



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Ujah

**Respondent:** Department of Work and Pensions

**Heard at:** Southampton

**On :** 7, 8 (reading day), 14, 15, 18, 19, 20, 21, 22, 25, 26 (in chambers) 27 (in chambers) March 2024

**Before:** Employment Judge Dawson, , Mr Sleeth, Mr Richardson

### **Appearances**

For the claimant: Representing himself

For the respondent: Mr Tinnion, counsel

## JUDGMENT

The claimant's claims are dismissed.

## REASONS

### **Introduction**

1. By a claim form presented on 25 June 2022, Mr Ujah presented claims of
  - a. being subjected to a detriment and/or unfair dismissal because of whistleblowing and;
  - b. race and disability discrimination.
2. By way of a very brief overview, Mr Ujah was employed by the respondent as an administrative officer from 12 August 2020 at Basingstoke Job Centre. He

was employed on a fixed term contract which was expected to come to an end in February 2021 but, in fact, was extended. It came to an end in June 2022 when, according to respondent, it decided not to offer Mr Ujah a permanent post following a management assessment against scoring criteria. Mr Ujah asserts that during his period of employment he was subjected to a number of acts of discrimination on the grounds of race. He also says that as a result of his disability he was not able to make telephone calls. He says that the respondent should not have taken into account his inability to make telephone calls when considering his performance and its failure to do so was a failure to make reasonable adjustments. The respondent denies that it took that inability into account and denies discriminating against Mr Ujah.

### **The issues**

3. The claim form was not particularly detailed and a case management hearing took place on 18 April 2023 before Employment Judge Roper. He spent some time discussing the case with the parties and establishing a detailed list of issues. He identified 27 different allegations of race discrimination and harassment and a claim of a failure to make reasonable adjustments by discounting the fact that Mr Ujah was unable to make telephone calls in his performance review in May 2022. In terms of the race discrimination claim, the judge noted that Mr Ujah describes himself as Black African and that he relied upon actual comparators namely the four members of his team who were white Caucasian. They were Joe Kiff, Megan Miles, Ashleigh Akers and Georgina Karagul/ Ewington.
4. The judge also particularised the whistleblowing claims but made a deposit order in respect of them. The deposit was not paid and those claims were dismissed on 12 June 2023.
5. A further case management hearing took place on 3 August 2023. A list of issues had been prepared in advance of that hearing which was same as the list created by Employment Judge Roper but without the whistleblowing claims. At the hearing on 3 August 2023, it is apparent that Employment Judge Livesey went through matters with a substantial degree of care, he pointed out to Mr Ujah that it may be difficult to present a claim with the number of allegations which he was making and asked Mr Ujah to give serious thought as to whether he wished to advance all of those allegations. Mr Ujah was clear that he wanted to pursue them.
6. Mr Ujah applied to vary the list of issues on 13 November 2023. Employment Judge Rayner rejected that application on 22 December 2023 and no appeal has been lodged in respect thereof.
7. As is briefly summarised below, Mr Ujah failed to serve his witness statements on time and a preliminary hearing was held on 7 March 2023 (which coincided with the first day of the hearing, which was a reading day). At that hearing Employment Judge Dawson raised with Mr Ujah his concern that his witness statement did not appear to address the list of issues and as far as the tribunal was concerned the issues which it would be determining at the final hearing

were those identified by Employment Judge Roper. Mr Ujah confirmed that that was, also, his understanding. No further application was made to vary the list of issues.

8. In those circumstances the list of issues remains that identified initially by Employment Judge Roper and confirmed by Employment Judge Livesey and in the preliminary hearing on 7 March 2024.

## **Conduct of the hearing**

### ***Delayed Start and Revision of Timetable***

9. The claim was, originally, listed for a 15 day hearing and there was a direction to exchange witness statements by 21 December 2023. It was anticipated that Mr Ujah would be calling 15 witnesses plus himself and the respondent intended to call 11 witnesses. The hearing was due to start on 7 March 2024 with the first two days being for reading and the parties attending from 11 March 2024. Mr Ujah was to go first and the timetable set down by Employment Judge Livesey allowed five days for Mr Ujah's evidence and four days for the respondent's evidence.
10. On 29 January 2024, Mr Ujah wrote to the respondent's solicitors stating that he had got behind with the witness statements and would not be able to exchange them for a further two weeks.
11. A further case management hearing was held on 31 January 2024 following which Employment Judge Cadney recorded that the claim was still not ready for hearing and that a tight timetable had been agreed in relation to the exchange of witness statements- they were to be exchanged by 21 February 2024. He recorded that "The parties are agreed that this is the latest date upon which they can be exchanged and still allow a reasonable time for preparation for the hearing. If this direction is not met the tribunal should be notified immediately as it may result in the final hearing being postponed in any event as set out above"
12. Mr Ujah was still not ready to exchange his statements by that date and on 21 February 2024 wrote to the tribunal stating that he had experienced difficulties getting his witnesses to comply with the timetable and asked for an extension to the 6 March 2024.
13. By email dated 23 February 2024 the respondent wrote stating that there would be insufficient time for the respondent to prepare for the hearing but also stating "if the Tribunal is minded to grant the Claimant's application (in whole or part), the Respondent invites the Tribunal to reduce the significant prejudice that will cause the Respondent by varying the case management order EJ Livesey made in August 2023 providing that the Claimant's witnesses would give evidence first on 11 March 2024, and instead order the Respondent's witnesses to give evidence first. This will give the Respondent's counsel the additional time required to review the Claimant's witness evidence, to take instructions, and to prepare his cross-examination of the Claimant's witnesses. The

Respondent submits this remedial course of action is consistent with the overriding objective of ensuring a fair trial and dealing in a proportionate way to the effect the Claimant's application will have if granted."

14. On 4 March 2024 Mr Ujah wrote to the tribunal stating "Regrettably, after trying relentlessly to push my witnesses to complete their statements by the 21st of February 2024 it has not been possible due to various factors, chiefly amongst which is the impact of them having to relive past traumas working for the Department for Work and Pensions while writing their witness statements".
15. The respondent applied to strike out the claim on 4 March 2024 and the case was listed for a one hour public preliminary telephone hearing on 7 March 2024 at 12 noon. The purpose of the hearing was to consider;
  - a) the claimant's application for an extension of time to serve witness statements to 6 March 2024,
  - b) the respondent's application to strike out the claim,
  - c) the claimant's application for his witnesses to attend by video.
16. On 5 March 2024, Mr Ujah stated that he was against the respondent's witnesses giving evidence first because that would affect his witnesses being able to attend the hearing and said that if the respondent believed that there was insufficient time the hearing date should be moved.
17. On 7 March 2024, Mr Ujah disclosed his statements. There were four of them. His statement was 19 pages long and consisted of 10,000 words. The statement of Ms Renner was three pages long, the statement of Mr Ewington was two pages long, the statement of Paul Lowman was four pages long and the statement of Ms Pawlicka was one page long. The witness statements of the respondent ran to 27 pages in total.
18. At the hearing on 7 March 2024, the respondent sought a delay to the start of the hearing until 18 March 2024. Counsel for the respondent submitted that he would need 3 days to cross examine Mr Ujah and his witnesses. Mr Ujah submitted that he would need 2-3 days to cross examine the respondent's witnesses. Thus, by now, the case was a very different one in terms of the number of witnesses and the amount of evidence than had been anticipated by Employment Judges Roper, Livesey and Cadney. At that hearing, Employment Judge Dawson directed that the case would start on 14 March 2024. The time allowed for Mr Ujah's case would be reduced to 3 days and the time allowed for the respondent's case would be reduced to 3 days. Full reasons were given at the time and are not repeated here. The application to strike out the claim was dismissed as a fair hearing was still possible.

### ***Video evidence***

19. At the hearing on 7 March 2024 Mr Ujah sought permission for one of his witnesses, who lives in Exeter to give evidence by video and the respondent sought permission for one of its witnesses, who lives on the Isle of Wight and was retired, also to give evidence by video. Neither party objected to the other's

application and, therefore, permission was granted. In fact, Mr Ujah called two witnesses by video, with no objection being taken and, due to slippage in the timetable, the respondent also called a further witness by video, again with no objection being taken.

