the claimant demand that Prisoner A return to his cell which In Officer Green's opinion escalated an already fractious situation between them. He reported he could not see a forthcoming attempt by the claimant to de-escalate the situation so he intervened to try and de-escalate matters, asking Prisoner A to return to his cell in lower voice so they could talk. AT that point, he reported, Prisoner A twice called the claimant a racist. Officer Green reported that he did not witness any racism from either of them. He said the body language was not improving and the claimant used an open palmed gesture to usher Prisoner A back into his cell. He reported that Prisoner A took exception to that and flicked the claimant's hand away, resulting in them grappling. At that point he reported he intervened with other officers joining later to assist.

268. We find that the Annex As represented the genuine recollection of events of each officer. They set out relevant context for what happened because Annex A requires an explanation of what led to the incident. We find that is why Officer Seminerio reported the complaints that Prisoner A made to her about feeling he was being singled out by claimant. We do not accept that was done in some way to

protect or support Prisoner A. We find the same is true of Officer Green's opinion that the claimant took no steps to de-escalate the situation. He was providing his honest opinion of what he witnessed given his experience as a Prison Officer. The reports in their Annex A that Prisoner A became initially compliant when the claimant left the situation but then matters escalated when he saw the claimant again reflect what we saw on the CCTV. We do not find there were any "false allegations" as alleged.

The Management Enquiry

269. On 17 November 2020 Governor Johnson commissioned CM Horner and SO Hesketh to carry out a Management Enquiry ("the ME"). The Terms of Reference set out the scope of the ME and the steps they were to take to do so. These were:

- Viewing the CCTV available to you
- Speaking with Security and CCU for any relevant intelligence
- Reviewing any relevant paperwork
- Speaking with the prisoner involved
- Speaking with Officer Green as a witness
- Speaking with the claimant - however please be sensitive to the fact that he is not fit for work at present

270. We find that CM Horner and SO Hesketh obtained the evidence indicated in the terms of reference and spoke to the claimant, Officer Green, SO Maudsley and Officer Rothwell. They also spoke to Prisoner A. Officer Green confirmed his opinion that the claimant had made no attempt to de-escalate the situation and confirmed he had seen no punches thrown.

271. After interviewing the claimant they spoke to Officer Seminerio and SO Derbyshire because the claimant had mentioned them in connection with the incident. Officer Seminerio was interviewed because the claimant alleged in his interview that during the restraint he felt Officer Seminerio was overly polite towards Prisoner A saying "please give me your head". The claimant had alleged that she did this on purpose because he had raised the Seminerio Grievance against her. He also alleged that The day before the assault he and SO Derbyshire had been standing on the landing while whilst Officer Seminerio and Officer Rothwell were speaking to Prisoner A. He alleged that during the conversation Prisoner A had pointed at him in an aggressive manner and he could hear calling him a fucking racist. Officer Mehmood stated that he asked SO Derbyshire what she was going to do about this and she said "nothing, just leave them to it".

272. When interviewed by CM Horner and SO Hesketh about these allegations, we find Officer Seminerio denied that she had been polite to Prisoner A during restraint but said she had been professional and tried to get Prisoner A to calm down. She acknowledged that she had been speaking to Prisoner A on Monday and that he had

pointed at the claimant and voiced frustrations about him but denied he had called the claimant a racist or acted inappropriately or aggressively. She had been managing the situation to stop it escalating. That was also SO Debyshire's view of what happened. There was no need for her to intervene in a conversation between staff and a prisoner which the officers were managing perfectly well themselves. SO Derbyshire also denied an allegation she had delayed submitting paperwork to review Prisoner A's status

273. CM Horner and SO Hesketh completed the ME report on 2 December 2020 (pp.1245-1260). In summary, they concluded that it was clear that the claimant and Prisoner A had their differences and that it was inevitable that it would come to a head at some point. Neither party did all that they could to avoid a physical confrontation. There was evidence in the form of IR's to support Prisoner A's claim that he was victimised by the claimant but there was also counteracting IR's suggesting that Prisoner A's behaviour was not what was expected of a prisoner on his status and that he should have been challenged by staff. They concluded that there was no evidence to support the claimant's claim he was hit by Prisoner A as alleged and that any injury was a result of the melee and not inflicted on purpose. It noted Officer Green's view that the claimant had not attempted to de-escalate the situation and that in his opinion he was looking for a reaction from Prisoner A. They concluded that had the claimant gone away from the area Prisoner A would not have had to be restrained because it was clear his problem was with the claimant. They also concluded that Officer Seminerio had not been "too polite" and that they did not believe there was any validity to the allegation that staff would not assist the claimant if he was assaulted (pointing out the response to the assault itself indicated that). They concluded that there were "deeper issues than this incident that require further investigation".

274. We find the ME report set out balanced conclusions based on a thorough consideration of the evidence including the CCTV. The claimant alleged in subsequent grievances that CM Horner and SO Hesketh had concealed relevant evidence, specifically the Annex A from Officer Manning. We do find that that Annex A is not referred to in the ME Report. We do not accept the claimant's allegation that it was "concealed" in some way to skew the report. We accept the evidence of CM Horner and SO Hesketh that they worked on the evidence they were provided by the Security and CCU offices. We do not find any evidence that they knowingly omitted or concealed Officer Manning's Annex A.

275. The claimant suggested that the biased ME report and what he regarded as false allegations made in Officer Green, Rothwell and Seminerio's Annex A were because those officers wanted to protect Prisoner A because he was white and the claimant was not. We found no evidence to support that allegation.

276. On 3 December 2020 Governor Johnson completed the "commission manager" part of the ME report. She accepted CM Horner and SO Hesketh's conclusions and recommended that when the claimant was fully recovered and returned to work that he meet with this Wing Manager to discuss what issues he is facing on A Wing and whether a move is appropriate.

277. On 4 December 2020, Deputy Governor Horridge signed off Part Four of the ME Report. He did raise concerns that the CCTV did not match the claimant's version of events but accepted the conclusion that it was a fair assumption that the traumatic elements of the incidents could have changed his recollection of the incident. Taking everything into context he agreed that there were no recommendations that required further examination.

Provision of the ME Report to the claimant

278. The claimant approached CM Horner on 25 January 2021 about the report because he had not seen it. CM Horner told him he would check with Governor Johnson as the Commissioning Manager to see if there was any issue with the claimant being supplied with a copy. He checked by email on the same day. Governor Johnson in turn checked the position with Usha Mistry, the HR Caseworker. By this time the claimant was due to be investigated because of further information provided by GMP (to the effect that he had not in fact sustained an injury). Governor Johnson then spoke to CM Horner who confirmed that he was happy to communicate the outcome of the managerial enquiry to claimant once he had been told of the investigation into him.

279. CM Horner then wrote to the claimant on 2 February 2021 to arrange to meet with the claimant to discuss the ME Report. That meeting did not take place until 12 February 2021 because the claimant was off sick until then. At the meeting the claimant was handed a paper copy of the ME report. He subsequently asked for an electronic copy which he was sent on 15 February 2021 (the date of that request).

D29: Governor Roberts refused to adjourn a prisoner's adjudication ("the Prisoners Adjudication") relating to the 10/11/20 incident, pending the claimant's appeal response from Greater Manchester Police.

D30: Governor Roberts said he was going to dismiss the Prisoner's Adjudication. (The claimant stated in his original List of Issues that this was because the segregation staff had put the wrong charge on a DIS1. The claimant no longer appears to believe this was the reason, and/or a genuine error)

D33: The Prisoner's Adjudication was dismissed Governor Roberts.

D34: The Prisoner's Adjudication dismissed in claimant's absence Governor Roberts. The claimant had been invited to attend but declined to do so as he wanted the Prisoner's Adjudication to be delayed until after he received his appeal response from Greater Manchester Police.

280. An adjudication is a hearing to investigate an offence against prison disciplinary rules. We accept Governor Roberts's evidence that when a prisoner breaches prison rules for whatever reason, such as an assault on a member of staff, they can be charged with an offence. The charge can be considered internally before an internal adjudication hearing and depending on the severity of the incident, the matter can be referred to GMP for further investigation. The charge must be laid

within 72 hours of the discovery of the offence. An adjudicating Governor considers the charge, the plea entered by the prisoner and any evidence to make a finding.

281. In this case the adjudication was in relation to the alleged assault by Prisoner A on 10 November 2020. The claimant had placed the prisoner on report alleging he had committed a racially aggravated assault against him, calling him a racist, throwing a "side punch" which hit him on the left side and then further assaulting him during restraint by pinning him on the landing grill. Prisoner A pleaded not guilty to the charge.

282. If the adjudication is heard internally then generally the prisoner involved attends the hearing as does the prison officer making the allegation of wrongdoing. The first hearing had taken place before Governor Roberts on 11 November 2020 (not 11 January 2021 as Governor Roberts's statement says). The matter was adjourned and referred to GMP but after completing their enquiries GMP referred it back to HMP Manchester to be dealt with internally. A second hearing took place on 14 January 2021. It was adjourned to enable the prisoner to get legal advice and to enable the claimant to attend.

283. The third hearing on 19 January 2021 was adjourned by Governor Robinson because Prisoner A had not had a chance to take legal advice and because the claimant was unable to attend to give evidence because he was on restricted duties. Governor Robinson also noted that Governor Roberts was progressing the adjudication.

284. Governor Roberts spoke to the claimant on 19 January 2021 to ask whether he was willing to attend the adjourned adjudication. The claimant said he wanted the matter re-referring to the GMP before it was considered by an adjudicating Governor. The claimant said he had further evidence that his ribs were broken. He indicated to Governor Roberts that he had already contacted GMP (PC Andrew Birkett) about that further evidence.

285. The claimant alleged that during that conversation Governor Roberts said that the segregation unit had brought the wrong charge against Prisoner A and he was going to dismiss or throw the adjudication out because the charge could not be proved. We do not accept that Governor Roberts said he was going to dismiss the adjudication. We find that Governor Roberts tried explain to the claimant during their conversation on 19 January 2021 that it would be difficult to uphold the charge of racially aggravated assault, particularly if the claimant did not attend. We find that he tried to explain that what the segregation unit should have done was to add a second charge of (non-racially aggravated) assault. We find he explained it was more difficult to prove the racially aggravated charge and the absence of a charge of assault as a fall back meant the charge was less likely to succeed.

286. We find that as a result of what the claimant told him about rereferring the matter to GMP, Governor Roberts emailed PC Birkett on 19 January 2021 to ask him to advise on the status of the claimant's request. He asked whether GMP were dealing with the matter. PC Birkett responded the same day to confirm that the claimant's complaint of assault had been looked at thoroughly and a criminal

investigation would not be taking place. He confirmed the case would not be reopened even if the claimant could provide evidence of significant injury. He also confirmed that the claimant's complaint about the handling of his case by GMP had also been dealt with and the case would not be reopened. GMP's conclusion having reviewed the evidence was that the incident was best dealt with internally by the prison.

287. By way of context, prior to that on 23 December 2020 PC Birkett confirmed in an email to Terry Mooney that GMP would not be taking action against the prisoner. GMP concluded that the claimant had not suffered any injury and had inflamed the situation. PC Birkett confirmed that it would only be a possible common assault and he had spoken to DI Moss who had confirmed it was not proportionate for GMP to pursue it. Instead, it was referred back to HMP Manchester for the adjudicating governor to deal with. Officer Mooney forwarded that confirmation to Governor Johnson and CM Horner.

288. PC Birkett had also spoken to the clamant on 23 December 2020 to confirm the case was being closed. At the claimant's request he sent him an email setting out the reasons for the decision. He also refuted the claimant's suggestion that the decision to close the case had been made because of "bogus witnesses who came forward and were not present the time of the incident". Governor Johnson reported GMP's position to Deputy Governor Horridge and Governor Knight on 24 December 2020.

289. Given GMPs (re)confirmation on 19 January 2021 that they were not going to pursue criminal proceedings, Governor Roberts asked Officer Rothwell to confirm when the adjudication had been re-booked now that GMP had confirmed they were not proceeding. He also asked him to ensure the claimant knew the date so he could attend.

290. Officer Rothwell emailed the claimant on 27 January 2021 to ask him to confirm that he could attend the rebooked adjudication on Friday 29 January 2021. The claimant responded by email to say that "I have requested already this adjudication should have gone to GMP. I don't want this to deal inside the prison. My ribs are not healed yet and GMP has decided, that it is common assault."

291. Governor Roberts emailed Governor Knight and Deputy Governor Horridge for advice later on 27 January 2021. He pointed out to them that what the claimant said contradicted what PC Birkett had told Governor Roberts by email on 19 January 2021. He said that he had all the information and evidence to complete the adjudication and that ideally it should "not go on any longer and jeopardise natural justice".

292. Governor Knight and Deputy Governor Horridge agreed the adjudication should proceed given GMP's clear position. Deputy Governor Horridge advised that the claimant could not dictate that the adjudication be suspended whilst he sought more police input and that the claimant "ran the risk of the adjudication breaching natural Justice if he delays it any further." He recommended that they proceed with

the adjudication, documenting the claimant's reasons for not attending if he decided not to do so.

293. On the following morning Governor Roberts emailed the claimant to confirm that the adjudication would be taking place on Friday morning 29 January. He told the claimant in his email that they had clear notice from GMP that they were not re-opening the case and that any further adjournment would require the adjudication to be dismissed due to timescales and natural justice. He also pointed out that if the claimant did not attend the adjudication would more than likely be dismissed because the prisoner had pleaded not guilty in the first hearing. He asked the claimant to confirm before 9 a.m. whether he would be attending.

294. The claimant said that he had appealed against GMP's decision to refer the case back for in-prison adjudication. We find that referred to his complaint. He said GMP had 28 days to reply to his complaint and his concern was that once the matter had been dealt with in the prison by way of adjudication GMP would have a reason for not pursuing the case. Governor Roberts responded to say that he had clear notice from GMP they would not be re-opening the case (which we find he had) and that the adjudication would be heard on the 29 January. The claimant responded, thanking Governor Roberts but saying he knew he was "In a difficult position here".

295. The claimant was in work on 29 January 201. He did not attend the adjudication hearing. Prisoner A denied the allegation. Governor Roberts viewed the CCTV footage and considered the evidence in the annex A from Officer Green. Taking into account that evidence and in the absence of evidence from the claimant as the reporting officer he decided it was unclear whether there had been an assault and, if there had been, whether it was racially aggravated. He therefore decided to dismiss the adjudication.

D31: The claimant says that Governor Barber refused to allow him to raise new grounds for a grievance at the appeal stage (grievance 10). The claimant says the new grounds should have been allowed as they arose from what was said in the grievance outcome.

D32: Governor Barber referred to the outcome of other grievances in dealing with the claimant's grievance (grievance 10). This was a counter grievance by Officer Seminerio, and the claimant's grievance 11).

D36: The claimant was refused permission by Governor Barber to have a copy of the audio recording of a grievance meeting on 27/1/21 (grievance 10).

296. These allegations relate to the claimant's appeal against the outcome of the Seminerio Grievance. In her Grievance Outcome dated 12 October 2020 CM Barrett had not upheld the claimant's grievance.

297. In her conclusion she said she found no evidence or witnesses to support the claimant's version of events on 29 August 2020. Instead, the witnesses' identified all confirmed that the claimant had raised his voice and sworn. She also found that the claimant knowingly tried to further antagonize the already volatile atmosphere by re-

entering the office when he knew Officer Seminerio was upset. She said she would be referring these matters to her Governor for further considerations. She found no evidence to support the allegations made by the claimant during the meeting. She noted that during the grievance process, both the claimant and Officer Seminerio had agreed to workplace mediation and therefore, she would make appropriate arrangements for that to commence.

298. The claimant appealed against that decision on 19 October 2020. He said that CM Barrett's conclusion about events on 29 August 2020 were "pre planned with bogus witnesses", with CM Barrett penalising him for putting in the Barrett Grievance against her. He referred to the outcome as "well worded lies", said CM Barrett was not being honest or impartial and said she "was being a compulsive liar". He said she had not answered his questions about whether Officer Seminerio had authority over him. He included details of allegations of his treatment by Officer Seminerio about events on 18 August and 28 August 2020 not included in his original grievance as "background". He said CM Barrett should have recused herself. He said that the grievance brought by Officer Seminerio against him was submitted as a distraction from his grievance.

299. Governor Barber heard the appeal on 27 January 2021. He had emailed the claimant on 21 January 2021 to confirm arrangements. That included confirming that he had agreed to hear the grievance brought against the claimant by Officer Seminerio at the same time because it was directly linked to the allegations in the Seminerio Grievance. Neither the claimant nor his trade union representative raised any objection to that at the time nor at the hearing on 27 January 2021.

300. The meeting was recorded and a transcript produced which was in the Bundle at pp.1395-1444. The claimant was accompanied by his union representative, Mr Cross. The claimant in cross examination evidence suggested that the transcript might not be accurate but was unable to explain why that would be the case or in what way it was inaccurate. He alleged that Governor Barber had shouted during the meeting but was unable to identify where in the transcript that happened or to explain why Mr Cross did not raise any concerns about how the meeting was being conducted. We find the transcript reliable and base our findings on it and Governor Barber's evidence. We found it more reliable than the claimant's evidence about what happened at the meeting.

301. We find that Governor Barber did make it clear at the start of the meeting that he was going to be strict in dealing only with matters relating to an appeal against the things included in the claimant's original grievance, i.e. the incident on 29 August 2020. He was careful to acknowledge that the other matters raised in the appeal document were important but that he would not be dealing with them in the context of the appeal.