***Adjournments during the course of the hearing***

20. At the outset of the hearing, we invited Mr Ujah in particular, but both parties, to let us know if they needed any adjustments to the hearing. Both parties indicated that no adjustments were needed but we told the parties to let us know if they needed a break and repeated that throughout the hearing.
21. On the third day of the hearing (18 March 2024), after he had cross-examined Ms Briggs, Mr Ujah was not in a position to carry out cross-examination of Mr Rance. He told us that the reason was that he had not finished preparing. He asked for the case to be adjourned to the next day. We asked for a timetable of how long he anticipated cross-examining each of the respondent's witnesses, which he gave us. The respondent resisted an adjournment because of the stress which Mr Rance was under, waiting to give evidence. Having considered the overriding objective we agreed to the application. The time estimates given by Mr Ujah reassured us that the case could still be finished on time and although we regretted the inconvenience to Mr Rance, we considered that the interests of justice favoured Mr Ujah having sufficient time to prepare cross-examination in full.
22. On the fourth day of the hearing, following cross-examination of Mr Rance, Mr Ujah felt ill, we allowed 1.5 hours for lunch to assist Mr Ujah. After lunch he cross-examined Ms Quinn but then felt unable to continue and we adjourned for the rest of the day at 2:44 pm.
23. On the fifth day of the hearing (20<sup>th</sup> March) we received an email from Mr Ujah, which had been sent at 07:02 that morning, in which he stated that he would not be able to attend the tribunal due to illness. He stated that he would be able to attend the next day and anticipated being able to cross examine all six remaining witnesses on that day. That was not unrealistic since he had given time estimates of either 30 or 40 minutes for cross-examination of each of the witnesses. It is not necessary for the purposes of this judgment to go into the nature of Mr Ujah's illness. With the consent of the respondent, the tribunal agreed to the adjournment and indicated to Mr Ujah that if it would assist him, going forward, the tribunal would be content for him to attend by video with the other parties attending in person. In fact, Mr Ujah attended in person for the rest of the hearing. He did not seek any further adjournments.
24. On 21 March 2024, an issue arose in that the respondent wished to call Mr King to give evidence as the second witness on that day. However an issue had arisen about disclosure of the minutes of the appeal hearing which had been conducted by Mr King. The claimant was keen to be given a copy of the minutes. The respondent no longer had a copy and the claimant maintained that he did not have a copy either. However, on 21 March 2024 the respondent had been able to obtain a copy from Mr Ujah's trade union representative, which it then

disclosed to Mr Ujah. Initially, we were minded to adjourn for a period to allow the claimant to consider the minutes and then hear evidence from Mr King for the respondent and we indicated that the tribunal would adjourn for two hours for lunch to allow that to happen. However, when we saw the minutes it was apparent that the claimant would not be able to assimilate them in the time allowed. In those circumstances we indicated that we did not think it was fair for the respondent to call Mr King as its next witness and the respondent called Miss Begum instead. Mr Ujah was still allowed two hours for lunch since it was apparent that he was struggling with his illness and the tribunal finished at 3:10 p.m.

25. In order to accommodate Mr Ujah's health issues, on 22 March 2024 the tribunal sat from 9:30 a.m. and finished hearing witnesses at 11:35 a.m.

26. That slippage in the timetable meant that the tribunal finished hearing evidence and submissions on 25 March 2024.

### ***The Witnesses***

27. For Mr Ujah we heard from him and

- a. Ms Ewington (also referred to in the documentation as Georgina Karagul), a colleague of his who was based at Basingstoke,
- b. Ms Renner, a colleague of his who worked at the Taunton job centre and from,
- c. Ms Pawlicka, another colleague.
- d. Mr Ujah also provided a witness statement from Mr Lowman, his trade union representative, who did not attend to give evidence.

28. For the respondent we heard from the following witnesses:

- a. Robert Rance who was, for the initial period we are considering, the team leader for the administrative officers (including Mr Ujah).
- b. Tracey Quinn, a work coach for the respondent.
- c. Sarah Briggs, a senior executive officer who took over the investigation into Mr Ujah's grievances about Robert Rance and Tracey Quinn from June 2021.
- d. Vicki Harrison, a Customer Service Leader who was the decision-maker in relation to Mr Ujah's grievances about Mr Rance and Ms Quinn.
- e. Junior King, District Operations Manager who decided Mr Ujah's appeal against the outcome of his grievances.
- f. Jodie Wilson, Service Leader, who scored expressions of interest for the role of South-West Universal Credit Work and Health Race Lead.

- g. Melanie Cramer, Service Delivery Coach; Mr Ujah's line manager from December 2021.
- h. Rahima Begum, Acting Customer Service Leader at Basingstoke and Mr Ujah's co-manager from April/May 2022
- i. Cassandra Salter, Customer Service Leader.

29. We received a bundle of documents running to 817 pages. In the course of the hearing we received, with no objection from either side,

- a. an initial set of minutes of the appeal hearing with covering email,
- b. an email from Melanie Cramer to Mr Ujah dated 7 April 2022 and
- c. an email from Mr Lowman to Mr King dated 24 February 2022.

## **The Law**

### **Race Discrimination**

30. The following are relevant sections from the Equality Act 2010.

#### **13 Direct discrimination**

- 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.

#### **26 Harassment**

- 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—
    - a. violating B's dignity, or
    - b. creating an intimidating, hostile, degrading, humiliating or offensive environment for B
  
- 4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
  - a. the perception of B;
  - b. the other circumstances of the case;

c. whether it is reasonable for the conduct to have that effect.

5) The relevant protected characteristics are—

...

race;

...

### **39 Employees and applicants**

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

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

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

(c) by dismissing B;

(d) by subjecting B to any other detriment.

### **109 Liability of employers and principals**

(1) Anything done by a person (A) in the course of A's employment

### **136 Burden of proof**

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

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

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



## **Causation**

31. In Chief Constable of Greater Manchester v Bailey [2017] EWCA Civ 425 it was held at para 12: “Both sections use the term “because”/“because of”. This replaces the terminology of the predecessor legislation, which referred to the “grounds” or “reason” for the act complained of. It is well-established that there is no change in the meaning, and it remains common to refer to the underlying issue as the “reason why” issue. In a case of the present kind establishing the reason why the act complained of was done requires an examination of what Lord Nicholls in his seminal speech in *Nagarajan v London Regional Transport* [2000] 1 AC 501, referred to as “the mental processes” of the putative discriminator (see at p. 511 A-B). Other authorities use the term “motivation” (while cautioning that this is not necessarily the same as “motive”). It is also well established that an act will be done “because of” a protected characteristic, or “because” the claimant has done a protected act, as long as that had a significant influence on the outcome: see, again, *Nagarajan*, at p. 513B.”
32. In Shamoon v Chief Constable RUC [2003] IRLR 337, the House of Lords held “No doubt there are cases where it is convenient and helpful to adopt this two-step approach to what is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? But, especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason-why issue. The two issues are intertwined” (paragraph 8).

## **The Burden of Proof and drawing of inferences**

33. In Madarassy v Nomura International plc [2007] IRLR 246, the Court of Appeal held, at paragraphs 56-57,

“The court in *Igen v Wong* expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.

57 'Could conclude' in s.63A(2) must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage (which I shall discuss later), the

tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like as required by s.5(3) of the 1975 Act; and available evidence of the reasons for the differential treatment.

34. In Hewage v Grampian Health Board [2012] UKSC 37, the Supreme Court held “Furthermore, as Underhill J pointed out in *Martin v Devonshires Solicitors* [2011] ICR 352 (para 39) it is important not to make too much of the role of the burden of proof provisions. They 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.”

35. In Bahl v The Law Society [2004] IRLR 799, the Court of Appeal held

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...

It has been suggested, not least by Mr de Mello in the present case, that Sedley LJ was there placing an important gloss on *Zafar* to the effect that it is open to a tribunal to infer discrimination from unreasonable treatment, at least if the alleged discriminator does not show by evidence that equally unreasonable treatment would have been applied to a white person or a man.