302. He also made it clear that he would be dealing with Officer Seminerio's grievance against the claimant at the same time. We find he took the view that it was sensible to deal with both at the same time given they related to the same incident. We find he did refer to the fact that the claimant had submitted the Barrett Grievance. That was because the claimant and his representative raised it in support

of the claimant's argument that CM Barrett should have recused herself from deciding the Seminerio Grievance. It is not accurate to say that he referred to the outcome of other grievances because there had not been an outcome in the grievance brought by officer Seminerio against the claimant or the Barrett Grievance. CM Morgan was hearing the Barrett Grievance that same day.

303. Governor Barber issued the appeal outcome on 19 February 2021. He did not uphold the appeal. He noted that the claimant and Officer Seminerio had agreed to mediation at the stage 1 grievance point and confirmed he would ask their line manager to arrange mediation as soon as possible. He made the same recommendation in his grievance outcome dated 9 February 2021 for Officer Seminerio's grievance against the claimant.

304. The respondent accepts that Governor Barber refused to provide the claimant with a copy of the audio recording. The claimant had been provided with the transcript of the recording. That is what prompted him to ask for the audio recording (his email of 12 February 2021). Governor Barber asked HR (Paul Nicholson) for advice on the request. Mr Nicholson's advice was that the claimant had no right to any recording, which is there to assist the notetaker. Mr Nicholson did suggest this was "another way to be awkward". There is no allegation of discrimination against Mr Nicholson in the advice he gave. Governor Barber confirmed that his thoughts were the same as Mr Nicholson.

305. Governor Barber responded to the claimant's request by email on 17 February 2021. He confirmed the audio recording would not be shared, repeating the reasons given by Mr Nicholson.

D35: The outcome of claimant's grievance against CM Barrett (grievance 11) was a recommendation of mediation with Officer Seminerio. This was CM Morgan.

D38: The claimant appealed against the outcome of his grievance against CM Barrett (grievance 11). There was an appeal hearing on 30/3/2021 and the claimant did not get an outcome to that appeal hearing in writing at that time. (This was a CM Donnelly).

306. In the Barratt Grievance, the claimant alleged that CM Barrett had micromanaged him, put Officer Seminerio in charge of him and then refused to move him so he would have to report to Officer Seminerio. He claimed that CM Barrett was biased. He raised that grievance on 8 October 2020. It was dealt with by CM Morgan at a grievance hearing on 27 January 2021 (the same day as Governor Barber was hearing the appeal against the Seminerio Grievance. CM Morgan did not uphold the Barrett Grievance. There is no allegation of discrimination about that decision in the Annex.

307. In his grievance outcome, CM Morgan said he found no evidence to suggest that inappropriate behaviour towards the claimant had taken place. However, he said he was mindful that the claimant had raised concerns about working with Officer Seminerio and remain in the same team. He therefore recommended a form of mediation to take place to ensure future working relationship can remain going

forward. He said he would ask the claimant's new manager take that forward. That referred to the fact that from January 2021 the claimant, having returned from sick leave, was on restricted duties in the Training Unit and was reporting to CM Simon Eve ("CM Eve").

308. The claimant appealed against CM Morgan's decision on 16 February 2021. It was allocated to Governor Donnelly to deal with. There was a grievance appeal hearing on 30 March 2021. The appeal outcome was dated 16 April 2021. Governor Donnelly emailed the claimant on 6 April 2021 to confirm there would be a delay in completing the appeal process because he had a COVID related absence so would not be able to meet CM Morgan. The grievance appeal outcome was emailed by Governor Donnelly to the claimant on 20 April 2021 at 15:56. Mr Donnelly also sent the claimant the notes of the appeal meeting at the claimant's request on 20 April 2021. The claimant acknowledged receipt of the notes the same day saying "this will help me in the near future".

309. Governor Donnelly rejected the appeal, finding that CM Morgan had carried out a full and in-depth investigation into the claimant's grievance. He concurred with the recommendation for mediation.

D37: The claimant says that at a meeting on 24 March 2021 Governor Cross brushed his grievances under the carpet (grievance 12).

310. This allegation relates to the Assault Enquiry Grievance. The claimant submitted it on 24 February 2021, having been provided with the ME Report by CM Horner in paper and then electronic form a couple of weeks earlier. The meeting on 24 March 2021 referred to is the grievance hearing. The grievance alleged that CM Horner and SO Hesketh had bullied and victimised the claimant by the way they conducted the ME Report. It also alleged that the report was biased, misleading, fabricated and prepared with malicious intent to protect Prisoner A, portray him as the victim and the claimant as the culprit. The requested outcome was for disciplinary action to be taken against them and for them to be banned from carrying out management enquiries. The claimant ticked the boxes on the grievance form to indicate that the nature of the complaint was bullying and victimisation linked to race and religion.

311. The grievance was heard by Governor Gary Cross. Governor Cross was from HMP Risley rather than HMP Manchester. He had been asked by his Deputy Governor to deal with the grievance. The claimant put to him in cross examination that paragraph 3.4 of PSO 8850 says that a grievance should not be dealt with outside establishment or area. The claimant put it to him that that this is what had happened in this case and asked why Governor Cross had not queried that. Governor Cross said that he got his direction from his Deputy Governor and therefore dealt with it in accordance with that direction. On balance, we find that Governor Knight had asked someone outside HMP Manchester to deal with the grievance so there could be no suggestion it had not been decided impartially.

312. There were detailed notes of the grievance meeting in the Bundle at pp.2695-2790. The claimant in cross examination evidence alleged he never said the things

the notes recorded him as saying. However, when asked whether the notes were wrong he said he could not remember. When the Judge asked him whether he was suggesting that the notes were made up he said "possibly". We do not find that suggestion plausible. It reflected a common approach by the claimant when confronted with documents (particularly meeting notes) which contradicted his version of events. As in this case, he started by challenging the accuracy of the notes while simultaneously saying he could not remember what was said and being unable to point to specific inaccuracies. He would then fall back on an allegation that the notes were fabricated. We find the notes do provide an accurate record of what was discussed.

313. Governor Cross gave evidence in a forthright manner and we found him a credible witness and his evidence reliable. We preferred his version of events to that of the claimant. Based on his evidence and the notes we find that Governor Cross repeatedly tried to understand the claimant's broad assertions that the report was "fabricated" because "96% of its contents" (later "98%) were against him. The claimant also suggested that the reason the report was biased was to do with things happening outside the prison but without giving any concrete details of what he meant. The underlying thrust of his argument was that he had been made to seem the culprit because those conducting the ME Report and those who gave evidence to it were working to protect Prisoner A. He also alleged that the ME Report had been supplied to GMP. Governor Cross found it had not.

314. We find that the evidence does not support the allegation that Governor Cross "brushed the claimant's grievance under the carpet". We find the claimant failed to provide evidence to substantiate his allegation of bias, misconduct and fabrication and the allegation that the ME Report itself was an act of bullying and victimisation due to race or religion. The closest he got to doing so was suggesting that matters were taken into account which should not have (such as an IR on 15 August) and that matters which should have been taken into account had not (for example, the 11 IRs that had been submitted by the claimant). We accept Governor Cross's evidence that he took the view that it was not his role to investigate those matters. For that reason he did not look at the CCTV of the incident nor did he look at the Annex As.

315. We find he decided on that approach for 2 reasons. The first was that the grievance he was investigating was an allegation that the management enquiry was carried out in a biased way or in a way that amounted to bullying and victimisation. He saw it as his role to review what CM Horner and SO Hesketh had done in carrying out eh Management Enquiry, rather than re-running the enquiry into the incident on 10 November 2020. The second reason was that he was aware by the time of the meeting that Governor Mielcarek had been commissioned to carry out an investigation into the incident on the 10 August 2020 following GMP's findings that it was not clear there had been an assault, that it was the claimant's actions which had led to Prisoner A becoming agitated and that there was no evidence that the claimant had suffered an injury as he alleged. He was concerned to ensure that he did not overlap with the scope of that ongoing investigation.

316. Governor Cross denied that he had no interest in investigating the grievance because of the claimant's race and religion and we accept his evidence on that point.

317. Governor Cross did not uphold the Assault Enquiry grievance. In his outcome dated 5 April 2021 he concluded that having read the ME report, he was satisfied that CM Horner and SO Hesketh had interviewed all relevant people and retrieved information from all appropriate departments including the additional staff that the claimant mentioned in their interview with him. He found no examples of the enquiry being done with bias and done with malicious motive and could find no bullying and victimisation due to the claimant's race or religion.

318. The claimant appealed against that decision. That appeal was dismissed by Mr Coghlan on 27 May 2021 following an appeal hearing on 14 May 2021. He endorsed Governor Cross' approach to dealing with the grievance.

D39: The claimant complained about the 3 'Annex As' on 2/4/21 and nothing was done. The claimant complained to Governor Johnson.

D41: Grievance number 14 was blocked and rejected by Governor Johnson.

D42: The claimant alleges he was not given a valid reason for rejecting grievance 15. The claimant alleges this was Governor Roberts.

D43: The claimant alleges his appeal against grievance 15 was 'brushed under the carpet' by Deputy Governor Horridge.

319. These allegations relate to the Annex As completed by Officers Green, Seminerio and Rothwell in relation to the incidents on the 10 November 2020. The claimant had obtained those Annex As on or around the 26 March 2021.

320. On 1 April 2021 the claimant sent a document to Cath Morgan at the prison's CTU/CPU Security Department. In that document (pp.1702-1706) he went through each Annex A in detail explaining why he disagreed with the content. He said that he had to submit a CPIR (Intelligence Report) after seeing the "false information" added to the Annex A to benefit Prisoner A. The document ended with a request that all 3 officers who had "submitted false information and made false allegations against me" should be investigated. His covering email asked that the document be linked to the CPIR he had submitted at the start of that week. There is no evidence that the claimant copied his email to Governor Johnson.

321. On 21 May 2021 (in answer to the claimant's chasing email), Cath Morgan confirmed that no further action was taken in relation to the document. The reason she gave was that CCU had been advised that the matters raised in the CPIR had already been dealt with by a grievance (a reference we find to the Assault Enquiry grievance), a disciplinary investigation (a reference we find to the investigation carried out by Governor Mielcarek whose report was dated 23 April 2021) and a GMP investigation. Governor Johnson was not copied into that exchange and there was no evidence that she played a part in that decision.

322. The claimant's response to Ms Morgan (who had concluded her email by saying she was "always here for a brew and support if needed") was to thank her for her quick reply because "it is just in time for me to complaint as this matter has never been investigated by anyone".

323. On 21 May 2021 the claimant submitted the Annex A Grievance. He repeated the allegations made in the document he submitted to Ms Morgan.

324. It is accepted that Governor Johnson rejected that grievance. We find she did so after taking advice from HR. We accept that her reasons for rejecting it were those set out in her email of 24 May 2021 to the claimant. They were that the incident on A wing and the claimant's complaint regarding the contents of the Annex A's had already been explored within CM Horner and SO Hesketh's enquiry; the Assault Enquiry Grievance; the GMP Investigation; and Governor Mielcarek's Investigation.

325. Governor Johnson said the claimant had had an opportunity to challenge the Contents of the Annex As. The claimant challenged that by pointing out that he had not seen the contents of the Annex As until 26 March 2021. Governor Johnson considered that point but decided that even if the claimant had not seen the contents of the Annex As he had had an opportunity to challenge their substance because that was reported in the ME Report. She noted that he had in fact challenged the 3 officers' evidence in substance even if he had not had the Annex As to do so.

326. We accept the claimant is correct that he did not have copies of the Annex As until 26 March 2021 so had not had a chance to challenge their wording in detail until after that date. However, Governor Johnson is correct that the evidence about the incident had been considered by the ME Report and in detail as part of the Mielcarek Investigation. The transcript of the interview between Governor Mielcarek and the claimant on 17 February 2021 records discussion of the evidence in relation to the incident including the CCTV. The Annex As were also discussed at the meeting. As a result, Governor Mielcarek concluded that Prisoner A had initially assaulted the claimant by pushing his hand away, that the claimant was not the aggressor but that the injury to the claimant had occurred as part of the control and restraint incident not by reason of an assault. He also concluded that the claimant had not bullied Prisoner A and that GMP had been correct to refer the matter back to be dealt with by the prison.

327. We accept Governor Johnson' evidence that her decision to reject the claimant's grievance was based on the circumstances of his case rather than on his race or religion.

328. The claimant relied on 3 actual comparators namely Officers Seminerio, SO Unsworth and CM Butler. We find that grievances submitted by them had been accepted (as had a significant number of grievances by the claimant). There was, however, no evidence that they had submitted grievances in the same circumstances as the claimant, i.e. where the grievance was about an incident which had already been subject to scrutiny through a number of other internal and external processes.

329. On 10 June 2021 the claimant submitted the Johnson Annex A Grievance. He said that the Annex A grievance was wrongly rejected because he had not had an opportunity to challenge the Annex As during the processes she had referred to in her email of 24 May 2021 because he did not have the Annex A s until 26 March 2021. He said he thought Governor Johnson acted unprofessionally and should be investigated for "covering the officer's misconduct". He did not tick any of the boxes on the grievance form to suggest the decision was related to race or religion.

330. The grievance was allocated to Governor Roberts who held a grievance meeting on 30 June 2021. His grievance outcome was dated 4 August 2021. He did not uphold the appeal. He gave reasons for his decision. His view was that para 1.3 of PSO5880 applied because the Mielcarek Investigation terms of reference looked at all aspects of the 10 November 2020 incident and the conduct of the staff involved. He also decided that there was no evidence to support the claimant's allegation that Governor Johnson had acted as she did to cover up officers' wrongdoing.

331. The claimant lodged an appeal against Governor Robert's decision on 5 August 2021. He said that Para 1.3 did not apply because the Mielcarek Investigation had not considered the Annex As about which he was raising a grievance. The appeal was dealt with by Deputy Governor Horridge. He held a grievance appeal hearing on 26 September 2021 which was recorded. The transcript was in the Bundle (p.1882-1912). We find he took time to try and understand the basis for the claimant's allegation that the Annex As included false allegations. He made the point that the Annex A were one person's perception. The claimant explained that he felt that the Annex A's included allegations against him. We find that is a reference in particular to the report in the Annex A of the complaints by Prisoner A that the claimant had ben eyeballing him and singling him out. Deputy Governor Horridge asked the claimant what would happen if he allowed the appeal and commissioned an investigation into the 3 Officers and that investigation found there was no case to answer. The claimant made it clear that if that was the outcome he would not accept it and would take it further. In other words, we find, the claimant made it clear that unless his allegations were upheld he would not accept the outcome of the process. We find the claimant's representative, Mr Cross, accepted that the interpretation of 1.3 was a "grey area" but made the point that the claimant had not had the Annex As before 26 March 2021 and that he had therefore not had the chance to raise their contents in any of the previous processes referred to by Govern Johnson. Mr Cross confirmed that there was no allegation of discrimination against Governor Johnson in relation to the refusal. The claimant did say that Prisoner A had been racially abusive towards him but said he had received no support in relation to that.

332. Deputy Governor Horridge did not allow the appeal. In his appeal outcome dated 14 September 2021 he decided that Governor Johnson's decision to reject the Annex A Grievance was a legitimate management decision based on her opinion that the subject matter had been dealt with already. He also decided that no purpose would be serve in allowing a formal challenge to Annex As which were an individual's perception of events. He also considered the claimant's suggestion that

no action had been taken against Prisoner A. He noted that a charge had been laid and the reason why the charge had been dismissed.

D40: CM Barry (CM Berry) invaded the claimant's personal space and told the claimant to listen to SO Jones.

V8: At/around 17:25 the claimant phoned CM Barry. (should be Berry) CM Barry then questioned why the claimant has not followed instructions given to the claimant i.e. to go on the wing and help prisoners with mealtime at 4pm. The claimant informed CM Barry that the claimant has completed that task and following last instructions given by wing SO.

D48: The claimant says he was never given an outcome to grievance number 13 by CM Westaway

D49: The claimant submitted a complaint on 23/11/2021 about the incident on 20/9/21 where the claimant was micro-managed and harassed by CM Barry, but no answer was given (CM Eve).

333. These allegations relate to an incident at the prison gate conservatory area (***D40***), the Gate Grievance which the claimant raised about it and the allegation of victimisation by CM Berry because of it (***D48, V8 and D49***), so we find it convenient to deal with our findings about them together.

The gate incident

334. The “gate” incident happened on 17 May 2021. At that point the claimant was on restricted duties after returning to work following the injury suffered during the 10 November 2020 incident involving Prisoner A. He was working on the Training Unit which we find was separate from the main prison wings.

335. There was CCTV (but no audio) of the incident. We found CM Berry to be a credible witness and his evidence reliable. We prefer his evidence about the incident to that of the claimant’s. We found it more consistent with the CCTV footage.

336. The incident happened early in the morning when a number of officers were arriving to start shift. This was a time when COVID restrictions were in place so staff were expected to wear masks, sanitise their hands and maintain social distance. It happened in a “check in area” which is a relatively restricted space. That meant officers had to queue to get in. We find that 2 officer support grades, OSG England and OSG Saunders were in charge of marshalling the queuing system, telling officers when to step in to the check-in area to try and maintain some social distancing and handing out masks for those who did not have them.

337. We find that when CM Berry arrived he could hear raised voices in the check-in area. We find there was an altercation between the claimant and OSG England and OSG Saunders. We accept CM Berry’s evidence that the claimant appeared to him to be the aggressor and he was shouting over OSG England who was trying to calm the situation down and was asking him to leave the area. That evidence is consistent with the body language in the CCTV footage. We find that the claimant

was picking up the keys for the training area, had been asked to wait his turn but had not been willing to do so. He was then not willing to leave when instructed to do so by OSG England.

338. SO Jones had also instructed the claimant to leave. He did not do so. We find that CM Berry approached the claimant and told him that he had been instructed by a Band 4 officer to leave and that as a Band 5 officer he was instructing him to leave the area. The claimant did so. We do find that CM Berry did get close to the claimant but do not find it correct to characterise that as invading the claimant's personal space. Everyone was wearing a mask and it was a confined area so it was understandable he would step closer to be heard without his having to raise his voice. In cross examination evidence the claimant said he feared he was about to be assaulted. We do not find that consistent with the CCTV evidence we saw.

339. We accept CM Berry's evidence that there were two reasons why he took the actions that he did. The first was that the claimant was clearly the aggressor and CM Berry had a duty of care to support the OSGs involved. The second was that was that the claimant's place of work was outside the main prison building so common sense dictated that the best solution was for him to be asked to leave. When asked why he had said in his witness statement that it was the claimant who had led to the incident being "protracted", Mr Berry confirmed that it was 100% accurate to say that it was the claimant who had led to the incident being protracted. We find that consistent with the CCTV footage - the claimant could have resolved the solution by leaving immediately rather than waiting to be instructed to so by OSG England, by SO Jones and by CM Berry.

340. The claimant put it to CM Berry in cross examination that he had no thought of his duty of care to the claimant, and that that was because the other officers involved were white and therefore CM Berry was protecting them. M Berry denied that was the case. He said that the OSG (England) had clearly spoken to the claimant and that he was not following the instructions to leave, and the situation needed to end.

The Gate Grievance

341. The claimant submitted the Gate Grievance on the day of the incident. He named OSG Saunders and OSG England as the officers it was directed at. However, in the text of the grievance he also said that SO Jones and CM Berry had acted unprofessionally by "protecting the abuser". He ticked the boxes on the form to indicate that the complaint was one of race and religion related harassment, bullying and victimisation. In the text of the form he alleged that SO Jones and CM Berry had protected OSG Saunders (who he said had called him a "dickhead") because he was White British like they were.

342. The grievance was allocated to CM Westaway. He emailed CM Berry and other witnesses on 17 May 2021 to ask for information. His email to CM Berry said that he understood he had to speak to a member of staff at the gate that morning and asked him to let him know what went on because the member of staff had now put a grievance in. We find there was nothing in the email to suggest CM Berry was

the subject of the grievance and accept his evidence that he thought his involvement was as a witness only.

343. CM Westaway also emailed the claimant to invite him to provide further any information. On 21 June 2021 the claimant asked why the grievance had not been progressed. When CM Westaway said the claimant had not responded to his email invitation the claimant pointed out that this was not correct procedure and that there should be a formal invitation with a GV3 form issued. The claimant was by this point very familiar with the grievance procedure. The claimant asked Governor Turner to ask CM Westaway to issue a GV3. Governor Turner suggested to CM Westaway that he familiarise himself with the grievance process and sent him a link to relevant guidance.

344. We find that the grievance meeting took place on 23 November 2021.CM Westaway sent his grievance outcome initially by email dated 14 December 2021. He explained there had been a delay due to shift issues, sickness and leave absences. He did not uphold the grievance. The claimant requested the grievance outcome be set out on a grievance form (so he could appeal it) which CM Westaway did the next day. The claimant's appeal against his decision was carried out by Mr Donnelly. He did not uphold the appeal (appeal outcome dated 28 February 2022) but acknowledged the delay and recommended that SMT review their processes for tracking and monitoring ongoing grievance procedures.

345. There was no evidence that CM Berry was involved in the grievance process after he provided his brief, emailed witness statement to CM Westaway on 17 May 2021. His evidence, which we accept, was that he regarded himself as a witness only. We find that plausible given he was only contacted by CM Westaway once to ask for his evidence about what happened. There was no evidence that he was contacted again by CM Westaway about the outcome of the grievance which, in any event was not decided until after the incident in allegation ***V8*** which we deal with next. That is the case even if we take the date of the grievance meeting on 23 November 2021 as the date the outcome was reached.

The incident on 20 November 2021 involving the claimant and CM Berry

346. There was some confusion as to which date this incident occurred. CM Berry in his witness statement suggested the incident happened on 11 September 2021. We find that he had been told the incident had happened on 20 September but that was not a weekend, and he was convinced that the incident had happened on a weekend. We find that, as the claimant said, the incident happened on 20 November 2021. That is consistent with his email to CM Eve about the incident on 23 November 2021.

347. We find that CM Berry was the Orderly Officer ("Oscar 1") on that date. He was responsible for allocating staff and ensuring there were sufficient staff to fulfil required tasks. There was a 10-15% shortage of staff on that day so as Oscar 1 he had directed that the gate be frozen. That denies exit from the prison to officers for operational reasons. That means officers who have finished their shift are required to stay in the prison and continue to carry out additional duties allocated to them to

make up for the staff shortage. We find that the gate was regularly frozen at weekends around this time both because there was a reduction in staff numbers as a result of Covid issues and because relations between staff and prisoners were not good at that point. Unless there were sufficient staff on the residential areas to get prisoner back into their cells at roll time then matters could not be dealt with safely.

348. The claimant's version of events was that he finished his shift, was told by his SO he could leave and at 17:25 went down to the gate and saw other people leaving when he was not allowed to. That is not consistent with the claimant's own email to CM Eve on 23 November 2021 in which he confirms that the gate was frozen but makes no mention of other staff being allowed to leave. We find that the gate was frozen and that the claimant then went to the business hub in the gatehouse to check his emails.

349. We find that CM Berry rang down to the gate to ask them to send up any staff who were there to the residential area. We accept CM Berry's explanation that staff were needed to return to the residential area to help with completing the prisoner roll (i.e getting all prisoners back in their cells). If staff merely stayed in the gatehouse waiting for the roll-in to be completed then that slowed down the process of completing the roll-in.

350. In this case Mr Berry rang back down to check that his order to the gate to send all staff back to residential wings had been complied with. He was told that the claimant had instead of returning to the residential area gone upstairs in the gatehouse. We accept CM Berry's evidence that it was a regular occurrence for him to be having to look for staff on weekends, something he had reported to senior management. In essence, CM Berry's evidence (which we accept) was that sometimes staff (not just the claimant) would "use the gatehouse to hide in" when the gate was frozen rather than return to the residential wings to help.

351. CM Berry asked the claimant to contact him and the claimant telephoned him from the gatehouse. His version of that short conversation was not challenged by the claimant. We find he asked the claimant for an explanation as to why he had not returned to the wings. He stated he had already been to a wing to help provide meals and after finishing he had returned to his place of work to check his email. We find CM Berry accepted the claimant's explanation and asked that in future he should inform CM Berry of his whereabouts and to notify him when he had completed a task. We find the claimant accepted that advice and the conversation ended.

*The complaint to CM Eve about that incident (**D49**)*

352. On 23 November the claimant emailed CM Eve (Who was by then his line manager) about the conversation with CM Berry on 20 November 2020. He reported the conversation he had had with CM Berry. He acknowledged that CM Berry was a higher rank and had every right to challenge him. He said he did not understand why he was "being micro managed by centre office". He said he would get external advice and that he "just thought I would let you know what was happening behind the scenes".

353. CM Eve accepts he did not respond to that email. We find that given the email said it was information he did not see the email as a "complaint" needing a response.

D45: CM Butler on 6/11/21 at around 11:10am penalised the claimant, phoned the claimant and shouted/was aggressive towards him, about the fact that he was in the external office rather than in Health Care and falsely accused him of failing to follow instructions.

354. We found CM Butler's evidence reliable and preferred his version of events to the claimant's. We find that on 6 November 2021, CM Butler was Oscar 1. We found he had allocated the claimant to the Health Care Centre (HCC). We find that it was reported to him that the claimant was not in the HCC but was in externals rest room working on emails (which he was). We find that CM Butler contacted the claimant to find out why he was not at HCC as deployed by him at the start of the day. We find the claimant said he had been told by the SO on HCC that he could go and sort out his emails out because the claimant said his account had been deleted or tampered with. We find that CM Butler challenged him about that version of events and the claimant confirmed that that was not exactly what had happened. We find CM Butler told the claimant that there were areas of the prison which were short staffed and that if he was not needed at HCC he should have reported back to the centre office to be redeployed. We accept his evidence that he was not aggressive towards the claimant.

355. We find that CM Butler contacted SO Lloyd on HCC who did confirm that the claimant was not needed on HCC because they had sufficient staff but that she had told him to report back to the centre office to be redeployed.

356. The claimant raised a grievance against CM Butler on 7 December 2021. In it he made the allegations about CM Butler singling out BAME staff to get them into trouble which we discuss below in the section dealing with findings relevant to the burden of proof.

V3: The claimant was shouted at by SO Unsworth on the 2's landings on B-Wing for not moving dirty mop and bucket from the landings which was left by prisoners after cleaning their cells.

V4: SO Unsworth gave evil look, when the claimant was coming towards the bucket, to secure the bucket after finding the gloves.

V5: The claimant was sent to Business hub twice by SO Unsworth to deliver letter and exchange the vape and the claimant was told by SO Unsworth to count the outer side of the wing alone.

V6: The claimant was told by SO Unsworth on/around 17:25 that the claimant's shift finished at 17:30 and the claimant must stay on the wing until shift finish time. The claimant was told that he cannot leave the wing at 17:25 but 2 other female members of the staff were allowed to leave around 17:20 by SO Unsworth.

V7: The claimant was told by SO Unsworth that before leaving the wing, go and ask every staff member on the wing if they are happy with you then you can leave.

D46: The claimant submitted complaint to his line manager (CM Eve and Governor Johnson) by email – no answer was given

The incidents on 10 and 11 November 2021

357. These allegations relate to 10 and 11 November 2021. The claimant was working on B wing. SO Unsworth was the officer in charge. We preferred SO Unsworth's version of the events on these days. We found her evidence more reliable than that of the claimant.

358. We find that at the relevant time the claimant had been redeployed to B wing because of a lack of B wing staff. This was at a time where staffing levels in the prison were affected by Covid. As a Band 4 SO, we find that SO Unsworth was entitled to give instructions to the claimant, who is a Band 3 officer.

359. We find that on 10 November 2021 SO Unsworth was on "response" on the wing which meant that she had to respond to any alarms or incidents raised within the area. We find that meant that she could not in practice leave the responding area and so was confined to the wing. She had to delegate tasks involving leaving the wing to others.

360. We find that a dirty mop and bucket had been left on the number 2 landing on B wing by the prisoners responsible for cleaning the cells. We find that it was important that cleaning materials and equipment were put away safely in the cleaning cupboard. The reason for that is that cleaning chemicals can be used for illicit purposes and that cleaning equipment, e.g. mops, can potentially be fashioned into weapons. If cleaning materials and equipment are not put away and accounted for, a wing may have to be locked down until they have been accounted for.

361. We find that on the day in question SO Unsworth instructed the claimant to remove the mop and bucket from the landing and store them in the landing cleaning cupboard on landing number 3 in B wing. We find that was a legitimate instruction for her to give. We accept her evidence that she did not shout at the claimant. We find the claimant did not follow that instruction. His version of events was that he felt he needed gloves to move the mop and bucket and he had gone to find them. Whatever the reason, by the time SO Unsworth returned 10 minutes later after helping to lock in the prisoners the mop and bucket were still there. She therefore put the mop and bucket away herself.

362. The claimant alleges that SO Unsworth gave him an "evil look". We find it plausible that SO Unsworth was not happy with the claimant because he had not followed her simple instruction and she had had to deal with the mop and bucket on top of everything else she was dealing with as responding officer. We accept SO Unsworth's evidence that if she had a look on her face it was probably due to fatigue. We do find it plausible that there was also an element of frustration with the claimant

as well. We find, however, that it was not her intention to give the claimant an "evil look" and she could not control how the claimant perceived it.

363. When it comes to the allegation ***V5***, we prefer SO Unsworth's evidence which is that she only sent the claimant to the business hub once and that was to replace a prisoner's glasses which had broken and needed to be swapped. We prefer that to the claimant's allegation that he was asked to exchange a letter and a vape and was therefore sent twice to the business hub by SO Unsworth.

364. The claimant alleged that he was told by SO Unsworth to count the outer side of the wing alone. We prefer her evidence that this did not happen. We find that the process for counting prisoners would involve two members of staff checking that the prisoners had been secured in their cells. One person would count and the other person would follow them and proof check each door. We accept SO Unsworth's evidence that this means there are usually at least two members of staff on each side of the wing, giving a total of at least four members of staff involved in that process. We find it inherently implausible that SO Unsworth would have compromised safety in order to victimise the claimant by getting him to carry out the task alone.

365. The claimant also alleged that SO Unsworth victimised him on the following day. We accept her evidence that on that day there had been an incident "at height" for a period. A prisoner had accessed the netting above the landings at 15:10 and had come back down off the netting two hours later at 17:10. We accept her evidence that protocol when there are incidents such as that is to debrief staff on the wing and for staff involved in the incident or who witnessed it to complete relevant paperwork about it. We find that as the first person on the scene of the incident SO Unsworth had to attend the Command Suite, which is opened when there is a major incident and used as a command hub during that incident. We accept SO Unsworth's evidence that when she returned to the wing the claimant asked her at approximately 17:15 if he could leave as his shift when it finished at 17:30. We accept her evidence that she asked the claimant to stay for the debrief with all staff on the wing and that his response was that he would be leaving at 17:30 regardless. The debrief was not due to occur until after 17:30. We accept SO Unsworth's evidence that she asked the claimant to ensure that the other staff on the wing had the paperwork covered or needed his assistance in completing it because he was also present on the wing when the incident with the prisoner occurred. The claimant was unhappy about being instructed to ask other staff if they needed his assistance in completing the paperwork.

366. The claimant alleged that two female officers were allowed to leave around 17:20. We accept SO Unsworth's evidence that those two female members of staff had been redeployed to B wing to assist in serving food to the prisoners and to help lock up the wing. We find that after doing so those two members of staff asked if they could return to their own areas of work to help serve meals on those wings. We accept SO Unsworth's evidence that those members of staff were not required to attend the debrief because they were not present during the B Wing incident. They had been redeployed after the incident. We find that SO Unsworth did grant them

leave to return to their usual designated roles where they were then required to help feed the prisoners on their wings. We find that they were not allowed to leave in the sense of leaving the prison but were told that they could return to their own wings.

367. We do not accept the claimant's allegation that SO Unsworth told him that before leaving the wing he had to go and ask every staff member on the wing if they were "happy with [him]" then he could leave. As we have said, we find that SO Unsworth told the claimant to check with the other members of staff whether his assistance was needed to complete the paperwork regarding the incident.

368. We find that the claimant was not happy to do that and that SO Unsworth told him to leave the wing at approximately 17:25 as it was clear that he did not want to assist with the paperwork and because she felt uncomfortable with him remaining on the wing because he was being argumentative towards her. We accept her evidence that he was being argumentative towards her.

369. We find the claimant's attitude towards SO Unsworth and his unwillingness to take orders from her is reflected in the wording of his complaint to CM Eve about the incident in which he said that "due to some reason SO Unsworth is under the impression that since she got promoted to Band 4, she has got power to rule every BAME person and use them as slaves". In the Second Unsworth Grievance the claimant said that SO Unsworth was treating him like a "servant". We do find that the claimant resented being given instructions by SO Unsworth. They had fallen out in 2019, resulting in the First Unsworth Grievance. The claimant had not in that grievance alleged that her treatment of her was related to race or religion.

*The email to CM Eve (***D46***)*

370. The claimant emailed CM Eve about these incidents on 12 November 2021. In addition to setting out his version of events he made the "slave" comment referred to above and also said prisoners were alleging that SO Unsworth was forcing them to eat Pork Pies. We find CM Eve responds that morning to tell the claimant that he is on A-wing all morning if he wants to talk. We find based on CM Eve's evidence and the contemporaneous notes he took that he and the claimant met on that day and that the claimant was satisfied that CM Eve would speak to SO Unsworth and address the issues.

371. We find that CM Eve did do so and it was clear that the matter could not be resolved informally. The claimant then submitted the Second Unsworth Grievance. SO Unsworth also submitted a grievance against the claimant.

<u>D44: Because of the claimant's race CM Eve counted claimant's Covid-19 related absence towards the trigger point for absence policy.</u>

<u>And correct procedure regarding one period of sickness was not followed.</u>

372. These allegations to the period in 2021 when the claimant returned to work after being signed off due to injury following the assault on 10 November 2021. He was on restricted duties in the Training Unit from 6 January 2021 until 16 September

2021. The claimant was then on sick leave from 20 September 2021 to 5 November 2021. That latter absence was COVID related. We deal with that allegation first.

373. We find the position was that the respondent's attendance policy was triggered after an absence of 8 days in a 12 month period. We find that absence above that trigger point automatically generated an invitation to an absence management meeting. In the claimant's case, it triggered an invitation letter dated 23 November 2021 to attend a meeting on 8 December 2021. We find (despite the claimant repeatedly saying so) that the claimant was not issued with a warning about his attendance. The attendance meeting did not take place because the claimant applied for and was issued with Sick Leave Exemption.

374. The claimant's allegation was that CM Eve had, in effect, tried to get him into trouble by recording his absence as due to a respiratory condition rather than COVID. He had also, the claimant alleged, refused to disregard more than 10 days of his absence as being related to COVID self-isolation. The claimant's case was that all his absence was self-isolation, his initial period relating to his own COVID being followed by a further period when he had to isolate because his daughter tested positive for COVID.

375. We accept CM Eve's evidence that his genuine understanding of the respondent's policy (Coronavirus (COVID-19) HR Policy Guidance - HMPPS was that an absence related to self-isolation should be disregarded but that any further period of absence after that should be treated the same as any other sickness absence. We find the policy is silent on what should happen when someone is isolating due to a family-member's illness.