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In our judgment, the answer to this submission is that contained in the judgment of Elias J in the present case. It is correct, as Sedley LJ said, that racial or sex discrimination may be inferred if there is no explanation for unreasonable treatment. This is not an inference from unreasonable treatment itself but from the absence of any explanation for it. However, the final words in the passage which we have quoted from *Anya* are not to be construed in the manner that Mr de Mello submits. That would be inconsistent with *Zafar*. It is not the case that an alleged discriminator can only avoid an adverse inference by proving that he behaves equally unreasonably to everybody. As Elias J observed (paragraph 97):

'Were it so, the employer could never do so where the situation he was dealing with was a novel one, as in this case.'

Accordingly, proof of equally unreasonable treatment of all is merely one way of avoiding an inference of unlawful discrimination. It is not the only way. He added (*ibid*):

'The inference may also be rebutted – and indeed this will, we suspect, be far more common – by the employer leading evidence of a genuine reason which is not discriminatory and which was the ground of his conduct. Employers will often have unjustified albeit genuine reasons for acting as they have. If these are accepted and show no discrimination, there is generally no basis for the inference of unlawful discrimination to be made. Even if they are not accepted, the tribunal's own findings of fact may identify an obvious reason for the treatment in issue, other than a discriminatory reason.'

We entirely agree with that impressive analysis. As we shall see, it resonates in this appeal

36. The Court of Appeal in Aylott v Stockton on Tees Borough Council [2010] EWCA Civ 910 stated “Direct discrimination claims must be decided in accordance with the evidence, not by making use, without requiring evidence, of a verbal formula such as ‘institutional discrimination’ or ‘stereotyping’ on the basis of assumed characteristics. There must be evidence from which the ET could properly infer that wrong assumptions were being made about that person’s characteristics and that those assumptions were operative in the detrimental treatment, such as a decision to dismiss”
37. In Nagarajan Lord Nicholls pointed out “In particular, if the reason why the alleged discriminator rejected the complainant's job application was racial, it matters not that his intention may have been benign. For instance, he may have believed that the applicant would not fit in, or that other employees might make the applicant's life a misery. If racial grounds were the reason for the less favourable treatment, direct discrimination under section 1(1)(o) is established”, he went on “Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did. It goes without saying that in order to justify such an inference the tribunal must first make findings of primary fact from which the inference may properly be drawn”

### ***Meaning of Detriment***

38. In deciding whether the claimant was treated unfavourably we have had regard to the decision in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11 that, in respect of the definition of detriment,

“As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522 g, the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the

view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.

But once this requirement is satisfied, the only other limitation that can be read into the word is that indicated by Brightman LJ. As he put it in *Ministry of Defence v Jeremiah* [1980] ICR 13, 30, one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment": *Barclays Bank plc v Kapur (No 2)* [1995] IRLR 87. But, contrary to the view that was expressed in *Lord Chancellor v Coker* [2001] ICR 507 on which the Court of Appeal relied, it is not necessary to demonstrate some physical or economic consequence. (Paragraph 34 to 35).

### **Disability Discrimination -Reasonable adjustments**

39. The provisions relating to the duty to make reasonable adjustments are to be found in sections 20 and 21 of the Equality Act 2010.

40. Section 20 of the Equality Act 2010 provides in respect of the duty to make reasonable adjustments as follows:

- "(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage
- (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

Section 21(1) provides that a failure to comply with the first or second requirement is a failure to comply with the duty to make reasonable adjustments.

41. In *Environment Agency v Rowan* [2008] IRLR 20, the EAT gave guidance on how an employment tribunal should act when considering a claim of failure to make reasonable adjustments. The tribunal must identify:

- "(a) the provision, criterion or practice applied by or on behalf of an employer, or;
- (b) the physical feature of premises occupied by the employer;
- (c) the identity of non-disabled comparators (where appropriate); and
- (d) the nature and extent of the substantial disadvantage suffered by the claimant'.

42. The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s 212(1).

### Approaching the Evidence

43. In *Gestmin SGPS SA v Credit Suisse (UK) Ltd*, Leggatt J gave the following helpful guidance

#### *Evidence Based On Recollection*

[16] While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

[17] Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory)

...

[22] In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. ... Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.

44. We have approached the evidence in that way. In this case we note that most of the allegations date back to September and November 2020. More than one witness noted they were being asked to recall things that took place over three years ago, in the context of explaining why their recollection on some details may not be perfect.

### **Findings of Fact**

45. We have received a large amount of material which spans the period of Mr Ujah's work for the respondent. It shows that Mr Ujah was, on a voluntary basis, very heavily involved in race relations matters whilst working for the respondent and shows a number of areas of friction between Mr Ujah and those involved in his management. The majority of Mr Ujah's witness statement does not deal with the central allegations contained in the list of issues but other matters which are clearly of importance to Mr Ujah. The same can be said of the witness statements of Mr Ujah's witnesses, Ms Renner and Ms Pawlicka.

46. As a tribunal it is not our role, and we do not have the jurisdiction, to conduct an enquiry into whether the respondent is a good employer from a race relations point of view or, indeed, a good employer generally. It is our role to consider the issues in the case and the evidence which relate to those issues. We can only reach conclusions based on the evidence which is presented to us by the parties. If particular facts are not dealt with in evidence, we are not in a position to make findings in respect of them.

47. The way in which Mr Ujah presented his evidence has, on occasion, made it somewhat difficult for us to make findings of fact. In relation to the majority of the issues- those in paragraphs 3.1.1 to 3.1.24 the list of issues - Mr Ujah has not given specific evidence in his witness statement but simply referred to a number of pages in the bundle. Those allegations are dealt with within paragraph 5 of his statement as follows:

I suffered a pattern of racist discrimination and humiliation in 2020 at the hands of Robert Rance and Tracy Quinn, both of Basingstoke JCP, of which I submitted a formal grievance to management in November of 2020 that was purposely botched with critical CCTV evidence requested via subject access request purposely destroyed, witness testimony

suppressed, with pressure brought to bear to change my original statements, and proceedings drawn out with the aim being to derail the process, break my resolve, intimidate me, and ensure these matters were silenced and just went away.

Robert Rance and Tracy Quinn in turn submitted a formal grievance against me.

[136 - 143, 160 - 165, 188 - 190, 228 - 234, 238 - 234, 131 - 132]

[118, 794, 795, 796, 797, 802, 806]

48. The numbers cited in paragraph 5 of his statement are references to page numbers in the bundle which are contemporaneous (or relatively near contemporaneous) documents.
49. Mr Ujah's evidence was presented in a straightforward fashion and marked by a willingness to make concessions where he considered it appropriate. The tribunal did not form the view that Mr Ujah was seeking to mislead us and we find that he was telling us about events as he genuinely believed them to have been. It was apparent to us that, at this remove from the events, Mr Ujah is clearly distressed by his recollection of what happened and we record that he presented the case to the tribunal politely and with determination.
50. We find that Mr Ujah was somebody who had a great deal of interest in race relations matters and a great deal of knowledge of them. One only has to consider some of the documents within the bundle which Mr Ujah has written, such as the email at page 196 discussing where in human history "we see the association of "darkness" or "black" being tied to something, or everything bad, and how?" to understand the depth of Mr Ujah's knowledge and the strength of his feeling.
51. We find that knowledge and strength of feeling has manifested itself in ways which show that Mr Ujah sees much of life through the prism of race relations and discrimination.
52. For instance, on one occasion when Robert Rance was telling Mr Ujah that he was thinking about buying an Audi, on his own evidence, Mr Ujah replied that the SS had funded the Auto Union in Nazi Germany. Robert Rance's witness statement suggests that the claimant went somewhat further and stated that Audi had links back to Nazi Germany which made Mr Rance feel that Mr Ujah was insinuating he was a racist. The fact that the immediate expression of opinion by Mr Ujah, when somebody talked about purchasing an Audi car was one that related to the SS and Nazi Germany is an example of Mr Ujah seeing life through the prism of race relations.
53. We also observe that in Mr Ujah's statement, he describes Ms Begum as follows:

Rahima Begum is a hijab wearing woman of colour, who initially had the trust of her marginalised colleagues in the department as she narrated racist incidents that broke the Equality Act in Portsmouth JCP on the NRN blog post platform – these have now been removed, along with this, marginalised groups inclusive of myself shared confidences with her on bigotry and racial discrimination in the department. She participated as a note taker in grievance proceedings, inclusive of one of the many botched proceedings of my original investigation in 2021. As Rahima Begum has risen in the department – she has provided legitimacy to a playbook of fictitious progressivism by the department, that has cost her the trust and confidence of her minority colleagues and allies, sadly.