376. The claimant position was that it was clear to him that the rule about disregarding only the ten days of self-isolation only applied where somebody was living in a single person household. Therefore, his self-isolation due to his daughter's illness should also have been disregarded. The claimant was unable to accept that whatever his interpretation of the policy was, CM Eve might genuinely have had a different interpretation. We find that was the position. CM Eve genuinely had a different understanding of the policy.

377. When it came to the comparators named by the claimant, the claimant conceded that he did not in fact have any knowledge about whether CM Eve had dealt with the sickness absence relating to those comparators. We accept his evidence that he had not. The claimant conceded in cross examination that he did not know the specific of the comparators' circumstances, only that he had talked to them and knew that they had been off for many months.

378. The allegation that "correct sickness policy had not been followed" boiled down to 2, linked allegations. The first was that CM Eve had requested fit notes from the claimant when he was already back at work and that he should not have done that according to OH. The second was that CM Eve was trying to push the claimant towards ill-health retirement.

379. We find by way of context that CM Eve was a supportive manager to the claimant. We found his evidence reliable and preferred it to that of the claimant. The claimant pointed out that in the OH report dated 13 April 2021 the Occupational Health adviser noted that the claimant "also reports being required to supply fit notes from his GP even though he is back at work. You may wish to discuss with him the reason for this and seek advice from HR regarding the process to be followed". The claimant suggested that being required to provide fit notes despite being back at work was evidence of CM Eve treating him detrimentally. CM Eve pointed out that fit notes can be required even when somebody has returned to work where the fit note specifies that they need adjustments e.g. phased return. There was an example of such a fit note in the Bundle at page 1669. We find that the accepted that even though he was back at work there was a need to clarify his medical condition and prognosis at the meeting with CM Eve on 26 March 2021.

380. The claimant also said that CM Eve had refused to accept the advice of a spinal specialist that he was ready to return to full duties. There is reference to this discussion on 19 August 2021 and 30 August 2021 in CM Eve's notes in the Bundle. They record that at the meeting on 19 August Mr Eve did tell the claimant that he needed a fit note to confirm that he was now fully fit for duties. The claimant told Mr Eve that a specialist he had recently seen was going to send him a letter which would confirm he was fit for full duties but that he was referring him for an MRI scan. CM Eve's evidence (which we accept) was that he was concerned given that the specialist was recommending an MRI scan that there might still be some unresolved issues which meant the claimant was not fully fit for work.

381. CM Eve saw the letter from the specialist at the meeting on 30 August 2021. It is quoted in CM Eve's notes. It does say "I think there is no reason why you should not return to full duties at work" but also "we have agreed to get an up-to-date MRI scan and I am optimistic that this will show healing of the rig fracture. This could be followed up by physiotherapy to reduce any stiffness in the rib and thoracic spine region".

382. It was put to CM Eve by the claimant in cross examination that he was gathering evidence in order to make a referral to Occupational Health for ill health retirement, i.e.. that CM Eve was conspiring to get rid of the claimant on that basis. We do find that CM Eve confirm that he did raise ill health retirement with the claimant on 30 August 2021. CM Eve's evidence (which we accept and is corroborated by his note of that meeting) is that CM Eve did so in the context of explaining possible next steps. We find that CM Eve had outlined two main possible outcomes from the MRI report and subsequent review of the scan. If there was a clean bill of health then the claimant would return to work and that would be the end of the matter. The second possible outcome was that the scan showed an injury still being present. If that happened then CM Eve explained that he would refer the claimant for an Occupational Health appointment which a view to ill health retirement. The issue would be whether the claimant had a future in the Prison Service or if his restricted duties could be sustainable after a long period already having been facilitated. CM Eve's notes record the claimant fully understood the content of the conversation but was adamant that he would be getting good news and was keen to return to full duties.

383. To take that narrative to its conclusion, on 15 September 2021 CM Eve spoke to the claimant to seek written confirmation from his specialist that he was fully fit for duties. The claimant confirmed the scan had taken place on 16 August and his appointment with the specialist was on 6 September 2021. Mr Eve asked the claimant to send him a photograph of the specialist letter by email as soon as he received it. On 16 September 2021 Mr Eve received the specialist report stating that the claimant would benefit from returning to work. The claimant was due to return to full duties in operations in the week commencing 26 September 2021 but on 20 September 2021 the claimant reported sick with Covid-19 symptoms.

H1: During morning shift estimated time around 09:30 the claimant was called coconut, freshy and also was told to resign due to not having British accent by Officer Khan on G-Wing 2's landings in the presence of prisoners.

D47: The claimant complained about Officer Khan. The claimant says it is direct race discrimination that the respondent has not replied (CM Eve).

384. When it comes to this allegation, we had live evidence from the claimant who was cross examined about the incident. We did not have live evidence from Mr Khan. Although we made a case management decision allowing him to give evidence he decided not to come and give evidence. We are very conscious that ordinarily, live evidence trumps written evidence from a non-attending witness. However, we have borne in mind the guidance in **Hovis** which is that we need to make a decision on what happened rather than simply taking the claimant's version of events as read because he gave live evidence. In particular, we have to take into account our findings about the credibility of the claimant as a witness. In short, we did not find him a credible witness and found his evidence frequently unreliable. We have set out in relation to other allegations instances where his assertions were not corroborated by the facts. We found he changed his position in relation to allegations and made broad assertions of malice, lying or fabrication by other officers.

385. When it came to Mr Khan, we had written evidence in the form of his response to the accusations at the time and in response to Lisa England's investigation. Having taken that into account, we have decided that the claimant's evidence is so unreliable that we prefer Mr Khan's version of events as set out in his contemporaneous document. That does not mean that we do not have reservations about Mr Khan's credibility. There are certainly aspects of his evidence, such as his denial that he asked the claimant for a login, which do not appear to us to be consistent with the documentary evidence. In particular, the exchange of text messages between the claimant and Mr Khan supports the claimant's evidence that Mr Khan had asked the claimant for login details which the claimant had denied him.

386. With those reservations in mind, we find that the events which occurred are as follows. Mr Khan had asked the claimant for login details which the claimant had refused to provide. The claimant had also reported that incident which led to Mr Khan being spoken to about that inappropriate behaviour.

387. We find from the witness statements provided at the time by Mr Khan that he and the claimant did use the terms “coconut” and “freshie” in conversations between them, but in relation to third parties rather than each other.

388. When it comes to the incident on 16 November 2021, the claimant’s version of events was that he was confronted by Officer Khan while the claimant was working on G wing and that the reason for the confrontation was his complaint about Officer Khan insisting on giving him his login password. The claimant says that Officer Khan questioned him abruptly about why he reported him when he asked for login details. The claimant said that it was not usual practice, so he was worried that he was asking for his details. The claimant asked Officer Khan why he did not have his own login details. The claimant said that it was at that point Officer Khan told him he was a coconut (i.e. white from the inside) and a freshie (i.e. a foreigner who recently came to the UK) and that he should resign because his accent was not a British accent.

389. Mr Khan vehemently denied making those remarks. We prefer his evidence. We find that what happened on 16 December was that the claimant had provoked Mr Khan, jokingly asking whether he had his login details (knowing that he had reported him). We find that Mr Khan left rather than being involved in a confrontation. We find that the claimant had taken against Mr Khan partly because he would not support him in pursuing allegations of discrimination against colleagues.

390. We find that the claimant agreed to mediation with Mr Khan. We find it implausible that he would have agreed to mediation if Mr Khan had said the racist remarks alleged to him.

391. In those circumstances, even allowing for the fact that it is unusual to make a finding in favour of a non live witness, we do find that we prefer Mr Khan’s version of events and find these events did not happen as alleged.

392. CM Eve received an email about the incident from the claimant on 18 November 2021. He responded to say Officer Khan’s behaviour was unacceptable and that he would be in the following day. On the following day he spoke to the claimant by phone and confirmed he would forward the claimant’s statement to CM Jones who was Mr Khan’s line manager. We find he did so.

<u>Facts relevant to the burden of proof</u>

393. We have considered the evidence put forward by the claimant which he says supported the passing of the burden of proof. We find that that non-white staff and Muslim staff were in the minority at HMP Manchester.

394. We have also taken into account the allegations made by the claimant in relation to individual officers which he says supported his case that they acted as they did because of race or religion.

395. In relation to Governor Johnson, the claimant alleged that she failed to attend a diversity forum related to race. We accept Governor Johnson’s evidence that in

her role she simply did not have time to attend all such events. It seems to us that to accept this as a "fact" sufficient to pass the burden of proof either in general or in relation to the allegations against Governor Johnson would be to put too much weight on that allegation by the claimant. We find Governor Johnson's explanation for her non attendance entirely plausible. In doing so we also take into account the evidence about her behaviour towards the claimant in this case. We found that she genuinely attempted to resolve issues specifically by proactively involving colleagues from the Equalities Unit.

396. In relation to Officer Seminerio, the claimant alleged she had called a Muslim prisoner "a fucking terrorist". We accept her evidence that the prisoner in question was a convicted terrorist so the remark was factually correct. We find the context in which she made the remark was her expressing concern about other officers not taking that conviction seriously in deciding what activities the prisoner should be allowed. We do not find that this amounts to a "fact" from which we could conclude that discrimination had occurred, either on the part of Officer Seminerio when comes to the allegations against her nor more generally.

397. In relation to SO Unsworth, the claimant in his grievance against her alleged that she had made Muslim prisoners eat pork pies. We find that the claimant had submitted an intelligence report about that. We do not find that establishes a "fact" from which we could conclude that the burden of proof had passed either in relation to allegations against SO Unsworth or more generally. We say that for three reasons. The first is that we have found throughout this case that the claimant made allegations which were without foundation against colleagues, particularly those who he felt had treated him badly. The second reason is that even if the claimant was accurately recording allegations made by prisoners, that is exactly what they were. They were allegations by prisoners against a prison officer. The claimant in relation to Prisoner A complained that the prisoner's allegations against him were being taken seriously. It seems to us that is exactly what he is asking us to do in this context. The third reason is that we heard evidence about how meals were prepared and allocated to prisoners. We find it would not have been possible for SO Unsworth to "force" prisoners to eat Pork Pies because of the way meals were prepared and delivered. We do not accept that the claimant has proven this as a fact.

398. Finally, in relation to CM Butler the claimant alleged in emails in the Bundle that CM Butler was well known for targeting BAME prison officers. The only specific incident he referred to was of CM Butler referring to a prison officer as "TANK". The claimant was unable to explain in cross examination how that amounted to an act relating to the officer's ethnicity or religion. We repeat our comments above about the unreliability of the claimant's evidence and his tendency to make allegations without foundation. Even if we accept that the substance of his allegation is correct, however, we do not accept that CM Butler referring to an officer as "TANK" could amount to a fact causing us to decide that the burden of proof had passed.

399. We recognise that the facts required to pass the burden of proof is not a high threshold. However, there is a requirement to prove facts, and we find the claimant has failed to do so.

Discussion and Conclusions

400. We concluded as follows:

Protected Acts

PA1: Report of sexual assault to the Police.

401. The respondent did not suggest that PA1 was not a protected act for the purposes of s.27(2) of the Equality Act 2010. It involved an allegation of sexual harassment by a fellow employee which, if substantiated, would be a breach of s.26 of the Equality Act 2010. The respondent did not suggest that it was not a protected act because it was a false allegation made in bad faith (s.27(4)). In the absence of such a submission, we find that PA1 was a protected act.

PA2: All grievance up to grievance 7 as part of cumulative number of grievances.

402. The respondent did not suggest that PA2 was not a protected act for the purposes of s.27(2) of the Equality Act 2010. We accept that some although not all of grievances 1-7 contained allegations of discrimination and that taken together, they amounted to a protected act.

403. However, allegations V2-V7 against SO Unsworth rely only on the First Unsworth Grievance (Grievance 2) as the protected act rather than PA2 as a whole. That grievance does not make allegations that the alleged treatment was because of the claimant's race or religion and none of the boxes to indicate that are ticked on the GRV1. The box for "victimisation" is ticked but there is nothing in the content of the form which refers back to a previous protected act to suggest that term is used in the s.27 sense. We find that the First Unsworth Grievance was not, taken in isolation from the other grievances in PA2, protected act for the purposes of the Equality Act 2010.

PA3: Grievance 13.

404. Grievance 13 was the Gate Grievance. It was not disputed that it was a protected act for the purposes of s.27 of the Equality Act 2010. We find it contained an allegation of racial harassment and discrimination and was a protected act.

PA4: Claimant's ET first ET Claim.

405. It was not disputed that this was a protected act and we find it was.

PA5: All grievances up to grievance 8 (dated 10 June 2020).

406. We find in reviewing the documents in the case that this should refer to all grievances up to Grievance 9 (The Ramadan Grievance). That is the grievance filed on 10 June 2020. Grievance 8 was the Atton/Johnson Grievance. That did not make allegations of race or religion discrimination. Grievance 9 did. We will not repeat

what we have already said about PA2. We find that taken cumulatively, these grievances amounted to a protected act.

Direct Race and/or religious belief discrimination allegations

407. We set out below our conclusions on each of the claimant's allegations of direct race and/or religious belief discrimination. In summary, our conclusion is that the claimant was not treated less favourably because of race and/or religion in relation to any of the alleged acts of discrimination. As we explain below, in the case of some allegations, we found that the alleged treatment did not happen. In the case of other allegations, we have decided that although the alleged treatment did happen, it did not amount to less favourable treatment of the claimant than the actual or hypothetical comparators he identified.

408. In all the allegations we decided that there was no less favourable treatment because of the claimant's race and/or religion. In reaching that conclusion, we took into account both our findings about the specific incidents alleged and our findings about the alleged facts which the claimant put forward as passing the burden of proof. We also stepped back to view our findings in the round to ensure that our decision was based on the whole picture rather than each individual allegation taken in isolation and, potentially, out of context.

409. Our conclusion was that the claimant had not proved facts sufficient to pass the burden of proof to the respondent in relation to any of the alleged acts of discrimination. His repeated assertion that the fact he was Pakistani and Muslim was why he was treated in the way he was did not amount to sufficient "facts" to pass the burden. That amounted to a difference in treatment (in some cases) and a different in protected characteristic but no more.

410. In reaching our conclusion, we decided that the sheer number of allegations made by the claimant could not, in themselves, amount to evidence contributing to the burden of proof passing. That would, it seemed to us, amount to accepting an argument that there must be something in the claimant's allegations simply because of the number of allegations he made. That does not seem to us to be correct, especially in this case where we have found a number of those allegations are not made out on the facts.

D1: The respondent failed to respond to the claimant's grievance of 1 September 2019, against the claimant's line manager until March 2020. It was sent by email to SSCL and Deputy Governor Horridge (grievance 4).

411. This allegation was brought against Deputy Governor Horridge. Based on our findings of fact, we do not accept that Deputy Governor Horridge failed to respond to the Fahie Grievance once it was brought to his attention. There was nothing in the claimant initial email to indicate that the claimant expected him to deal with it directly. Once he did so, Deputy Governor Horridge acted promptly in asking Governor Robinson to address it by way of a "please explain".

412. We do not accept the comparators named by the claimant were in the same material circumstances. Of the 4 named comparators, only 2 submitted grievances under PSO 8550 (Officers Seminerio and SO Unsworth). Officer Davies and BB did not raise their complaints under the formal grievance process. We accept the respondent's submission that neither officers Seminerio nor Unsworth submitted their grievance to SSCL, copying the Deputy Governor as the claimant did. Instead, they raised their grievances with the relevant line manager in accordance with PSO 8550. They were also not relevant comparators because Deputy Governor Horridge did not deal with their stage one formal grievances.

413. In those circumstances, we do not find that the claimant was subjected to the alleged less favourable treatment than relevant comparators by Deputy Governor.

414. If we are wrong about that, we find that the claimant did not prove facts from which we could conclude that any difference in treatment was due to race or religion. The claimant relied on the mere assertion of a difference in treatment coupled with a difference in race and religion. That is not sufficient to pass the burden of proof.

415. This allegation fails.

D2: A Mediation did not occur as a resolution to a grievance (grievance 5) because Officer Bennison would not engage with the process.

416. We found that Officer Bennison initially agreed to mediation. The claimant initially did not. By 17 March 2020, however, Officer Bennison had to all intents and purposes decided not to engage with the process. By then, the claimant was willing to mediate. By 2 June 2020 Officer Bennison had categorically refused to participate in the mediation.

417. The claimant relies on a hypothetical comparator. The central issue is why Officer Bennison refused to participate in the mediation as at March 2020. It is clear from the "snitch" incident that Officer Bennison disliked the claimant. We find that was due to his opinion of the claimant's behaviour, rather than to the claimant's race or religion. In explaining to Governor Patterson in August 2020 why he refused to apologise to the claimant, he said he stood by the comments he made at the briefing on 16 January 2020. We find that he viewed the way the claimant had acted towards OSG Lord as unacceptable and not the way a prison officer should behave towards a colleague. Although he did not use the word during that incident, we do find that he regarded the claimant as untrustworthy and as a "snitch". We are not condoning that, but we do find that in assessing his actions, the relevant hypothetical comparator for this incident would be one who Officer Bennison regarded in that way. To be in the same material circumstances, the comparator would also have to be one whose grievance against Officer Bennison had not been upheld. (The claimant at times seemed to lose sight of the fact that the First Bennison Grievance which resulted in the recommendation to mediate was not upheld at Stage 1 or Stage 2). To be in the same material circumstances, the hypothetical comparator would also have brought a second grievance against Officer Bennison. We find that Officer Bennison would have refused to participate in mediation with such a comparator regardless of their

race or religion. That is even more the case by 2 June 2020. Leaving aside the passage of time since the original incident, the claimant had by then made an unfounded allegation of sexual assault against Officer Bennison. We find that Officer Bennison would have refused to mediate with a comparator in those circumstances regardless of their race or religion.