54. We can see no reason why it was necessary for Mr Ujah to describe Ms Begum in such terms in order for him to pursue his claims.
55. Some of the allegations in the list of issues, being allegations of direct race discrimination and harassment, were withdrawn by Mr Ujah during cross examination when it was explained to him why they were not acts of race discrimination or harassment.
- a. In relation to issue 3.1.3, Mr Ujah accepted that if he was given an insurmountable amount of work to do in October 2020 it was nothing to do with his race.
  - b. In relation to issue 3.1.22, the allegation was that Tracy Quinn had abused her position of trust to encourage Mr Ujah to raise a grievance against Robert Rance. In cross-examination Mr Ujah agreed that there was nothing wrong with Ms Quinn saying to him that if he felt strongly he should raise a complaint and withdrew his allegation that that was an act of race discrimination or harassment on the grounds of race.
  - c. In relation to allegation 3.1.25- an assertion that the respondent failed to thoroughly investigate the claimant's grievance- Mr Ujah agreed that any defects were procedural and not to do with race and he withdrew that complaint.
56. It is, of course, to Mr Ujah's great credit that he was willing to withdraw complaints when, upon explanation, he saw them in a different light. However, the fact that he made the allegations when they could not be sustained, means that we must approach with caution the uncorroborated evidence by him.
57. Further, in relation to issue 3.1.24, the destruction of CCTV footage, Mr Ujah accepted that he could not say whether Kath Rix, Michelle Aikins, Adele Blaker (who were those involved in the failure to secure CCTV) were motivated by race and told us that he had not accused them of failing to secure CCTV on the grounds of race. When he was asked to explain why he maintained that failure to secure the CCTV was an act of race discrimination, he could only assert that if the CCTV footage would have shown Robert Rance being discriminatory towards him, its destruction must be an act of race discrimination. Such a belief



suggests that Mr Ujah is not clearly able to separate particular acts from one another in the context of his complaints.

58. Mr Ujah was able, however, to bring supporting evidence from three witnesses including Georgina Ewington. We found Ms Ewington to be a forthright witness who was unshakeable in her views but was, eventually, willing to say when she could not remember things. Her evidence was that she had written her statement based upon what she had said to an investigatory meeting on 12 August 2021 with Ms Briggs (page 266 of the bundle). At the time she wrote her witness statement she had not seen the list of issues and Mr Ujah did not see her statement before she signed it. We accept that evidence, it was given without prevarication and spontaneously. In those circumstances, although she clearly supports Mr Ujah, her evidence has a degree of independence from him.

### **Background Findings of Fact**

59. Most of the following facts are not in dispute and we set them out as the background to the specific findings which we must go on to make in order to determine Mr Ujah's claim.

60. Mr Ujah was employed by the respondent as an administrative officer. The post was full time and for a fixed term of six months. Mr Ujah was situated at the Basingstoke job centre and his start date was 10 August 2020.

61. On 15 August 2020, at the end of his induction week, Mr Ujah sent an email to a friend of his who worked for the respondent which included the following statement "so, I wake first thing, with clear thoughts and a clear throw of what I witnessed yesterday @ the DWP! Here goes: the first thing that comes to mind, A FLOCK OF EGOMANIACS!-Management or the upper echelons consist of a group of very sophisticated talentless individuals whose entrance status/power within the organisation rests on ensuring an enforced hierarchy from which they derive their power... Management consists mostly of people who would find no relevance in the real world - they lack talent and education to exist outside of the Department..." (Page 118). At that time Mr Ujah's line manager was Robert Rance.

62. Ms Ewington told us, and we accept given that she gave evidence on behalf of Mr Ujah and this point was not challenged, that until about November or December 2020, the team which Mr Rance had responsibility for was split over two floors. It is obvious, therefore, that at times he would be on one floor and at times on another floor. He would not have been able to see everything which was going on the whole time.

63. However, Mr Rance also told us that his role, as well as being Team Leader for the administrative officers (AOs) included being the senior responsible officer for the site including during covid and for health and safety. The building consisted of four floors (including the ground floor) with the main customer operation being on the ground floor. There were around 20 to 25 people in the

office spread over those floors, although there were 54 people employed by the Department. Mr Rance's office was on the ground floor although he did not spend much time in it. Mr Rance said that he was responsible for 6 front of house staff, Mr Ujah's team and 14 AOs based in different areas around the building. That evidence was given in answer to the tribunal's questions, but Mr Ujah did not seem to disagree with it and there is nothing in the bundle of documents which would cause us to question it. We accept that evidence.

64. Everyone agreed that Mr Ujah and Ms Ewington were situated on the top floor.
65. On 8 December 2020, Mr Ujah submitted grievances against Robert Rance and Tracey Quinn. The grievances appear at pages 122 and 127 of the bundle. They are not dated but it is apparent from the notes of a meeting on 29th December 2020 that they were submitted on 8 December 2020.
66. In the grievance against Mr Rance, Mr Ujah stated "Incident 1 I wish to raise a complaint against the above member of staff... In relation to an incident on 24 November 2020... In which condescending and degrading language was used in relation to my race and ethnicity, along with an orchestrated succession of racist micro-aggressions and bullying that not only relates to this incident but is underpinned by a prior sequence of event that culminated on 24 September 2020 and 25 September 2020... Incident 2 Underpins Incident one above in which a succession of Racist Micro-aggressions, Bullying and Harassment occurred culminating in the events of 24 September 2020 - 25 September 2020" (page 122).
67. In the grievance against Ms Quinn, Mr Ujah stated "Incident 1 I wish to raise a complaint against... Ms Tracey Quinn in relation to an incident on the 24th of November 2020 @ 17:20pm in which condescending and degrading language was used in relation to my race and ethnicity, that is underpinned by a prior sequence of events that culminated on the 24/09/2020 and 25/09/2020... Incident 2 Underpins Incident 1 above in which a succession of Racist Microaggressions, Bullying and Harassment occurred, culminating in the events of the 24/09/2020 - 25/09/2020. Of which Ms Tracey Quinn contacted me on the internal DWP Skype Messaging system, inviting me to a hour long meeting with her, in her car, in the office car park to discuss what had happened, urging me under pressure to seek disciplinary action against Mr Robert Rance." (Page 127)
68. Mr Ujah submitted two documents shortly afterwards. The first commences at page 160 of the bundle and runs to page 165. It records a number of events which appear (at least according to Mr Ujah) to have come to a head on 24 September 2020 when Mr Rance told Mr Ujah that having a personal laptop on his desk was a sackable offence. According to the document, that led to a conversation in which Mr Ujah raised a number of allegations, nearly all of which form many of the allegations in this case. The document says that when

he was presented with those facts Mr Rance told Mr Ujah that he knew how "my people" felt, that he had ginger hair and had got bullied for it as a child. The document goes on to talk about a discussion with Mr Ujah then had with Tracey Quinn in her car and certain other matters.

69. The second document is at page 188 of the bundle and gives the details of the incident on 24 November 2020 where it is alleged that Mr Rance revoked Mr Ujah's printing rights.
70. For the purposes of clarity, in recording what those documents say, we are not at this stage making any finding as to the truth of the content of the documents.
71. A lengthy investigation then took place into Mr Ujah's grievances. At some point disciplinary allegations were made against Mr Ujah in relation to the same incidents and the investigation into the grievance and the disciplinary matters were dealt with together. There was then a decision to investigate the grievances separately to the disciplinary proceedings. Delays were caused by people leaving the respondent and by Mr Ujah requesting a delay in the proceedings.
72. Various people were interviewed in connection with the grievance including Mr Rance, Ms Quinn, Mr Ujah, Ms Ewington, Mr Panquang, Megan Miles and Tanatswa Muroyiwa. Mr Ujah also submitted further evidence by way of "loose sheets" which appear pages 136 to 143 of the bundle
73. Ultimately, Sarah Briggs produced an investigatory report into the grievances, finding there was no evidence to support Mr Ujah's complaints. The grievance was determined by Vicki Harrison, who in October 2021 rejected the grievances (pages 352 and 356 of the bundle).
74. Mr Ujah appealed against the grievance decision and the appeal was heard by Junior King. Mr Ujah had listed eight grounds of appeal (page 371). On 23 March 2022 Mr King rejected the appeal following an appeal hearing on 19 January 2022 (page 511).

### **Findings of Fact and Conclusions on Specific Issues**

75. We turn then to the specific issues in the case. In an attempt to make this judgment more comprehensible, we set out our conclusions as we go through, rather than making a long list of findings and then a separate list of conclusions. However, in doing so we are acutely aware of the need to keep the overall factual picture in mind as well as make findings on individual allegations. For instance, it is possible that in relation to a number of individual allegations, the tribunal might take the view that considering each in isolation, Mr Ujah has not discharged the burden of proof that is on him, however, taken overall the tribunal could conclude that the whole picture does persuade us that Mr Ujah has discharged the burden of proof.

**Issue 3.1.1 Robert Rance addressing the claimant by the wrong name in the office with the last alleged incident taking place on August or September 2020.**

76. As we have indicated, Mr Ujah's witness statement refers to a number of different pages in the bundle without giving details of the allegations. In cross-examination Mr Ujah said that page 160 of the bundle gave his evidence in respect of this allegation. Page 160 is part of the grievance which was submitted by Mr Ujah. Mr Ujah submitted his grievance on 8 December 2020 and, as we have said, told us that he had submitted the document at page 160 and the other document at page 188 within about two weeks of submitting that grievance. He confirmed in his closing submissions that he had not made any complaints in writing prior to that submission.
77. Page 160 contains an account of events that took place on 24 September 2020 and states as follows; "I then proceeded to outline to Mr Rance how his creation of an environment of double standards and racist aggression were affecting my life and implored him to stop. The actions which I outlined included the following." There then follows a table which contains largely the same allegations as appear in the list of issues. It includes "Repeatedly being called the name of another person of colour in the office – "Arrey" - after I had informed him and Nicky Blanchard on several occasions previously that I am an individual that deserves to be treated with respect and dignity and addressed by my own name."
78. Mr Ujah's evidence is supported by the statement which Arrey Panquang gave to the investigation into Mr Ujah's grievance on 12 August 2021. He said "Rob was under a lot of stress he is a nice gentleman but I think the stress got to him. He had a lot of pressure there were times when he called me Alex instead of Arrey. It didn't offend me people get names wrong but in Civil Service we need to understand how people feel. I'm not saying Rob is racist but its always Me and Alex he confuses by name and we are both black. I wish he had found the courage to ask Alex how it made him feel calling him by the wrong name (sic)"
79. Robert Rance says, in his statement:
- I do not deny that I mistakenly called Alex by the wrong name. However, I deny that this was discrimination on my part, I frequently get names wrong. Two women joined my department at the same time called Lauren and Megan. I got their names mixed up for months after they joined. If other people in the department are similar in any way I will mix them up. I frequently call my children by each other's names. I myself was called Nick for about a year by a number of people in the DWP. While I can understand this might be frustrating for people there is no malice in it and I mix up people with all sorts of characteristics, not just people of particular races.
80. In his evidence Mr Rance said that he only recalled misnaming Mr Ujah on two or three occasions. He said that he apologised then and he apologised now.

81. Ms Ewington's statement is silent on the question of mis-naming Mr Ujah as is the statement which she made to the investigation into Mr Ujah's grievance (page 266).
82. The tribunal is not unanimous in its findings and conclusions in respect of this allegation. In a case of the size of this one that is not particularly surprising or concerning. The tribunal sits as a panel of three, all members appointed for their expertise. Particularly in a case where events occurred a long time ago and the tribunal is doing its best with imperfect evidence, it is not uncommon for different members of the tribunal to take a different view of the evidence.
83. The majority view is that of the lay members. They conclude, having regard to the evidence of Mr Rance and the fact that Ms Ewington does not appear to have been aware of the misnaming of Mr Ujah, that the mis-naming did not happen very often. They also note that Mr Panquang, in his evidence to the investigation of Mr Ujah's grievance, referred to the misnaming happening at "times" but does not suggest it happened a lot. The majority conclude that the misnaming happened on occasions which could be numbered in low single figures.
84. All of the tribunal accepts the evidence of Mr Rance that mixing people's names up is something which happens to him frequently and accept his evidence that it happens if people in the department are similar in any way. They accept that Mr Rance frequently calls his children by each other's names. There was no significant evidence to contradict that evidence and Mr Ujah did not challenge it. Although Mr Panquang says that it was always him and Mr Ujah that Mr Rance mixed up, he would not necessarily know if Mr Rance was mis-naming other people in the department.
85. Having heard Mr Rance give evidence, all of the members of the tribunal are of the view that he is a person who would not deliberately seek to discriminate against people on the grounds of their race and would not deliberately want to cause an offensive or humiliating environment for any members of staff. We will return, below, to some of Mr Rance's evidence, particularly in the context of him having spoken to Mr Ujah about the fact that he was ginger, but there is no objective evidence that Mr Rance ever singled Mr Ujah out because of his race, or indeed any other members of staff. As seen above and, as we explain in more detail below in relation to issue 3.1.20, Mr Panquang was supportive of Mr Rance in the sense that he described him as a nice gentleman and said that he did not say that he was racist.
86. The lay members find that the occasions when the misnaming of Mr Ujah took place were towards the start of his employment when he was not well known and, therefore, it is unsurprising that a manager would get Mr Ujah's name wrong.
87. When the lay members apply that finding to the legal test for harassment they conclude as follows
  - a. Calling Mr Ujah by the wrong name was unwanted conduct.

- b. The conduct did relate to race because Mr Rance, on his own evidence, confuses people's names if they are similar. The appropriate conclusion is that he confused the names of Mr Ujah and Mr Panquang because they are similar in that they are both black.
  - c. It was not the purpose of Mr Rance to call Mr Ujah by the wrong name, he simply struggles with names of people. Mr Rance did not, in any way, have the purpose of violating Mr Ujah's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
  - d. In considering whether the effect of the conduct was to violate Mr Ujah's dignity or create an intimidating, hostile, degrading, humiliating, or offensive environment for him, the majority;
    - i. note Mr Ujah's perception as somebody who takes matters of race very seriously and would be upset by the misnaming of him,
    - ii. note all the circumstances of the case, including that Mr Rance mis-named other individuals in the office, not just Mr Ujah and that Mr Ujah was in the early days of his employment, but
    - iii. do not consider that it was reasonable for the conduct to have the proscribed effect. The majority conclude that because the misnaming only happened on a small number of occasions, Mr Ujah should have accepted that slips of the tongue occur from time to time, particularly when one is new in a job and it was not reasonable for him to feel that his dignity was violated or an intimidating, hostile, degrading, humiliating or offensive environment existed.
  - e. Therefore, the claim of harassment fails because the conduct did not have the purpose or effect of violating Mr Ujah's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
88. The minority, being the judge, does not significantly disagree with the analysis of the majority but has reached a different finding as to the frequency on which the mis-naming occurred.
89. The judge notes that the first time Mr Rance said that he had only mis-named Mr Ujah two or three times was in his oral evidence, given a long time after the events occurred.
90. When he was asked about the mis-naming in the investigation into Mr Ujah's grievance (on 27<sup>th</sup> April 2021) Mr Rance said "I do struggle with names but not faces. Ari is also a black colleague and I have called Alex Ari, however I have also called Megan and another lady each other's names and they are both female and white... When I spoken to them with us not wearing our name badges in these dress down times of covid..." (sic). Mr Rance did not say that

it only happened two or three times which would be surprising if that was the case.