418. In reaching our decision, we have considered whether the claimant had proved facts from which we could conclude that Officer Bennison's decision not to mediate was due to the claimant's race or religion. We find that he did not. His repeated assertions that Officer Bennison was a racist do not amount to such facts. Neither does the fact that Officer Bennison did single him out at the briefing meeting on 16 January 2020. Even if as the claimant asserted, he was the only Asian officer present (the evidence suggests he was not the only ethnic minority officer present), his being singled out was explained by the fact that he had reported OSG Lord to an SO. There was no evidence any other officer had done anything similar. We do not find that that or any other evidence we heard was sufficient to pass the burden of proof. If we are wrong and it was, we find that there was a non-discriminatory explanation of the treatment, namely Officer Bennison's dislike of the claimant base on his behaviour towards OSG Lord.

419. This allegation fails.

420. For completeness, we record that if the allegation related to Officer Bennison's refusal to mediate as a result of the Second Bennison Grievance appeal outcome, our decision would have been the same for the reasons given in relation to the First Bennison Grievance above.

D3: No alternative resolution was offered [this was before the alleged sexual assault by Officer Bennison]. Failure to offer alternative resolution was by CM Dearden.

421. The claimant's case is that CM Dearden was required by para 2.6 of PSO 8550 to ensure that action was taken as a result of the outcome of the First Bennison Grievance. He says that because there was a failure to mediate, CM Dearden should have ensured some other action was taken. In relation to this allegation, we find there was no less favourbale treatment. CM Dearden decided not to uphold the First Bennison Grievance. She did recommend mediation. However, that was a voluntary process. Given that she had not upheld the grievance we find that she would not have offered an "alternative resolution" to mediation regardless of the race or religion of the person bringing the grievance. This was not a case where she could impose an alternative resolution, e.g. a sanction on Officer Bennison, because that she had not upheld the grievance. The claimant provided no evidence to substantiate his allegation that CM Dearden would have acted differently if the claimant had been of a different race or religion.

422. This allegation fails.

D4: The claimant claims that he was sexually assaulted by Officer Bennison because of his race and/or religion.

423. This claim fails on the facts. There was no sexual assault or assault of any kind.

D5: The claimant was not supported following his reporting that he had been sexually assaulted. The claimant says this was the Care Team.

424. As we noted in our findings of fact, the claimant did not suggest that he had asked for support and been refused it. We found CM Costello had provided the claimant with information about how to obtain support and the claimant had not sought it. Instead, the claimant suggested that CC had been proactively provided with support by the Care Team, We do not accept that CC was an appropriate comparator. The CCTV in their case provided evidence of a sexual assault. The CCTV in the claimant's case did not. If we are wrong, and CC was an appropriate comparator, there was no reliable evidence that CC had been proactively contacted by the Care Team. On that basis we find the alleged less favourable treatment compared to CC did not occur. The claimant provided no evidence to support the conclusions that the Care Team treated him less favourably because of race or religion.

425. This allegation fails.

D6: The claimant was told on 28 April 2020 not to report the sexual assault on him to the police. The claimant will say he was told this by Governor Johnson and Governor Wright.

426. This claim fails on the facts. Neither Governor Wright nor Governor Johnson "told" the claimant at the meeting on 28 April 2020 not to report the sexual assault to GMP. They explained to him why there was no purpose in the claimant raising the matter with GMP. That was because DC Riley of GMP had already viewed the footage and concluded there was no assault and so no criminal offence had taken place. A referral to GMP would result in the same outcome.

427. We also find that the comparator relied on, CC, was not in the same material circumstances as the claimant for the reasons given in relation to allegation D5.

428. For the avoidance of doubt, if we are wrong and the behaviour of Governor Johnson and Wright amounted to "telling" the claimant not to report the sexual assault, we find they would have acted in the same way regardless of the race or religion of the person making the allegation. Having viewed the CCTV footage, they were clear (as we are) that there was no sexual assault. They had, nonetheless, sought the view of DC Riley as a representative of GMP and he had confirmed that no crime had been committed. If there it had been a white, non-Muslim officer making the allegation we find they would have acted no differently. The claimant provided no evidence to support a finding to the contrary.

429. This allegation fails.

D7: The claimant will say that he was asked for a meeting by Deputy Governor Horridge after he reported his sexual assault to the police.

430. Deputy Governor Horridge did ask the claimant for a meeting in his email of 30 April 2020.

431. The claimant said this was less favourable treatment compared to CC. The respondent submitted that CC was not an appropriate comparator. The CCTV in CC's case had showed them being groped twice. There was evidence that a crime had taken place. In the claimant's case the CCTV showed no evidence of a sexual assault and DC Riley of GMP had confirmed that that no crime had been committed. Despite that, the claimant had persisted in making a very serious allegation of criminal behaviour against a colleague.

432. We accept the respondent's submissions that CC and the claimant were not in the same material circumstances and CC was not an appropriate comparator.

433. For the avoidance of doubt, had the claimant relied on a hypothetical comparator we would, have found that Deputy Governor Horridge would have treated a white non-Muslim officer who persisted with an unfounded allegation of a criminal offence against a colleague in the same way.

434. This allegation fails.

D8: The claimant asked for sight of CCTV footage. His request was refused by Deputy Governor Horridge – The claimant has made numerous such requests granted without difficulty in the past.

435. We find the claimant's request to view the CCTV footage was not refused. The claimant viewed the footage more than once, including at the meeting on 28 April 2020 and 7 May 2020. This allegation fails on that basis.

436. In fairness to the claimant, we have gone on to consider the position if the allegation is that Deputy Governor Horridge refused the claimant's request on 30 April 2020 for a copy of the CCTV. It is accepted that he did refuse that request. He gave his reasons for doing so in his email dated 30 April 2020, i.e. that it was clear that no crime had been committed. We accept those were his genuine reasons for denying the request. We find that he would have denied the request had it been made by a white, non-Muslim officer in the same circumstances.

437. This allegation fails.

D9: At a meeting to discuss a DIRF raised against the claimant additional allegations were raised by CM Atton. The meeting was on 15 May 2020

438. We find Governor Johnson had extended the terms of reference for the Management Enquiry to include the allegations about comments alleged to have been made by the claimant during Ramadan. CM Atton had to investigate what was in the terms of reference. We find he would have done so regardless of the race or religion of the person against whom the allegations were made. We also found as a fact that CM Atton had told the claimant about the expanded terms of reference prior to the meeting on the 15 May 2020. We do not find the alleged less favourable treatment happened.

439. The claimant shifted his ground in cross examination, suggesting the discrimination was in dealing with the DIRF by way of a management enquiry when he had been told that he could not submit a DIRF about SO Stewart. We accept the respondent's submission that that is not the allegation set out in the Annex.

440. In any event, it was not CM Atton's decision to instigate a management enquiry. There was no evidence to suggest that either CM Atton or Governor Johnson acted as they did based on the claimant's race or religion.

441. This allegation fails.

D10: The claimant will say that after being told by a deputy governor (Mr Horridge) his 2/5/20 grievance (grievance 7) was on hold, it was then contrary to what Deputy Governor Wright had stated proceeded with and determined on 22 May 2020.

442. We found Deputy Governor Horridge did not say that the Third Bennison Grievance was on hold. If the underlying suggestion is that he sought to stop the grievance against Officer Bennison going ahead then the facts do not support that.

443. If, in the alternative, the claimant is saying (as he alleged at one point during his evidence) that Governor Wright was progressing the grievance so he could stay in the process to "protect" Officer Bennison, we do not find there is a factual basis for that allegation. Governor Wright was allocated the grievance by Deputy Governor Horridge. That was why he dealt with the grievance.

444. In any event, Governor Wright made it clear in his grievance outcome that the claimant would have the opportunity to put his case about the alleged sexual assault as part of the Management Enquiry. He explained one possible outcome of that Enquiry would be disciplinary action against Officer Bennison, which was the outcome the claimant was seeking in the Third Bennison Grievance. Even had the factual basis for this allegation been established, we would have found there was no detriment to the claimant in the Third Bennison Grievance being progressed to an outcome.

445. There was no evidence of less favourable treatment of the claimant because of race or religion in relation to this allegation.

446. The allegation fails.

D11: CM Costello did not respond to an email of complaint from the claimant dated 25/5/20 – The claimant cannot recall what was in the email.

447. This claim fails on the facts. CM Costello did respond to the claimant's email on the following day and on 2 June 2020 to his request to be moved.

448. There was no less favourable treatment. If we are wrong about that, the claimant has not proven facts from which we could conclude that any less favourable treatment was because of race or religion.

449. This allegation fails.

D12: The management enquiry report (compiled by CM Costello) into the sexual assault on the claimant was sent to the claimant on 25/5/20, but it did not deal with all the issues.

450. We find that the TORs set out the steps CM Costello was to take in carrying out the enquiry. He carried out those steps. The TOR also set the scope of the enquiry, i.e. whether the assault took place. The TORs could have been broader (e.g. covering what was said in the aftermath of the incident) or could have said the enquiry should be carried out in a different way (e.g. by interviewing Officer Bennison or Officers Decre and Riching). They did not, however, and we find that CM Costello carried out the enquiry in accordance with the TORs he was given. There is no evidence he would have acted differently had the claimant been of a different race or religion.

451. The claimant relied on CC as an actual comparator. There was no evidence about whether a managerial enquiry was carried out in their case or how. In any event, for the reasons given in relation to ***D5*** and ***D7***, we do not find that CC was an appropriate comparator.

452. This allegation fails.

D13: The Management Enquiry report written by CM Atton and dated 3.6.20 was biased and had not been investigated impartially as shown by the conclusions reached.

453. We did not find any evidence of bias on the part of CM Atton. The claimant did not deny the first allegation dealt with in the report (the Claimant's comments about Officer Bennison being racist). His challenge to the conclusions about the second allegation (the Ramadan incident) was based on his disagreeing with the evidence of the other officers interviewed. We find he was inferring bias simply because he did not like the conclusion reached. We do not find the decision by Governor Fisher to quash CM Atton's report in the Atton/Johnson Grievance outcome to support this allegation. It is clear that was on a point of process. We find that Governor Fisher did not quash the report because he thought it was biased. His conclusion was that there was no evidence that the behaviour of both Governor Johnson and CM Atton were related to bullying, victimisation, race or religious beliefs. We find that the alleged less favourable treatment did not happen.

454. This allegation fails.

D14: The claimant says he was referred to OH without his consent, for making repeated complaints and presenting multiple grievances. The grievances presented were 1-7. This was by CM Costello. (The only issue is that there was no consent for the referral).

V2: Claimant referred to OH by CM Costello, respondent says because of repeated grievances (the fact that consent was not sought is irrelevant for victimisation)*.*

455. We find it convenient to deal with these 2 allegations together because of the close factual connection between them.

456. We found that the claimant did say at the meeting on 3 June 2020 that he was stressed and disclosed that his GP was supporting him and providing medication to help with anxiety. We find that was the trigger for referring him to OH. We found that he agreed to the referral to OH at that meeting. That means that allegation D14 fails on the facts – the claimant was not referred without his consent.

457. When it comes to allegation V2 the first question is whether the decision to refer the claimant to OH amounted to subjecting him to a detriment. We bear in mind the guidance in the EHRC Code and the case-law which says that the threshold for "detriment" is a low one. We considered whether a reasonable person would or might consider the decision to make the OH Referral to be a disadvantage in these circumstances. We bear in mind that the motive for making the referral, even if benign, would not prevent it being a detriment if that were the case. We took into account our finding that the referral was made with the claimant's consent in circumstances where he had raised issues about experiencing stress and anxiety. In those circumstances, we do not find a reasonable person would or might view the referral as a disadvantage. There was no detriment and this allegation fails on that basis.

458. In case we are wrong about that and the OH referral was a detriment, we considered whether it was "because of" protected act PA2. It is certainly the case that the grievances raised by the claimant were part of the context for the referral - CM Costello specifically refers to them in the OH referral form. We found that the primary reason for referring the claimant was concern about the claimant's mental health given what he said at the meeting on 3 June 2020. That reason was unrelated to PA2. We did find that part of the reason for the referral was an attempt to understand why the claimant felt he had to raise so many complaints and grievances and seemed unable to accept any outcome other than those in his favour or any feedback he perceived as negative. We do find that the number and nature of the complaints raised by the claimant was part of the reason for the OH referral. We have considered whether that was separable from protected act PA2.

459. We bear in mind the importance placed in the case-law on being sceptical and cautious in identifying reasons for alleged detriments separate from the protected acts themselves. Equally, we bear in mind that the fact that someone has done a protected act does not mean that an employer is precluded in acting towards them in any way which causes them a disadvantage (see **Fecitt**). Otherwise, the respondent in this case would have been entirely hamstrung in seeking to get to the bottom of the reasons for and resolve the situation it was faced with. Had we been required to, we would have found that the alleged detriment was not "because of" protected act PA2. It was because of the number and nature of the claimant's complaints and was a genuine attempt by the respondent to understand and get to the bottom of why the

claimant felt the need to raise them. It was, we find, an attempt to resolve issues which were rendering the workplace increasingly dysfunctional when it came to the claimant. We do find those reasons separable from protected act PA2. Had we found the alleged detriment in V2 made out we this allegation would have failed because the detriment was not "because of" protected act PA2.

D15: a complaint was made about the claimant having submitted grievances on 8 June and 10 June (grievances 8 and 9). This complaint was by Governor Johnson).

460. We find the less favourable treatment alleged did not take place. What Governor Johnson did at the meeting on 12 June is not correctly characterised as "complaining" about the claimant putting in his grievances. The claimant was not told that he was not allowed to put in any more grievances. We find on the facts that the allegation is not made out.

461. If we are wrong about that we would have found that the claimant was not treated less favourably than any other employee would have been who had put in the number and nature of complaints made by the claimant at that point. There was no evidence to suggest that Governor Johnson's behaviour was because of the claimant's race or religion.

462. This allegation fails.

D16: The claimant was told that the respondent could not deal with the number of grievances he was submitting, and the respondent stated a third party would be brought in "to decide about the claimant" (not OH). This was said by Governor Johnson agreed by Mr Costello).

463. We find the less favourable treatment alleged did not take place. Governor Johnson did not say that the respondent could not deal with the number of grievances the claimant was submitting.

464. Governor Johnson did not say that a third party would be brought in to "decide about the claimant". That is a distortion of what happened. Governor Johnson told the claimant that she had asked the Head of Equalities of the Prison Service as a third party to look at some of his complaints and issues from an objective and equalities standpoint.

465. We do not accept that her doing so might be viewed as a disadvantage by a reasonable employee. We find that asking the Head of Equalities to provide an objective assessment of the situation did not amount to a detriment.

466. If we are wrong, about that, the claimant has not proven facts from which we could conclude that any less favourable treatment was because of race or religion.

467. This allegation fails.

D17: The claimant was told that he looked stressed and therefore he would be referred to OH. This was said by Governor Johnson).

468. We find this did not happen as alleged. The claimant was not told that he looked stressed. He said he was stressed in response to being asked at the meeting on 3 June 2020 (rather than on 12 June) how he was feeling. That alleged less favourable treatment did not happen. It is accepted he was referred to OH but as we said in relation to allegation V2, we do not accept that the referral amounted to a detriment.

469. If we are wrong about that, the claimant has not proven facts from which we could conclude that any less favourable treatment was because of race or religion.

470. This allegation fails.

D18: Resolutions of a grievance (grievance 6) from the meeting of 15/6/20 never took place i.e. apology form Officer Bennison and mediation. This allegation is against Officer Bennison and Governor Patterson (who decided on this outcome).

471. When it comes to the failure to mediate by Officer Bennison, we find that this was not because of the claimant's race or religion. Our reasons are those set out in relation to allegation D2. In addition, by the time of Officer Bennison's final refusal to mediate in August/September 2020 the claimant had lodged three grievances and made an allegation of sexual assault against him. They were no longer working together and the proposed mediation related to an incident 7 months' earlier. In those circumstances, we find Officer Bennison would have declined mediation regardless of the race or religion of the person bringing the grievance.

472. When it comes to his refusal to apologise to the claimant, we find that the reasons were the same. As we have said in relation to D2, we find that Officer Bennison regarded the claimant as a "snitch" because of his behaviour in relation to OSG Lord. He stood by what he had said about him at the meeting on 16 January 2020. We find he would have refused to apologise to the claimant regardless of his race or religion – his refusal was based on his opinion of the claimant's behaviour not who he was.

473. This allegation against Officer Bennison fails.

474. When it comes to the allegation against Governor Patterson of failing to ensure mediation took place we do not find there was less favourable treatment. Mediation was voluntary. In those circumstances, Governor Patterson was not in a position to force Officer Bennison to mediate once he had declined to do so. There was no evidence to suggest that she would have acted differently if the claimant was of a different race or religion.

475. When it comes to the refusal to ensure Officer Bennison apologised, the position is not so clear cut. There was a recommendation that Officer Bennison apologise. It is not clear from PSO 8550 what steps could be taken to force him to do so. The apology was not a disciplinary sanction. Governor Patterson did seek HR advice despite the refusal but ultimately concluded that the circumstances were such that the recommendation for an apology could not be implemented. We find that

when she decided not to enforce the apology that was because of a number of factors. They included the impact on Officer Bennison's well-being, the passage of time since the original incident and the broader context of the other grievances and allegations made by the claimant and the breakdown in relationship between him and Office Bennison.

476. The claimant relied on a hypothetical comparator. In terms of evidence of race or religion discrimination, he pointed to the concern shown for Officer Bennison's wellbeing as evidence that Governor Patterson's failure to enforce the apology was related to race or religion. He relied on the fact that Officer Bennison was a white officer and he was not – in essence he said that the Governor was seeking to protect Officer Bennison. We do not accept that argument. If Governor Patterson had wanted to protect Officer Bennison it would have been far easier for her not to have partially upheld the appeal and recommended an apology. We find that she would have taken into account the welfare of those involved into account regardless of their race or religion and that it was appropriate for her to do so. We find that she would not have acted differently if the claimant was of a different race or religion.

477. This allegation against Governor Patterson fails.

D19: Governor Johnson is alleged to have told the claimant that OH had lied to the claimant about the reason for the referral of the claimant. The claimant says that Governor Johnson lied to the claimant.

The claimant is clear that "lied" is an appropriate description of Governor Johnson's conduct. The claimant also says that CM Costello lied to him on the same basis.

478. We find that Governor Johnson did not say that OH had lied to him. We also found that neither Governor Johnson nor CM Costello lied as alleged. The alleged favourable treatment did not happen.

479. If we are wrong about that, the claimant has not proven facts from which we could conclude that any less favourable treatment was because of race or religion.

480. This allegation fails.

D20: The claimant sought but was denied access to the OH referral form. This was by CM Costello.

481. We find that CM Costello did not deny the claimant access to the OH Referral form. He did not have it because of the way the OH referral system operated. He had to request it from the OH provider which he did on 23 July 2020. The alleged less favourable treatment did not happen. If we are wrong about that, the claimant has not proven facts from which we could conclude that any less favourable treatment was because of race or religion.

482. This allegation fails.

D21: The claimant says that Governor Johnson failed to contact him to discuss the OH referral, which is what Governing Governor Knight had stated would happen.

483. We find that Governor Johnson had not been made aware that this is what Governor Knight was said. She did not know that she was meant to contact the claimant to discuss the OH referral. That breakdown in communication was unfortunate but it means there no less favourable treatment on Governor Johnson's part. If we are wrong about that, the claimant has not proven facts from which we could conclude that any less favourable treatment was because of race or religion.

484. This allegation fails.

D22: The claimant had complained about Officer Seminerio (grievance 10) who was then temporarily promoted by CM Barrett. This resulted in the claimant bring forced to work under Officer Seminerio.

485. We found that Officer Seminerio was not "temporarily promoted". She was on occasion nominated to act up as an SO on A Wing. We found that it was not CM Barrett who decided when she did so. We also found that Officer Seminerio had been acting up as SO before the Seminerio Grievance was submitted. We find there was no substance to the claimant's allegation that CM Barrett made him work under Officer Seminerio's supervision to penalise him. The alleged less favourable treatment did not happen and this allegation fails. . If we are wrong about that, the claimant has not proven facts from which we could conclude that any less favourable treatment was because of race or religion.

486. This allegation fails.

D23: The claimant says that CM Barrett should not have been allowed to deal with the grievance about Officer Seminerio on 12/10/20 (grievance 10) because he had presented a grievance against CM Barrett on 9/10/20 (grievance 11). The claimant says that Governor Johnson should have appointed someone different and CM Barrett should have recused herself.

487. There were 2 separate allegations rolled into this one allegation. The first was that CM Barrett should have recused herself from dealing with the Seminerio Grievance because the claimant had raised the Barrett Grievance. We found that CM Barrett did know that the claimant had submitted a grievance against her before she signed off the Seminerio Grievance outcome on 12 October 2020. We find that she had in substance concluded her grievance outcome before she knew about the grievance against her. In the absence of any advice from HR to recuse herself we find that she did not consider recusing herself. We remind ourselves that the question is not whether a fair procedure required CM Barrett to recuse herself but whether she treated the claimant less favourably than she would a hypothetical comparator in the same material circumstances apart from his race and religion. We find that she would not have acted any differently. The issue of recusal did not occur to her especially where she had in substance concluded the grievance outcome

before the issue arose. We find there was no less favourable treatment on CM Barrett's part and this allegation against her fails.

488. We found that Governor Johnson was not involved in the Seminerio Grievance. We accept the respondent's submission that there was no reason for her to appoint anyone else in place of CM Barrett because as far as Governor Johnson was concerned, CM Barrett was not aware of the Barrett Grievance and the grievance meting on the Seminerio Grievance had already taken place. We do not accept the alleged less favourable treatment happened. There was no evidence to support the conclusion that Governor Johnson would have acted any differently in the case of a hypothetical comparator not sharing the claimant's race and/or religion.

489. This allegation fails.

D24: The claimant had made written complaints about SO Derbyshire and CM Brown (this was a formal complaint by email, not a grievance). The claimant chased up his complaints on 17/2/21 and was not given any resolution. The claimant will say an email sent to Governor Johnson about this.

490. We find on the facts that the claimant had not raised a complaint about SO Derbyshire and CM Brown. He asked for clarification on the Lima 23 role and SO's discretion when it came to leaving early. If anything, the "complaint" was about Officer Wain. Governor Johnson acted promptly asking CM Brown or CM Barratt to deal with it. CM Brown had explained to the claimant why he was not able to (the claimant and Officer Wain's long-term absence). There was no failure on Governor Johnson's part. She took the view the matter was appropriately dealt with at CM level and delegated accordingly. There was no detrimental treatment and no basis for finding she treated the claimant less favourably than she would have a junior officer who raised a similar complaint but was not of the claimant's race or religion.

491. This allegation fails.

D25: The claimant asserts that the report into assault on 10/11 was biased and contained false and misleading information. CM Horner and SO Heskett prepared the report. The claimant claims that this was malicious. The report was produced sometime in or around December 2020.

492. This allegation related to the Management Enquiry into the assault on 10 November 2020. We found the report was not biased, malicious nor did it contain false and misleading information. The treatment alleged did not happen.

493. This allegation fails.

494. ***D26: The claimant says that false allegations were made against him in 3 'Annex A' reports following the 10/11 incident. These were not included in the management report into that incident. Allegations by Officer Rothwell, Officer Green and Officer Seminerio, report compiled with CM Horner and SO Heskett.***

495. We found the Annex A reports did not contain false statements. The alleged treatment did not occur.

496. If the allegation is that the ME Report provided to the claimant by CM Horner in February 2021 did not include the Annex As it is accepted that was the case. There is no evidence to support a finding that CM Horner would have included them if the report related to an incident involving an officer who did not share the claimant's race and/or religion. There was no less favourable treatment because of race and/or religion.

497. Either way it is put, this allegation fails.

D27: The claimant complains about the inclusion of the false allegations in the 3 'Annex A' reports of Officer Green, Officer Rothwell and Officer Seminerio.

498. We found the Annex A reports did not contain false statements. The alleged treatment did not occur.

499. This allegation fails.

D28: The claimant was not allowed (by CM Horner) to see the report into the assault on 10/11 until 12/2/21.

500. It is accepted that the claimant was not provided with the ME Report until 12 February 2021. The ME was not a grievance but a report commissioned by Governor Johnson so it "belonged" to her. There was no suggestion as we understood it that the claimant had approached CM Horner about the report until 25 January 2021. When asked to provide it, he checked with Governor Johnson as the Commissioning Manager and, when she provided permission he arranged a meeting with the claimant to discuss the outcome and hand over the report. We do not find that it is correct to characterise that as CM Horner "not allowing" the claimant to see it. Our primary finding is that the alleged treatment did not happen.

501. If we are wrong about that, we find there was no less favourable treatment by CM Horner. There was no evidence to suggest he would have acted any differently if the claimant was of a different race or religion. As we have said, the ME report "belonged" to the Commissioning Manager. CM Horner's role ended when he submitted it to Governor Johnson for sign off. It was not role to share the outcome unless and until directed to do that by the Commissioning Manager. That is what he did.

502. This allegation fails.

D29: Governor Roberts refused to adjourn a prisoner's adjudication ("the Prisoners Adjudication") relating to the 10/11/20 incident, pending the claimant's appeal response from Greater Manchester Police.

503. We find that Governor Roberts took the decision not to adjourn the adjudication because he had been given a clear indication from GMP that it would not be pursuing a case against Prisoner A. The adjudication had already been delayed for 6 weeks and senior governors advised it would go against natural justice to delay the outcome further. There was no evidence from which we could conclude

that Governor Roberts would have acted any differently in the same material circumstance if the request to adjourn was by an office of a different race or religion.

504. This allegation fails.

D30: Governor Roberts said he was going to dismiss the Prisoner's Adjudication. (The claimant stated in his original List of Issues that this was because the segregation staff had put the wrong charge on a DIS1. The claimant no longer appears to believe this was the reason, and/or a genuine error).

505. We understand this allegation to relate to Governor Roberts telling the claimant during their conversation on 19 January 2021 that the segregation unit had brought the wrong charge (or at least failed to add a second, lesser, charge of "assault" to that of racially aggravated assault.

506. First, we found that did not say he was going to dismiss the adjudication. He explained why it would be harder to sustain the case against Prisoner A because of the absence of the lesser charge of "assault". We do not find the treatment alleged occurred.

507. If we are wrong about that and Governor Roberts explaining the situation and the difficulty in sustaining the case against Prisoner A equates to him saying he was going to dismiss the adjudication, we do not find this to be an act of direct discrimination. First, it was the segregation unit rather than Governor Roberts who had made the mistake of not adding the charge of assault. Governor Roberts could do nothing to change that. Second, it is not at all clear to us that explaining the position to the claimant was a detriment. Governor Roberts was, we find, trying to make clear to the claimant why it was important that he did attend the adjudication.

508. If we are wrong and that amounts to a detriment, we find there was no evidence on which we could conclude that he treated the claimant less favourably because of race or religion in this regard. We find he would have acted in the same way regardless of the race or religion of the officer who made the allegation against a prisoner.

509. This allegation fails.

D31: The claimant says that Governor Barber refused to allow him to raise new grounds for a grievance at the appeal stage (grievance 10). The claimant says the new grounds should have been allowed as they arose from what was said in the grievance outcome.

510. We found that Governor Barber did limit the appeal hearing to matters relating to the appeal against the incident in the original Seminerio Grievance. He did not allow the claimant to effectively start a new grievance about incidents not in that original grievance, e.g. in relation to other incidents involving Officer Seminerio. We find that he was seeking to follow a logical and manageable process in doing so. There was no evidence that he would have followed a different process had he been

dealing with an appeal by an officer of a different race or religion who was seeking to broaden the scope of his original grievance at appeal stage. We find there was no less favourbale treatment because of race or religion.

511. This allegation fails..

D32: Governor Barber referred to the outcome of other grievances in dealing with the claimant's grievance (grievance 10). This was a counter grievance by Officer Seminerio, and the claimant's grievance 11).

512. We found that Governor Barber did decide to hear the claimant's response to Officer Seminerio's grievance against the claimant at the appeal hearing against CM Barrett's outcome to the Seminerio Grievance. He notified the claimant in advance of the appeal hearing that he would do this. Neither the claimant nor his representative objected. It was an entirely logical approach given the number of proliferating grievances. We do not find that Governor Barber would have acted differently if the claimant was of a different race or religion. There was no less favourable treatment.

513. This allegation fails.

D33: The Prisoner's Adjudication was dismissed Governor Roberts.

514. We find the reason the Adjudication was dismissed by Governor Roberts was that there was not enough evidence to uphold the allegation of racially aggravated assault. Part of the reason for that was that the claimant decided not to attend the Adjudication. That was despite Governor Roberts explaining to him in their conversation and in emails that the likely outcome if he didn't attend would be that the adjudication would be dismissed.

515. We do not find evidence from which we could conclude that the decision to dismiss the allegation of racially aggravated assault was less favourbale treatment because of race or religion.

516. This allegation fails.

D34: The Prisoner's Adjudication dismissed in claimant's absence Governor Roberts. The claimant had been invited to attend but declined to do so as he wanted the Prisoner's Adjudication to be delayed until after he received his appeal response from Greater Manchester Police.

517. This seems to us in essence to repeat allegation D29 and D33. As we said in relation to those allegations, Governor Roberts had to balance the claimant's needs against the need to ensure that the rules of natural justice were complied with in relation to the Adjudication. We do not find the decision to proceed in the claimant's absence to be less favourable treatment because of race or religion. Nor do we find the decision to dismiss the adjudication to be so.

518. This allegation fails.

D35: The outcome of claimant's grievance against CM Barrett (grievance 11) was a recommendation of mediation with Officer Seminerio. This was CM Morgan.

519. It is accepted that CM Morgan recommended mediation with Officer Seminerio. The context for that was his decision not to uphold the Barrett Grievance while recognising that the claimant would need a future working relationship with Officer Seminerio. We accept the respondent's submission that it did not amount to a detriment. We do not find a reasonable worker would or might regard it as a disadvantage for that recommendation to be made given that mediation was by its nature voluntary. CM Morgan was not (and could not) force the claimant to mediate with Officer Seminerio if he chose not to.

520. If we are wrong about that, and the recommendation did amount to a detriment we find it was not less favourable treatment. There was no evidence to support a finding that CM Morgan would have acted any differently had the claimant been of a different race or religion.

521. This allegation fails.

D36: The claimant was refused permission by Governor Barber to have a copy of the audio recording of a grievance meeting on 27/1/21 (grievance 10).

522. The respondent accepts that Governor Barber refused to provide the claimant with a copy of the audio recording. We found that he did so having taken advice from HR who told him that the recording was to assist the transcriber so the claimant had no right to it. There was no evidence that HR would have given different advice if the claimant was of a different race or religion. We find that Governor Barber would have acted in the same way regardless of the race or religion of the person asking for the audio recording. There was no less favourable treatment.

523. The allegation fails.

D37: The claimant says that at a meeting on 24 March 2021 Governor Cross brushed his grievances under the carpet (grievance 12).

524. We found that Governor Cross did not "brush the claimant's grievance under the carpet". He decided it was not his role to re-investigate the incident on 10 November for the reasons we have given in our findings of fact. That was a perfectly reasonable approach for him to take. His decision not to uphold the grievance was entirely reasonable given the lack of specific or concrete evidence of bias, fabrication, malice or bullying provided by the claimant. There was no basis for a finding that he would have acted differently had the claimant been of a different race or religion. The alleged less favourable treatment did not occur.

525. This allegation fails.

D38: The claimant appealed against the outcome of his grievance against CM Barrett (grievance 11). There was an appeal hearing on 30/3/2021 and the

claimant did not get an outcome to that appeal hearing in writing at that time. (This was a CM Donnelly).

526. We found that CM Donnelly did provide the claimant with the Barrett Grievance Appeal outcome on 20 April 2020. He had emailed the claimant on 6 April 2021 to explain there would be a delay in completing the appeal process because he had a COVID related absence. On the facts this allegation fails -the alleged treatment did not happen as alleged.

527. If the allegation is that the delay from 30 March 2021 to 20 April 2021 in providing the appeal outcome was the less favourable treatment we find that there is no evidence that CM Donnelly would have treated a hypothetical comparator of a different race or religion any differently. There was no less favourable treatment.

528. This allegation fails.

D39: The claimant complained about the 3 'Annex As' on 2/4/21 and nothing was done. The claimant complained to Governor Johnson.

529. There was no evidence that Governor Johnson was involved in the decision by Ms Morgan/CCU not to investigate the matters raised in the information submitted to Ms Morgan by the claimant about the Annex As. This claim fails on that basis.

530. For the sake of completeness, we record that if we are wrong and the advice on which Ms Morgan acted in deciding not to take action was from Governor Johnson, we would have found that there was no less favourbale treatment for the reasons given in relation to allegation D41 below.

531. This allegation fails.

D40: CM Barry (CM Berry) invaded the claimant's personal space and told the claimant to listen to SO Jones.

532. We do not find that CM Berry had "Invaded the claimant's personal space". WE found that he did step close to him and said he had been instructed by a Band 4 (SO Jones) to leave and himself instructed him to leave. There were legitimate reasons for him acting as he did to protect the OSG's involved and resolve the situation. We find that CM Berry would have intervened in the same way if an officer who did not share the claimant's race or religion had been causing an altercation and refusing to follow instructions to leave the gate area when instructed to do so by OSGs and a Band 4 Officer. We do not find there was any less favourable treatment because of race or religion.

533. This allegation fails.

D41: Grievance number 14 was blocked and rejected by Governor Johnson.

534. It is not disputed that Governor Johnson rejected the Annex A Grievance. We accept that the reasons given by Governor Johnson for rejecting it in her emails of 24 and 25 May 2021 were her genuine reasons for doing so. We do not accept that

the named comparators were in the same material circumstances. The appropriate comparator was an officer raising a grievance about an incident which had already been the subject of a number of internal and external reviews and investigations. None of the named comparators submitted grievances in those circumstances. They were not appropriate comparators.

535. The question is whether Governor Johnson would have acted differently if the claimant was of a different race or religion. We find that she would not have. We do accept that there is something in the claimant's point that he had not had a chance to challenge the detail of the Annex As before 26 March 2021. However, we also accept that the claimant's version of events had been discussed before, in particular during the ME Report and the Mielcarek Investigation. We accept that Governor Johnson's genuinely held view was that it was not proportionate or appropriate to go back over that ground again. There was no evidence that she would have acted differently if the claimant was of a different race or religion. The claimant himself did not in the Johnson Annex A grievance form suggest her decision was linked to race or religion.

536. This allegation fails.

D42: The claimant alleges he was not given a valid reason for rejecting grievance 15. The claimant alleges this was Governor Roberts.

537. Grievance 15 was the Johnson Annex A Grievance. We found that Governor Roberts did set out his reasons for rejecting the grievance. The claimant states the reasons given are not "valid". We understand that to mean he disagreed with Governor Roberts' interpretation of para 1.3 of PSO 8550. Even if Governor Roberts was wrong in his interpretation of para 1.3 there was no evidence to suggest that he would have reached a different conclusion had the claimant been of a different race or religion. There was no less favourable treatment.

538. This allegation fails.

D43: The claimant alleges his appeal against grievance 15 was 'brushed under the carpet' by Deputy Governor Horridge.