91. The judge takes the view that the way paragraph 4 of Mr Rance's statement most naturally reads his problems with mis-naming people is not just one which occurs on two or three occasions. He talks about getting the names of Lauren and Megan mixed up for months after they joined. He says that he frequently calls his children by other people's names. If that was not the case for Mr Ujah, the minority takes the view that the witness statement would more properly have read something along the lines of, "I got the names of Lauren and Megan mixed up for months (although that was not the case for Mr Ujah and Mr Panquang)".
92. If, as the witness says, he called Lauren and Megan by the wrong names for months, the minority cannot see any reason why Mr Rance would not have had the same difficulties with the name of Mr Ujah.
93. The judge does not read the evidence of Mr Panquang to the grievance investigation in quite the same way as the majority. He gave his evidence in August 2021. The judge notes that Mr Panquang states "it's *always* me and Alex he confuses by name and we are both black" (emphasis added) and takes the view that it is unlikely to have been something which Mr Panquang remembered so strongly in August 2021 (to the extent of saying he wishes that Mr Rance had had the courage to ask Mr Ujah how he made him feel) if it had only happened on a low number of occasions.
94. The minority acknowledges that it is somewhat surprising that Ms Ewington did not refer to Mr Ujah being mis-named on a number of occasions but does not consider that fact outweighs the factors pointing towards the mis-naming of Mr Ujah having occurred on a significant number of occasions.
95. Thus the judge finds that the misnaming of Mr Ujah happened on a significant number of occasions over the period between Mr Ujah starting on 10 August 2020 and him complaining about it on 24 September 2020.
96. In those circumstances the judge's analysis is as follows :
  - a. Calling Mr Ujah by the wrong name was unwanted conduct.
  - b. The conduct did relate to race because Mr Rance, on his own evidence, confuses people's names if they are similar. The appropriate conclusion is that he confused the names of Mr Ujah and Arrey Panquang because they are similar in that they are both black.
  - c. It was not the purpose of Mr Rance to call Mr Ujah by the wrong name, he simply struggles with names of people. Mr Rance did not, in any way, have the purpose of violating Mr Ujah's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

- d. In considering whether the effect of the conduct was to violate Mr Ujah's dignity or create an intimidating, hostile, degrading, humiliating, or offensive environment for Mr Ujah, the judge;
  - i. notes Mr Ujah's perception as somebody who takes matters of race very seriously and would be upset by the misnaming of him,
  - ii. notes all the circumstances of the case, including that Mr Rance mis-named other individuals in the office, not just Mr Ujah and that Mr Ujah was in the early days of his employment, but also takes the view that the misnaming happened over a prolonged period on a number of occasions to the extent that it was noted by another black member of staff (being Mr Panquang)
  - iii. considers that in those circumstances it was reasonable for the conduct to have the proscribed effect. To get somebody's name wrong on a couple of occasions is unsurprising and it would not be reasonable for an employee to take offence if that happened to them, particularly if the manager struggles with names and gets a lot of people's names wrong. However, there comes a point where it is reasonable for somebody to feel offended if their name is confused with the name of another employee, particularly when the cause of the confusion is that they share protected characteristics with that other employee. After Mr Rance had got the names wrong on a few occasions, he should have taken steps to ensure that he did not do so in the future.
- e. Therefore, in the view of the minority, the claim of harassment should succeed because the conduct had the effect of creating an offensive environment for Mr Ujah.

97. Where there is a difference between the view of the majority and the view of the minority, the view of the majority prevails and, therefore, this claim of harassment is dismissed.

98. It is, then, necessary to consider whether the allegation should succeed as an allegation of direct discrimination. In this respect the tribunal is largely unanimous.

99. Having accepted the evidence of Mr Rance that he confuses lots of people's names, we consider that the appropriate comparator for the respondent is somebody who is not black but is similar to another person. In this case there are actual comparators who can be used, being Lauren and Megan. They had both joined the department at the same time and they were treated in the same way by Mr Rance. The reason for the confusion of the names was not because Mr Ujah was black but because Mr Rance confuses names of people who are similar. Thus Mr Ujah was not treated less favourably than the appropriate comparator.



100. In reaching our conclusions, we have considered whether our finding in this respect is consistent with the decision of the Supreme Court in *Preddy v Bull* [2013] 1 WLR 374. This is not a point we have heard argument on, neither party addressed us on this issue. In *Preddy*, Baroness Hale summarised the decision in *James v Eastleigh* [1990] 2 AC 751 as being that where there is an exact correspondence between a criterion and a protected characteristic of sex there will be direct discrimination. She referred to the opinion of Advocate General Jacobs in *Schnorbus v Land Hessen (Case C-79/99)* [2000] ECR I-10997 that “the discrimination is direct where the difference in treatment is based on a criterion which is either explicitly that of sex or necessarily linked to a characteristic indissociable from sex”
101. We can see an argument that could be advanced on behalf of Mr Ujah that it is artificial to say that the difference in treatment is not because of race, in circumstances where the only reason for the confusion was the race of Mr Ujah. Thus, it could be argued, that in this case there is an exact correspondence between the criterion (Mr Rance getting confused) and the protected characteristic (of race) and therefore there is direct discrimination.
102. Ultimately we have concluded that that is not the correct analysis in this case. There is no evidence that Mr Rance only confuses people where they have a shared protected characteristic. In those circumstances there is no exact correspondence between Mr Rance getting names confused and protected characteristics generally, even if on this occasion the cause of the confusion was a shared characteristic.
103. In any event, even if we were wrong in that respect, having regard to their findings on harassment, the majority of the tribunal take the view that Mr Ujah had not been subjected to a detriment within the meaning of section 39 Equality Act 2010. He had no more than an unjustified sense of grievance.

**Issue 3.1.2 Robert Rance in September 2020 devaluing and nullifying the claimant’s ideas on improving performance**

104. It is alleged that in September 2020 Mr Rance devalued and nullified Mr Ujah’s ideas on improving performance.
105. Again, Mr Ujah’s witness statement does not expressly deal with the point and, again, Mr Ujah, in his evidence, referred to page 160 of the bundle for the specifics of the allegation. That document states “My ideas on performance reporting along with other improvements that would have provided motivation to the team were – devalued and nullified. I had to resort to passing my ideas through to my white colleagues who would then table these with Mr Rance or other senior members of the management team such as Anna Marshall, for these issues to be aired”
106. Robert Rance, in his statement, says that although he does not know which ideas Mr Ujah is referring to, he expressed to the team that there was always an openness to helpful suggestions but they had to be relevant to the way the work was being carried out. He has some recollection of Mr Ujah

making suggestions that could not be delivered on, such as a petty cash fund to buy staff teas and coffees and other suggestions that were similar or too grand for him to be able to authorise.

107. Mr Ujah has not given us any details of what ideas he gave or when he gave them. He has not given any examples of passing his ideas through to white colleagues who could table them with Mr Rance. Ms Ewington does not give any evidence of any such matters.

108. On the evidence which we have we cannot be satisfied, on the balance of probabilities, that Mr Rance devalued or nullified Mr Ujah's ideas on improving performance. There is simply insufficient evidence on which we could make such a finding of fact.

109. In those circumstances this allegation cannot succeed, either as a claim of harassment or as a claim of direct discrimination because we are not satisfied that Mr Rance engaged in unwanted conduct in this respect or that the claimant was subjected to a detriment or treated less favourably than others.

**Issue 3.1.3 In October 2020 being given an insurmountable amount of work to do in comparison with other colleagues (namely four members of the claimant's team including Georgia Karagul [Ewington])**

110. This allegation was withdrawn.

**Issue 3.1.4 Robert Rance threatening to dismiss the claimant between August and September 2020**

111. It is alleged that Robert Rance threatened to dismiss Mr Ujah between August and September 2020.

112. Again Mr Ujah referred to page 160 and in cross examination he accepted that one of the incidents he was referring to was when he had his laptop next to his PC on the 24 September 2024. He gave no other examples in his oral evidence and although page 161 of the bundle, paragraph 4, refers to being threatened with being sacked for a number of incidents (which are then listed) he gives no particulars such as who threatened him, when they threatened him or what was said.

113. Mr Ujah's account at page 160 states that Mr Rance had informed him that having his personal laptop on his desk "was a sackable offence" and states that if he was caught with his laptop on the desk again he would face disciplinary measures and be sacked.