539. We do not accept that this appeal was "brushed under the carpet". Deputy Governor Horridge spent time and effort at the grievance appeal hearing to understand the substance of the appeal. Having done so, he reached conclusions which we find were his genuine conclusions and dismissed the appeal on that basis. It seems to us that what the claimant means is that he disagreed with the conclusions reached. We find there was a basis for those conclusions. There was no evidence that Deputy Governor Horridge would have reached a different conclusion based on what was said at the appeal hearing had the claimant been of a different race or religion. In reaching that conclusion we find that the appropriate hypothetical comparator was a white, non-muslim officer who had made serious allegations of fraud and dishonesty against colleagues and made plain that he would not be satisfied with his grievance about the Annex A being investigated if the outcome was that there was no case to answer.

540. This allegation fails.

D44: Because of the claimant's race CM Eve counted claimant's Covid-19 related absence towards the trigger point for absence policy.

And correct procedure regarding one period of sickness was not followed.

541. When it comes to the COIVD allegation we found that CM Eve was genuinely following what he understood was the correct policy in relation to disregarding self-isolation. We did not have sufficient evidence about the comparators to find they were in the same material circumstances or had been treated more favourably than the claimant. We find that CM Eve would have applied the same interpretation of the policy to an officer in the claimant's position regardless of their race or religion. We find that there was no less favourable treatment because of race or religion.

542. When it comes to the provision of sick notes to prove the claimant was able to return to work we find that CM Eve had good reason for seeking that. The position was that the claimant was on restricted duties because of what he maintained was a serious injury (following his assault in November 2020). There were pending diagnostic procedures to be undergone such as MRI. It was reasonable and understandable that CM Eve would have asked for evidence that the claimant was fit for work. We find he would have done the same regardless of the officer's race or religion. We also do not accept the allegation that he was working towards ill-health retirement. We accept he had looked at IHR as a possible option depending on the outcome of the medical evidence. At that point there was a genuine question as to whether the claimant would be fit to return to full duties. We find he would have done the same if the claimant was of a different race or religion.

543. We find that there was no less favourable treatment because of race or religion.

544. This allegation fails.

D45: CM Butler on 6/11/21 at around 11:10am penalised the claimant, phoned the claimant and shouted/was aggressive towards him, about the fact that he was in the external office rather than in Health Care and falsely accused him of failing to follow instructions.

545. We found that CM Butler was not aggressive towards the claimant. We find that the claimant had been told by the SO on HCC he was not needed there but the claimant had not reported back to the centre office so CM Butler did not know that. SO far as he was concerned, the claimant was not on HCC which is where he as Oscar 1 had deployed him. We find that CM Butler did challenge the claimant about that.

546. We find that there was no less favourable treatment of the claimant. We find that CM Butler would have treated any officer who was checking their email rather than being working a deployed in the same way. He was Oscar 1 and seeking to manage the prison staff in the context of COVID and staff shortages.

547. This allegation fails.

D46: The claimant submitted complaint to his line manager (CM Eve and Governor Johnson) by email – no answer was given.

548. We found the alleged treatment did not happen. CM Eve did respond. He spoke to the claimant and then to SO Unsworth. He concluded that an informal resolution wasn't possible and both officers involved submitted formal grievances against each other.

549. We do not find the alleged less favourable treatment happened.

550. This allegation fails.

D47: The claimant complained about Officer Khan. The claimant says it is direct race discrimination that the respondent has not replied (CM Eve).

551. We find this allegation failed on the facts. CM Eve took action, reporting the matter to Officer Khan's line manager. That resulted in an investigation into the incident. We do not find there was less favourable treatment compared to what happened when Officer McKevitt submitted a DIRF. In both cases an investigation was carried out.

552. The alleged treatment did not happen.

553. This allegation fails.

D48: The claimant says he was never given an outcome to grievance number 13 by CM Westaway.

554. We find this allegation is not made out. CM Westaway did give the claimant a grievance outcome for the Gate Grievance on 14 December 2021 (by email) and on 15 December 2021 on the correct grievance outcome form. The alleged treatment did not occur.

555. For the avoidance of doubt, if the allegation is that there was a delay in providing a grievance outcome, we find there was a delay. CM Westaway provided an explanation for that in his grievance outcome. There was no evidence that the delay was because of the claimant's race or religion. In addition to the factors referred to by CM Westaway we find that part of the delay was due to CM Westaway not understanding the grievance process very well.

556. This allegation fails.

D49: The claimant submitted a complaint on 23/11/2021 about the incident on 20/9/21 where the claimant was micro-managed and harassed by CM Barry, but no answer was given (CM Eve).

557. CM Eve accepted he did not respond to the claimant's email of 23 November 2021. Given the wording of the email we find that was a reasonable response. We

do not find that it is accurate to describe the email as a "complaint" – it provides information but does not request that CM Eve investigate or take action against CM Berry. The email makes no reference to CM Berry "harassing" the claimant. In fact, the claimant acknowledges CM Berry's right to challenge him and does not suggest he did it in an aggressive or inappropriate way.

558. We do not find that CM Eve would have acted differently if the claimant was of a different race or religion. There was no less favourable treatment.

559. This allegation fails.

H1: During morning shift estimated time around 09:30 the claimant was called coconut, freshy and also was told to resign due to not having British accent by Officer Khan on G-Wing 2's landings in the presence of prisoners.

560. We find these events did not happen.

561. If they did happen, we find they would have amounted to race related harassment.

562. This allegation fails.

V1: Bullied by governors for reporting sexual assault to the police (Deputy Governor Horridge). Protected Act relied on: PA1

563. We found as a fact that the claimant was not "bullied" by Deputy Governor Horridge at the meeting. We note that neither the claimant nor his representative raised any complaint about the treatment at the meeting. The evidence showed the claimant was not shy of complaining (including against Governors) if he felt aggrieved. He did not do so in relation to the 7 May meeting. We find the claimant was not subjected to the detriment alleged.

564. This allegation fails.

V2: Claimant referred to OH by CM Costello, respondent says because of repeated grievances (the fact that consent was not sought is irrelevant for victimisation)*.*

565. We deal with this allegation with allegation ***D14*** above.

V3: The claimant was shouted at by SO Unsworth on the 2's landings on B-Wing for not moving dirty mop and bucket from the landings which was left by prisoners after cleaning their cells.

V4: SO Unsworth gave evil look, when the claimant was coming towards the bucket, to secure the bucket after finding the gloves.

V5: The claimant was sent to Business hub twice by SO Unsworth to deliver letter and exchange the vape and the claimant was told by SO Unsworth to count the outer side of the wing alone.

V6: The claimant was told by SO Unsworth on/around 17:25 that the claimant's shift finished at 17:30 and the claimant must stay on the wing until shift finish time. The claimant was told that he cannot leave the wing at 17:25 but 2 other female members of the staff were allowed to leave around 17:20 by SO Unsworth.

V7: The claimant was told by SO Unsworth that before leaving the wing, go and ask every staff member on the wing if they are happy with you then you can leave.

566. As we explain in our findings of fact, we preferred SO Unsworth's version of these events. We find that that she gave the claimant legitimate instructions which she was entitled to do so as a Band 4 officer. We do not accept she shouted at the claimant. When it comes to the claimant having been given an "evil look", we did not find that SO Unsworth did so. We do find it plausible that she gave him a look of frustration given his failure to comply with a simple instruction.

567. We do not find that SO Unsworth's actions other than V4 amounted to unfavourable treatment. We do not accept that a reasonable person might have viewed them as a disadvantage. They were reasonable instructions given to a Band 3 officer by a Band 4 officer. On the 11 November 2021 they were instructions given in the context of a serious incident involving a prisoner.

568. When it comes to the "evil look" allegation, we find that is how the claimant interpreted SO Unsworth's look of fatigue and frustration. We do not accept that a reasonable worker might have interpreted that as a significant enough disadvantage as to amount to an act of unfavourable treatment. That is particularly given the context, which we found was the reasonable worker being aware that he had not complied with a simple instruction resulting in the Band 4 officer having to move the mop an bucket themselves.

569. This allegation fails because there was no unfavourable act. If we are wrong and there was unfavourable treatment, we find that these allegations fail in any event because there was no protected act as defined by section 27 of the Equality Act 2010. The claimant relied on the First Unsworth Grievance (part of PA2). That did not contain allegations of discrimination or other breaches of the Equality Act 2010.

570. The claimant appeared to shift position during the hearing and allege that the protected act relied on was his third Employment Tribunal claim, which referred to SO Unsworth. That was not how the case was pleaded. In any event, we accept her evidence that she could not have been (and was not) aware that she was named in that claim form as at 10 and 11 November 2021 because it was not filed until 13 December 2021.

571. This allegation fails.

V8: At/around 17:25 the claimant phoned CM Barry. (should be Berry) CM Barry then questioned why the claimant has not followed instructions given to the claimant i.e. to go on the wing and help prisoners with mealtime at 4pm.

The claimant informed CM Barry that the claimant has completed that task and following last instructions given by wing SO.

572. In his email to CM Eve on 23 November 2021 the claimant suggested that this was an example of him being "micromanaged". We do not agree. We find that as Oscar 1, CM Berry was legitimately challenging the claimant about his whereabouts in a situation when the gate was frozen. CM Berry was trying to do his job by ensuring that the claimant was not "hiding" in the gatehouse when he should be helping with roll-in. We accept his evidence that he was having to do that regularly with other staff at the time. We do not find this amounted to unfavourable treatment. We do not find that a reasonable worker might see that as a disadvantage. The claimant himself in his email to CM Eve acknowledged that CM Berry was entitled to challenge him. The evidence was that CM Berry accepted the claimant's explanation and did not require him to return to the wing.

573. If we are wrong, and this was unfavourable treatment, we find it was not because of the Gate Grievance. We accepted CM Berry's evidence that he did not understand the Gate Grievance to be directed at him. He had had no contact about it apart from a single email from CM Westaway on 17 May 2021, six months before the incident on 20 November 2021. We do not find the Gate Grievance played any part in CM Berry's actions. He was trying to do the difficult job of getting the roll in safely when there was a shortage of staff and where his previous experience was that some staff tended to hide away in the gatehouse rather than return to the residential wings to help when the gate was frozen.

574. This allegation fails.

V9: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that there was no racial aspect being raised by the claimant, which the claimant says was untrue.

***V10: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the claimant did not have positive relationships in the prison, that he actively distanced himself and refused to build relationships*.**

V11: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that she referred the claimant to Occupational Health to find out if there were underlying issues.

V12: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the team had done all of the internal processes and that the personal impact for all involved was significant and building, and the claimant says that it was untrue to say that all process had been followed.

V13: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the claimant's behaviour remained the same and was mirrored in the community and this did not seem to be repairable.

V14: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that there was no-one the claimant could trust, and they had even tried matching him with staff but he was stand-offish and refused to engage which was upsetting all the staff, when the claimant says this was wrong and was said to paint him as a bad person.

V15: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the way the claimant communicates with prisoners, who feel the claimant targets them.

V16: Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that she was not struggling to do her job as she was spending all her time on these matters.

575. We find that Governor Johnson did make the comments set out in these allegations. We find the information she conveyed was her genuine reflection on the situation as it then stood. We find that the information conveyed (when read in the context of what was said at the meeting as a whole rather than as phrases taken out of that broader context) provided and accurate, balanced account of matters as they then stood. We find it was not only reasonable but also important that Ms Saigal had as clear a picture as possible of the situation. Otherwise she would not have a firm basis of information on which to advise.

576. We accept that some of the information conveyed could be viewed as critical of the claimant, e.g. that he did not get along with his colleagues. We find that this did not amount to "unfavourable treatment". It seems to us it cannot be that any discussion of a situation arising from the making of a protected disclosure amounts to unfavourable treatment otherwise an organisation would be paralysed from seeking to resolve the issue because of a fear of a successful victimisation claim. The claimant accepted that the report produced by Ms Saigal was a balanced one. It was in some respects critical of the respondent. We find that the comments made by Governor Johnson did not amount to unfavourable treatment and the victimisation claims relating to these allegations fail.

577. If we are wrong, and the information conveyed did amount to unfavourable treatment, we would have found, for the same reason as we gave in relation to V2, that the unfavourable treatment was not because of the protected act but because of the nature and number of the grievances and complaints raised by the claimant. We find that was separable in this case from the protected act itself (in the case of these allegations, PA5).

578. This allegation fails.

Employment Judge McDonald
Date: 3 May 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

3 May 2024

FOR THE TRIBUNAL OFFICE

ANNEX A
List of Issues

[Draft revised] LIST OF ISSUES (Liability Only)

TO BE READ IN CONJUNCTION WITH THE ANNEX TO EMPLOYMENT JUDGE BUZZARD'S CASE MANAGEMENT ORDER DATED 14 JUNE 2022 (P171-180)

1. Jurisdiction

1.1 Were the claims brought within the time limit in Section 123 of the Equality Act 2010? In particular:

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

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

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

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

2. Direct discrimination because of race.

2.1 Was the claimant treated as alleged at D1 to D49 of Annex 1 (p172 – 189)?

2.2 If so, in so doing, did the person alleged to have discriminated against the claimant, treat him less favourably than they treated, or would have treated, someone who was not Asian / of Pakistani origin, but whose circumstances were otherwise not materially different? In relation to the allegations at D1, D4, D5, D6, D7, D12 and D41, the claimant relies upon actual comparators as set out in the table at Annex 1. In relation to the other allegations the claimant relies upon a hypothetical comparator.

2.3 Was any less favourable treatment because of the claimant's race?

3. Direct discrimination because of religious belief.

3.1 Was the claimant treated as alleged at D1 to D49 of Annex 1 (p172 – 189)?

3.2 If so, in so doing, did the person alleged to have discriminated against the claimant, treat him less favourably than they treated, or would have treated, someone who was not Muslim, but whose circumstances were otherwise not materially different? In relation to the allegations at D1, D4, D5, D6, D7, D12 and D41, the claimant relies upon actual comparators as set out in the table at Annex 1. In relation to the other allegations the claimant relies upon a hypothetical comparator.

3.3 Was any less favourable treatment because of the claimant's religious belief?

4. Harassment related to race.

4.1 Did Officer Khan treat the claimant as alleged at H1 of Annex 1 (p179)?

4.2 If so, was that treatment unwanted?

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

4.4 If it did not have that purpose, did it have that effect, taking into account the perception of the claimant, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?

4.5 Was it related to the claimant's race?

5. Harassment related to religious belief.

5.1 Did Officer Khan treat the claimant as alleged at H1 of Annex 1 (p179)?

5.2 If so, was that treatment unwanted?

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

5.4 If it did not have that purpose, did it have that effect, taking into account the perception of the claimant, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?

5.5 Was it related to the claimant's religious belief?

6. Victimisation.

6.1 Did the claimant do a protected act(s)? The matters said to be protected acts are identified PA1 to ~~PA3~~ PA5 of Annex 1 (p171).

6.2 Was the claimant treated as alleged at V1 to ~~V8~~ V16 of Annex 1 (p180)?

6.3 If so, did that amount to a detriment(s)?

6.4 Was the claimant subjected to the detriment(s) because he had done a protected act(s)?

Allegations, list of comparators and list of persons alleged to have discriminated against the claimant.

AMENDED 6/06/2023 – AMENDMENTS SHOWN IN PURPLE
RE-AMENDED 7/06/2023 – AMENDMENTS SHOWN IN BLUE

Protected acts which the claimant relies on in his claims he was victimised because of the protected act		
No.	**Date**	**Protected Acts**
PA1	28/4/20	Report of sexual assault to the Police
PA2	Various dates	All grievance up to grievance 7 as part of cumulative number of grievances
PA3	17/5/21	Grievance 13
PA4	25/08/20	Claimant's ET first ET Claim
PA5	Various dates	All grievances up to the grievance 8 (dated 10 June 2020)

The alleged discriminators for any act or omission referred to are highlighted in red.

Allegations (any comparators/individuals identified as discriminating) which are subject to a deposit order are in green font *(allegations D2, D4, D18, D35 & V2)*

Direct Race and/or Religious Belief Discrimination allegations			
No.	**Date**	**Less Favourable Treatment**	**Comparator(s)**
D1	1/9/19-03/20	The Respondent failed to respond to the claimant's grievance of 1 September 2019, against the claimant's line manager until March 2020. It was sent by email *to SSCL and Deputy Governor Horridge (grievance 4)*	Officer Davies (comparator 1) BB (comparator 2) Officer Seminario (comparator 4) SO Unsworth (comparator 5)
D2	16/1/20	A Mediation did not occur as a resolution to a grievance ~~(grievance 6)~~ (grievance 5 [see para XXX of reasons]) because officer Bennison would not engage with the process.	Hypothetical comparator The Claimant cannot identify a comparator
D3	16/1/20	No alternative resolution was offered *[this was before the alleged sexual assault by officer Bennison]. Failure to offer alternative resolution was by CM Deardon* in relation to (grievance 5 [see para XXX of reasons])	Hypothetical comparator The Claimant cannot identify a comparator
D4	27/4/20	The Claimant claims that he was sexually assaulted by Officer Bennison because of his race and/or religion.	Claimant wants to rely on: Officer Riching (comparator 6) Officer Decre (comparator 7)
D5	27/4/20 and thereafter	The Claimant was not supported following his reporting that he had been sexually assaulted. The claimant says this was the "Care Team"	CC (comparator 3), who the claimant will say was supported.

D6	28/4/20	The Claimant was told on 28 April 2020 not to report the sexual assault on him to the police. The claimant will say he was told this by the Governor Johnson and Governor Wright	CC (comparator 3)– the claimant does not know if this comparator was told not to report a sexual assault to the police
D7	30/4/20	The Claimant will say that he was asked for a meeting by the Deputy Governor Horridge after he reported his sexual assault to the police.	CC (comparator 3).
D8	30/4/20	The Claimant asked for sight of CCTV footage. His request was refused by Deputy Governor Horridge – The Claimant has made numerous such requests granted without difficulty in the past.	Hypothetical comparator The Claimant cannot identify a comparator – he cannot use himself on earlier occasions as a comparator for this clam.
D9	15/5/20	At a meeting to discuss a DIRF raised against the Claimant additional allegations were raised by CM Atton	Hypothetical comparator The Claimant cannot identify a comparator
D10	22/5/20	The Claimant will say that after being told by a deputy governor (Mr Horridge) his 2/5/2020 grievance (*grievance 7)* was on hold, it was then contrary to what Deputy Governor Wright had stated proceeded with and determined on 22 May 2020.	Hypothetical comparator The Claimant cannot identify a comparator
D11	25/5/20	CM Costello did not respond to an email of complaint from the claimant dated 25/5/20 – The Claimant cannot recall what was in the email.	Hypothetical comparator The Claimant cannot identify a comparator

D12	25/5/20	The management enquiry report (compiled by CM Costello) into the sexual assault on the claimant was sent to the claimant on 25/5/20, but it did not deal with all issues	CC (comparator 3)
D13	3/6/20	The Management Enquiry report written by CM Atton and dated 3/6/20 was biased and had not been investigated impartially as shown by the conclusions reached.	Hypothetical comparator The Claimant cannot identify a comparator
D14	4/6/20	The Claimant says he was referred to OH without his consent, for making repeated complaints and presenting multiple grievances. The g*rievances presented were 1-7. This was by CM Costello (The only issue is that there was no consent for the referral)* **Claimant says the fact he was referred to OH was victimisation (allegation V2)**	Hypothetical comparator The Claimant cannot identify a comparator
D15	12/6/20	A complaint was made about the Claimant having submitted grievances on 8 June and 10 June (*grievances 8 & 9). This complaint was by Governor Johnson*	Hypothetical comparator The Claimant cannot identify a comparator
D16	12/6/20	The Claimant was told that the Respondent could not deal with the number of grievances he was submitting and the Respondent stated a third party would be brought in "*to decide about the Claimant*" (not OH). *This was said by Governor Johnson, agreed by Mr Costello*	Hypothetical comparator The Claimant cannot identify a comparator
D17	12/6/20	The Claimant was told that he looked stressed and therefore he would be referred to OH. *This was said by Governor Johnson.*	Hypothetical comparator The Claimant cannot identify a comparator

D18	15/6/20	Resolutions of a grievance *(grievance 6)* from the meeting of 15/6/20 never took place, i.e. apology from Officer Bennison and mediation. This allegation is against Officer Bennison, and Governor Patterson (who decided on this outcome)	Hypothetical comparator The Claimant cannot identify a comparator
D19	14/7/20	Governor Johnson is alleged to have told the claimant that OH had lied to the Claimant about the reason for the referral of the claimant. The Claimant says that Governor Johnson lied to the claimant. The claimant is clear that '*lied*' is appropriate description of Governor Johnson's conduct, Claimant also says that CM Costello lied to him on the same basis	Hypothetical comparator The Claimant cannot identify a comparator
D20	14/7/20	The Claimant sought but was denied access to the OH referral form. This was by CM Costello	Hypothetical comparator The Claimant cannot identify a comparator
D21	After 20/7/20	The Claimant says that Governor Johnson failed to contact him to discuss the OH referral, which is what Governing Governor Knight had stated would happen	Hypothetical comparator The Claimant cannot identify a comparator

D22	24/9/20	The Claimant had complained about Officer Seminerio *[(grievance 10)* who was then temporarily promoted by CM Barrett. This resulted in the claimant being forced to work under Officer Seminerio.	Hypothetical comparator The Claimant cannot identify a comparator
D23	12/10/20	The Claimant says that CM Barrett should not have been allowed to deal with the grievance about Officer Seminerio on 12/10/20 *(grievance 10)* because he had presented a grievance against CM Barrett on 9/10/20 *(grievance 11).* *Claimant says that Governor Johnson should have appointed someone different and CM Barrett should have recused herself.*	Hypothetical comparator The Claimant cannot identify a comparator
D24	14/10/20	The claimant had made written complaints about SO Derbyshire and CM Brown *(this was a formal complaint by email, not a grievance)*. The Claimant chased up his complaints on 17/2/21 and was not given any resolution. The claimant will say an email sent to Governor Johnson about this.	Hypothetical comparator The Claimant cannot identify a comparator
D25	10/11/20	The Claimant asserts that the report into the assault on 10/11 was biased and contained false and misleading information. CM Horner and SO Heskett prepared the report. The Claimant claims this was malicious. The report was produced sometime in or around December 2020.	Hypothetical comparator The Claimant cannot identify a comparator
D26	13/11/20	The Claimant says that false allegations were made about him in 3 '*Annex A*' reports following the 10/11 incident. These were not included in the management report into that incident. Allegations by Officer Rothwell, Officer Green and Officer Seminerio, report compiled with CM Horner and SO Heskett	Hypothetical comparator The Claimant cannot identify a comparator

D27	13/11/20	The Claimant complains about the inclusion of the false allegations in the 3 'Annex A' reports of Officer Green, Officer Rothwell and Officer Seminero	Hypothetical comparator The Claimant cannot identify a comparator
D28	6/1/21	The Claimant was not allowed (by CM Horner) to see the report into the assault on 10/11 until 12/2/21	Hypothetical comparator The Claimant cannot identify a comparator
D29	27/1/21	Governor Roberts refused to adjourn a prisoner's adjudication ("the Prisoners Adjudication") relating to the 10/11/20 incident, pending the Claimant's appeal response from Greater Manchester Police	Hypothetical comparator The Claimant cannot identify a comparator
D30	27/1/21	Governor Roberts said he was going to dismiss the Prisoner's Adjudication. [*The Claimant stated in his original list of issues that this was because the segregation staff had put the wrong charge on a DIS1. The claimant no longer appears to believe this was the reason, and/or a genuine error]*	Hypothetical comparator The Claimant cannot identify a comparator
D31	27/1/21	Claimant says that Governor Barber refused to allow him to raise new grounds for a grievance at the appeal stage *(grievance 10). The* claimant says the new grounds should have been allowed as they arose from what was said in the grievance outcome.	Hypothetical comparator The Claimant cannot identify a comparator
D32	27/1/21	Governor Barber referred to the outcome of other grievances in dealing with the claimant's grievance (*grievance 10)*. This was a counter grievance by Officer Seminerio, and the claimant's grievance 11.	Hypothetical comparator The Claimant cannot identify a comparator
D33	29/1/21	The Prisoner's Adjudication was dismissed Governor Roberts	Hypothetical comparator The Claimant cannot identify a comparator

D34	29/1/21	The Prisoner's Adjudication dismissed in Claimant's absence Governor Roberts. The claimant had been invited to attend but declined to do so as he wanted the Prisoner's Adjudication to be delayed until after he received his appeal response from Greater Manchester Police.	Hypothetical comparator The Claimant cannot identify a comparator
D35	9/2/21	The Outcome of Claimant's grievance against CM Barrett *(grievance 11)* was a recommendation of mediation with officer Seminario. This was CM Morgan	Hypothetical comparator The Claimant cannot identify a comparator
D36	12/2/21 (ish)	The Claimant was refused permission by Governor Barber to have a copy of the audio recording of a grievance meeting on 27/1/21. *(grievance 10)*	Hypothetical comparator The Claimant cannot identify a comparator
D37	24/3/21	The Claimant says that at a meeting on 24 March 2021 Governor Cross brushed his grievances under the carpet. *(grievance 12)*	Hypothetical comparator The Claimant cannot identify a comparator
D38	30/3/21	The Claimant appealed against the outcome of his grievance against CM Barrett *(grievance 11)*. There was an appeal hearing on 30/3/2021 and the Claimant did not get an outcome to that appeal hearing in writing at that time. (This was a CM Donnelly)	Hypothetical comparator The Claimant cannot identify a comparator
D39	2/4/21	The Claimant complained about the 3 '*Annex A*'s on 2/4/21 and nothing was done The claimant complained to Governor Johnson	Hypothetical comparator The Claimant cannot identify a comparator

D40	17/5/21	CM Barry invaded the claimant's personal space and told the claimant to listen to SO Jones	Hypothetical comparator – the claimant does not have this information about others
D41	24/5/21	Grievance Number 14 was blocked & rejected by Governor Johnson	Officer Seminario (comparator 4) SO Unsworth (comparator 5) CM Butler (comparator 8) (Cl not aware if they had put in numerous prior grievances) In alternative a hypothetical comparator.
D42	4/8/21	Claimant alleges he was not given a valid reason for rejecting Grievance 15, the claimant alleges this was Governor Roberts	Hypothetical comparator – the claimant does not have this information about others.
D43	14/9/21	Claimant alleges his appeal against Grievance 15 was 'brushed under the carpet' by Deputy Governor Horridge.	Hypothetical comparator – the claimant does not have this information about others
D44	23/9/21	Because of C's race CM Eve counted claimant's Covid-19 related absence towards the trigger point for absence policy. And correct procedure regarding one period of sickness was not followed.	Officer Kenyon (comparator 9), Officer Massey (comparator 10) and Officer Harrison (comparator 11). In alternative a hypothetical comparator

D45	6/11/21	CM Butler on 6/11/21 at around 11:10am penalised the claimant, phoned claimant and shouted/was aggressive towards him, about the fact he was in the external office rather than in Health Care and falsely accused him of failing to follow instructions	Hypothetical comparator – the claimant does not have this information about others
D46	12/11/21 Approx. 8am	C submitted complaint to his line manager (CM Eve and Governor Johnson) by email no answer was given	Hypothetical comparator – the claimant does not have this information about others
D47	After 16/11/21	Cl complained about Officer Khan, claimant says it is direct race discrimination that the R has not replied (CM Eve)	Officer McKevitt (comparator 12). In alternative a hypothetical comparator
D48	23/11/21	Claimant says he was never given an outcome to grievance number 13 by CM Westaway	Hypothetical comparator – the claimant does not have this information about others
D49	23/11/21	Claimant submitted complaint on 23/11/2021 about the incident on 20/9/21 where C was micro-managed and harassed by CM Barry, but no answer was given. (CM Eve)	Hypothetical comparator – the claimant does not have this information about others

Harassment - as pleaded in claim 2415177/21 (presented on 13/12/21)		
No.	**Date**	**Act of Harassment**
H1	16/11/21	During morning shift estimated time around 09:30 C was called coconut, freshy and also was told to resign due to not having British accent by Officer Khan on G wing 2's landings in the presence of prisoners.

Victimisation as pleaded in claim 2415177/21 (presented on 5/4/21) and claim 2413460/20 (presented on 25/8/20)			
No.	**Date**	**Less Favourable Treatment**	**Protected Act(s)**
V1	7/5/2020	Bullied by governors for reporting sexual assault to the police Deputy Governor Horridge	PA1 Report to the Police
V2	4/6/2020	Claimant referred to OH by CM Costello, R says because of repeated grievances (the fact that consent was not sought is irrelevant for victimisation)	PA2 Grievances 1-7
V3	10/11/21 approx. 10:30	C was shouted at by SO Unsworth on the 2's Landings on B-Wing for not moving dirty Mop and bucket from the landings which was left by prisoners after cleaning their cells	part of PA2 grievance 2 (June 2019) PA4 (1st ET Claim)
V4	10/11/21 Approx. 10:30	SO Unsworth gave evil look, when C was coming towards the bucket, to secure the bucket after finding the gloves	part of PA2 grievance 2 (June 2019) PA4 (1st ET Claim)
V5	10/11/21	C was sent to Business hub twice by SO Unsworth to deliver letter and exchange the vape and C was told by SO Unsworth to count the outer side of the wing alone.	part of PA2 grievance 2 (June 2019) PA4 (1st ET Claim)

V6	11/11/21	C Was told by SO Unsworth, on/around 17:25 that C's shift finishes at 17:30 and C must stay on the wing until shift finish time, C was told that he cannot leave the wing at 17:25 but 2 other female members of the staff were allowed to leave around 17:20 by SO Unsworth	part of PA2 grievance 2 (June 2019) PA4 (1st ET Claim)
V7	11/11/21 Approx. 17:25	C was told by SO Unsworth that before leaving the wing, go and ask every staff member on the wing if they are happy with you then you can leave	part of PA2 grievance 2 (June 2019) PA4 (1st ET Claim)
V8	20/11/21	At/around 17:25 Cl phoned CM Barry, CM Barry then questioned why C has not followed instructions given to C, i.e. to go on the wing and help prisoners with mealtime at 4pm. C informed CM Barry that C has completed that Task and following last instructions given by wing SO	PA3 grievance 13
V9	18/06/20	Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that there was no racial aspect being raised by the claimant, which the claimant says was untrue.	PA5 (grievances 1-8)
V10	18/06/20	Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the claimant did not have positive relationships in the prison, that he actively distanced himself and refused to build relationships.	
V11	18/06/20	Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that she referred the claimant to occupational health to find out if there were underlying issues.	PA5 (grievances 1 -8)

V12	18/06/20	Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the team had done all of the internal processes and that the personal impact for all involved was significant and building, and the claimant says that it was untrue to say that all process had been followed.	PA5 (grievances 1 – 8)
V13	18/06/20	Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the claimant's behaviour remained the same and was mirrored in the community and this did not seem to be repairable.	PA5 (grievances 1 -8)
V14	18/06/20	Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that there was no one the claimant could trust and they had even tried matching him with staff but he was stand offish and refused to engage which was upsetting all the staff, when the claimant says this was wrong and was said to paint him as a bad person.	PA5 (grievance 1-8)
V15	18/06/20	Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that the way the claimant communicates with prisoners, who feel the claimant targets them.	PA5 (grievance 1-8)
V16	18/06/20	Carly Johnson stated in a meeting attended by Deputy Governor Horridge, A Saigal and others that she was now struggling to do her job as she was spending all her time on these matters.	PA5 (grievance 1-8)

Case No. 2413460/2020
2402756/2021
2415177/2021

List of 12 named comparators

Comparator 1 - Callum Davies
Comparator 2 - BB
Comparator 3 - CC
Comparator 4 – Officer Seminario
Comparator 5 – SO Unsworth
Comparator 6 – Officer Riching
Comparator 7 – Officer Decre
Comparator 8 - CM Butler
Comparator 9 – Officer Kenyon
Comparator 10 – Officer Massey
Comparator 11 – Officer Harrison
Comparator 12 – Officer McKevitt

List of 25 individuals accused of discrimination (In alphabetical order by surname)

CM Atton
Governor Barber
CM Barrett
CM Barry
Officer Bennison
CM Butler
CM Costello
Governor Cross
CM Deardon
CM Donnelly
CM Eve
Officer Green
SO Heskett
CM Horner
Deputy Governor Horridge
Governor Johnson
Officer Khan
CM Morgan
Governor Patterson
Governor Roberts
Officer Rothwell
Officer Seminerio
SO Unsworth
CM Westaway
Governor Wright

”The Care Team”

(this could be one or more unknown persons in that team)

Annex B

Day 8 decision on admissibility of documents

1. This is our decision on the respondent's application to add further documents to the Tribunal hearing bundle.

2. The documents concerned are for prisoner complaints against the claimant and the outcome of a complaint which is already in the Tribunal bundle. They consist (we are told) of 20 pages. The claimant has had an opportunity to read them overnight. He objects to the documents being added to the bundle.

3. Dealing firstly with whether the documents are relevant, we find that they are relevant in the sense that the respondent will rely on them as part of its case that victimisation allegation V15 is not well-founded. That is an allegation that Governor Johnson gave wrong information at a meeting on 18 June 2020 with the Equalities Adviser and others, specifically that she gave wrong information that the way the claimant communicates with prisoners who feel that that he targets them.

4. In terms of relevance, we find that the documents are clearly relevant.

5. In terms of the delay in producing them, the allegation of victimisation was added on Day 3 of the hearing. That means that we are receiving them about five working days after the allegations were added. The respondent explains that it took some time to locate the documents and then on Monday when Ms Knowles reviewed them to confirm that redaction was necessary. The documents would have been produced yesterday (i.e. on Day 7 of the hearing) but we agreed that it made more sense to continue with the claimant's cross examination and give him an opportunity to review them overnight. We find that that delay is not a long one and that there is a reasonable explanation for it.

6. In terms of the prejudice to the respondent, we find that there would be prejudice to the respondent if we did not allow the documents to be added. As we have said, the victimisation allegation was a new one and that (we find) explains why the documents were not adduced and disclosed previously.

7. From the claimant's point of view, we accept that there is always some prejudice to a party, particularly a litigant in person, where documents are produced partway through the hearing. In this case (as we say) there is a reasonable explanation for why that is the case.

8. In terms of prejudice to the claimant, he has had an opportunity to read the documents. From his comments he was aware of at least some of the complaints even if he had not seen all the documents. The claimant has been given an opportunity to read them. He will be able to cross examine Governor Johnson about them and there is time for him to re-read the documents to prepare for that. If Ms Knowles does ask him questions about them in cross examination, we will ensure that if necessary he will be given time to read parts of them that he is referred to. We find therefore that the prejudice to the claimant is minimal.

9. The claimant (as we understand it) has said that if the documents are to be added to the bundle, he should also be allowed access to the relevant prisoner' files. We find that that would be disproportionate. It is also not necessary to decide the issue to which the documents are relevant. We are not deciding whether the complaints against the claimant were substantiated in the sense that there was good ground for them – what we are deciding is what information Governor Johnson had when she gave information at the meeting on 18 June. We find that the complaints will be sufficient for that.

10. On balance, therefore, we find that in order to comply with the overriding objective it is fair and just for us to allow these documents to be added to the bundle.