114. Mr Ujah was referred to what Mr Rance had said in the grievance investigation in April 2021. He accepted that the account in the bundle at page 202 was largely accurate except that he said he had not been previously told that he could not have his laptop open. Mr Rance stated that there was an AO team with four AOs (administrative officers) working out of sight. He went to check in and had a general conversation with them as there was no team leader

that day. Mr Ujah's private laptop was open and he broached the subject that it should not be on the desk. He thought it was inappropriate to have it open when accessing customer details on the adjacent work computer. In his witness statement he goes further and says that he explained to Mr Ujah that the laptop could be perceived as a security breach and the potential outcome of such an investigation could be dismissal.

115. Mr Ujah told us that it was reasonable for his laptop to be open because his mobile phone could not connect to all of his private email accounts which he needed to monitor whilst he was at work.

116. Mr Ujah's point was that other people had powerful mobile phones with them and they were using them all the time and therefore it was unreasonable to single him out. In effect his laptop was only performing the same function as a mobile phone would. He says the people were playing games on mobile phones in front of Robert Rance and he was not doing anything about that. He said that he had not been warned before.

117. There is no dispute that the next day Mr Rance sought Mr Ujah out and told him that there was no specific DWP policy that stopped him having his laptop on his desk at work and that as long as it was not distracting him from doing his job it was fine for him to have it. Mr Ujah accepted that and they shook hands (as appears from page 164).

118. Ms Ewington confirms that others who had been recruited at the same time as she and Mr Ujah constantly played on their mobile phones but does not deal with this specific issue.

119. There is a relatively small difference between what Mr Ujah says happened and what Mr Rance says happened. Mr Ujah's account at page 160 was written a number of weeks after the event and is unlikely to be a verbatim account of what happened. Having observed Mr Rance give evidence we do not find him to be the kind of manager who would threaten dismissal on the first occasion, but clearly he was somebody who was willing to deal with issues when they arose. The fact that he was willing to go to Mr Ujah the next day and effectively concede that he had been wrong and that Mr Ujah could have his laptop on the desk suggests that he is not the overbearing type of manager which Mr Ujah contends he is.

120. Given, further, that Mr Ujah accepted that the account at page 202 is largely correct, we find that on the balance of probabilities, Mr Rance observed the laptop, thought it was a security risk and told Mr Ujah that it should not be on the desk. He referred to a potential disciplinary offence but we do not find that he threatened Mr Ujah with the sack. He then went and checked whether there was a potential disciplinary offence and having concluded that he was wrong, he admitted that to Mr Ujah.

121. In terms of the claim of harassment, the tribunal accepts that what Mr Rance said to Mr Ujah was unwanted conduct but there is no evidence from which we could conclude that it was related to race. It is much more likely that

it was because Mr Rance thought that Mr Ujah's behaviour was inappropriate in so far as he had a personal laptop open on the desk next to him. It is unusual for employees, in general, to so blatantly have a personal laptop open while they are at work. We do not think it at all surprising that Mr Ujah's situation would be noticed and raised by Mr Rance. Although Mr Ujah makes the argument that mobile phones are just as powerful as laptop computers, they are different in so far as they are much less likely to draw attention to themselves. There is no evidence that Mr Rance considered that the use of mobile phones presented a security risk in the same way that he thought the laptop did. If the warning had been related to race, we think, on the balance of probabilities, that Mr Rance would not have returned the next day to say that he was wrong and that Mr Ujah could have the laptop on the desk.

122. Given that the warning was not, in our judgment, related to Mr Ujah's race, it cannot amount to harassment. Moreover we consider, on the balance of probabilities, that a white person in the position of Mr Ujah- that is to say someone who had a private laptop open on the desk next to their work- would have been treated in the same way. Therefore, the claim of direct discrimination must also fail.

123. As we have said above, Mr Ujah did not give any other particulars of the occasions when he says he was threatened with dismissal and we note that the statement of Arrey Panquang at page 277 of the bundle says that he did not witness Mr Ujah being threatened with "the sack". In respect of those occasions listed at page 161, not only does Mr Ujah give no particulars of how he was threatened with dismissal but as he discussed those particular incidents in his oral evidence (all but one of the occasions are presented as separate specific allegations of race discrimination and harassment) he did not refer to being threatened with the sack.

124. Ms Ewington's statement refers to an alternative occasion when Mr Ujah was told that he could not print personal documents because that was a sackable offence but that is not one of the allegations listed at page 161. The printer allegation arose on 24 November 2020 and is dealt with by Mr Ujah at page 188. In that document Mr Ujah states that Mr Rance told him that printing University material from the office printers would be seen as theft but did not say that he had been threatened with dismissal. Mr Ujah was asked to reorder the events that had happened to him as part of the grievance process and did so in a document dated 14 May 2021. In that document Mr Ujah said that he was accused of theft and would be sacked (page 231). There is, therefore, something of a development in Mr Ujah's claims, in that in his statement made at the time of the grievance (around December 2020) he said that printing University documents would be seen as theft but did not mention a threat of dismissal, by May 2021 he said that he had been accused of theft and told that he would be sacked.

125. The printing issue forms the subject matter of issue 3.1.18. At this stage we must simply consider whether Mr Ujah was threatened with dismissal because of it.

126. Given the development in Mr Ujah's case, we do not find ourselves able to rely upon it as being an accurate account. We are not satisfied, on the balance of probabilities, that Mr Ujah was threatened with dismissal in this respect.
127. In those circumstances the claims of harassment and direct discrimination must fail in this respect;
- a. we are not satisfied that the claimant was threatened with dismissal at all,
  - b. Mr Rance did say that having his laptop on his desk might lead to dismissal,
  - c. he did not say that for a reason related to race and a white Caucasian person would have been treated in the same way.

**Issue 3.1.5 Robert Rance warning the claimant about expressing his general beliefs in about September 2020.**

128. The allegation is that Mr Rance warned Mr Ujah about expressing his general beliefs in September 2020. At page 160 Mr Ujah's explanation in this respect is "my white colleagues seem to have no reservations about expressing their opinions whenever they wanted".
129. Mr Ujah agreed that if he had been told by Mr Rance that it was necessary for him and others to leave their opinions at the door there would be nothing wrong with that given that Mr Ujah and his colleagues were civil servants. It was then put to Mr Ujah that doing so was not racist, it was good management. Mr Ujah disagreed saying that if it stops "you from thinking and being able to contribute to the organisation then it defeats the object". He went on, however, to say that he wasn't saying it became racism, just bad policy.
130. Mr Ujah was asked to consider what Mr Rance had said in his witness statement at paragraph 8, namely that as civil servants they could not allow personal political views to affect the way they treated customers or colleagues. It was put to him that that would not be racist to which he replied "it would be racist if it was an accumulation, if I was constantly told to stop giving opinions and I wasn't able to give opinions." Mr Ujah says he never witnessed any other AO colleagues being told that they could not have opinions. He then referred to paragraph 16 of Ms Ewington's witness statement but that deals with a different point which is the assertion that Mr Ujah was told he could not speak to senior managers.
131. We have been provided with no examples of opinions where other colleagues sought to share opinions or beliefs and they were allowed to, nor given any specific examples of viewpoints Mr Ujah wanted to share which he was prohibited from sharing. The nearest example we were given is that in September he was challenged for writing on a whiteboard about the Chinese economy and we will return to that later.

132. It is clear, that Mr Ujah spent large amounts of time sharing his views on race on DWP forums, an example of him sharing his view, albeit via email, is at page 196. Although there was an issue about whether the posts could contain discussion about the Black Lives Matter movement and white privilege, clearly most of the time Mr Ujah was able to share what he wanted to on those forums.
133. One of Mr Ujah's colleagues, Megan Miles, was asked to give evidence to the investigation into Mr Ujah's grievance, she gave evidence that from what she could remember Mr Ujah was always expressive about his beliefs and very vocal even when it was not appropriate. He was told to "numb" down his comments not in a harsh way but just keep them to himself as he had different beliefs and they could offend others.
134. Given Mr Ujah's comment about the Audi which we have recounted above, it seems to us more likely than not that Ms Miles evidence is accurate.
135. Ms Ewington accepted that in one discussion, where Mr Ujah was talking about world trade, others were present in the room, even though she was adamant in her view that it was permissible for Mr Ujah to talk as he was doing because he was on a break. There is no dispute that Mr Ujah, on at least that occasion, was sharing his views in an open plan office. Mr Ujah did not have his own office but had a desk in an open plan area.
136. We accept the evidence of Mr Rance that he told Mr Ujah that civil servants could not allow their own personal political views to affect the way they treated customers and we accept that it is likely he was told to keep his views to himself. There is sufficient evidence of Mr Ujah making other people feel uncomfortable with his views (the evidence of Ms Miles and the evidence of Mr Rance about the Audi) that we consider, on the balance of probabilities, that Mr Ujah was told to keep his views to himself not because of his race but because others did not want to hear his views.
137. We accept that being told that he could not share personal views was unwanted. However, the claim of harassment must fail because the conduct was not related to Mr Ujah's race. Further, we are entirely satisfied that a white person who had been sharing the views which Mr Ujah had been sharing, and doing so in the same manner, would have been treated in the same way. Thus the direct race discrimination claim must also fail.

**Issue 3.1.6 Robert Rance telling the claimant that he was not allowed to remove shoes at his desk for comfort in about September 2020, when the claimant's team leader was allowed to do so**

138. It is alleged that Mr Rance told Mr Ujah that he was not allowed to remove his shoes at his desk in about September 2020, when Mr Ujah's team leader, Nikki Blanchard was allowed to do so.
139. There is a photograph of Ms Blanchard not wearing shoes at page 794 of the bundle.

140. Again Mr Ujah's witness statement does not deal with this issue except to refer to page 161, where Mr Ujah says that he is not allowed to take his shoes off at his desk even though others took their shoes off with ease including managers and moved freely around the office. Mr Ujah says that he was unable to wear the shoes he loved to work, because if his feet got hot he could not take them off for relief.
141. Mr Ujah's complaint is supported by Ms Ewington who says "Robert Rance told Alex he had to keep his shoes on, but I had on flip-flops, and I would take them off under my desk, but nothing was ever said to me." Ms Ewington was challenged on the basis that her witness statement did not say that Mr Rance was aware of her being without shoes on. She pointed out that when she wrote her witness statement she had not seen the list of issues but was basing her statement on the one that she had given to the investigation into Mr Ujah's grievance at page 266. It was put to her that she was making allegations up as she went along. She denied that and said with some vehemence that Mr Rance had seen her on several occasions without shoes on underneath the desk.
142. Whilst we do not consider that Ms Ewington was making allegations up as she went along, it is inescapably the case that the first time that she said that Mr Rance had seen her without shoes on was at this hearing. That may well be because she was never asked before, but we cannot be confident that Ms Ewington's recollection has not changed over time. Her statement is extremely brief and does not say how often she had taken flip-flops off under the desk or at what time of day.
143. Mr Rance, in his witness statement, states that he agreed that he told Mr Ujah not to be barefoot in the office as that was a basic health and safety concern. He said that when he saw the photograph which was taken by Mr Ujah he took Nikki Blanchard to one side and told her quietly not to do that and keep her shoes on in the office. He does not say that he ever challenged anyone else about having shoes off in the office.
144. In his statement to the investigation into Mr Ujah's grievance, Mr Rance said that the time he tackled Mr Ujah about being barefoot was the first time he had seen it and he tackled it as soon as it was noticed.
145. As we have set out above, Mr Rance also told us that his role, as well as being Team Leader for the AOs, included being the senior responsible officer for the site including during covid and for health and safety. The building was across four floors (including the ground floor).
146. Mr Rance said that he would go to the top floor at the beginning and the end of the day and spend maybe 15 minutes a day on that floor. There is no independent evidence which would corroborate what Mr Rance said and although Mr Ujah did not challenge it, that may well be because the evidence was only given in relation to the Tribunal's questions at the end of his evidence. Having said that, it is obvious that Mr Rance could not be on the top floor all the time, his attendance was likely to be necessary elsewhere. In respect of the

claimant's team there were team leaders who, in terms of the hierarchy, were between Mr Rance and the AO's. Thus it seems reasonable that he would leave the team leaders to get on with managing the AO's whilst he did other duties. Given the state of the pandemic, it is more likely than not that much of Mr Rance's time was spent elsewhere. That finding is supported by the evidence which Ms Ewington gave to the investigation into Mr Ujah's grievance where she stated "we are left to our own devices a lot of the time on the third floor and we were not supervised." Although she goes on to state "during the day RR would come and check on us and have discussions with us throughout the day" the clear thrust of her evidence was that most of the time he was not around (page 267).

147. The respondent, therefore, contends that it is quite likely that events would have happened (such as people removing their shoes or people rolling cigarettes) which were observed by Mr Ujah and Ms Ewington but not by Mr Rance.

148. Mr Ujah relies upon the photograph which he took of Nikki Blanchard who was clearly standing in the middle of the office without shoes on. That evidence is compelling and we have considered, carefully, whether we can infer that if Ms Blanchard was willing to be so blatant about not wearing shoes, it was a sufficiently common practice for us to infer that Mr Rance would have been aware of it. However, ultimately, we have decided that would be a leap too far. Mr Ujah's own evidence is that the day in question was a particularly hot day. He gives no evidence as to when the practice of not wearing shoes started or ended and it is entirely possible that it was simply on that day that Ms Blanchard was not wearing shoes, in which case it's possible that she would not have been seen by Mr Rance.

149. We are not satisfied, on the balance of probabilities, that Mr Rance was aware of other people without shoes on who he had ignored. Had we been satisfied of that then it may well be that there would have been a basis for finding that Mr Ujah was treated differently to other people, but that factual premise has not been made out. We would be quite unable to say which other people Mr Rance had seen without their shoes on, where those people were situated or when he had seen them.

150. In terms of the claim of harassment, we are satisfied that the requirement that the claimant keep his shoes on was unwanted conduct. We are not satisfied that the claimant was told to keep his shoes on when Nikki Blanchard was permitted to remove hers. Thus the unwanted conduct alleged is not made out. In any event, we do not find that the direction to the claimant was related to race- there are no facts from which we could find that it was. There are also no facts from which we could conclude that a white Caucasian person in the position of the claimant would have been treated differently. Thus this claim cannot succeed.

**Issue 3.1.7 In September 2020 Robert Rance requiring the claimant to leave his desk to take lunch between 1 pm and 2 pm when others could leave as and when**



**they pleased (namely four members of the claimant's team including Georgia Karagul [Ewington])**

151. The allegation is that Mr Ujah asserts that he was required to leave his desk to take lunch between 1 PM and 2 PM when others could leave as and when they pleased.
152. Again, Mr Ujah's statement does no more than cross refer to page 160 onwards of the bundle. The allegation contained at page 161 is "must leave my desk between 1 PM and 2 PM for lunch, and preferably the office premises completely". The allegation says others appeared to be able to take lunch as and how they pleased without any restriction provided there was enough cover and agreement between team members.
153. Mr Ujah's evidence is supported by Ms Ewington who says "He was told by Robert Rance on several separate occasions that he was to take his lunch break between 1-2pm and was reinforced by Nicky Blanchard and Tracy Quinn." It was put to her that Mr Rance was doing no more, therefore, than Ms Blanchard and Ms Quinn. She replied that the original instructions came from Mr Rance and Ms Blanchard and Ms Quinn merely reinforced his instructions.
154. The way this issue is put and Ms Ewington's evidence is not altogether consistent with what Mr Ujah told the investigation into his grievance on 29<sup>th</sup> December 2020. At that point he said "Rob also said that I must leave the office for lunch and that I cannot sit at my desk", however he did not say that he was told that he must take lunch between 1 pm and 2 pm. In our judgment that is a significant omission.
155. In the grievance investigation, Mr Rance was not asked about the timing of when Mr Ujah was required to take lunch in the investigation but the separate point of telling Mr Ujah that he could not eat at his desk and that he had to leave the building. In his witness statement he says that on occasion he had to say to many members of staff that he needed them to take their lunch at a certain time because cover was needed in a particular area. He says that the respondent operated a flexible approach to lunch breaks but if he knew that some employees would be busy or out at certain times he would ask the members of staff to take breaks at a particular time. He gives no specific examples of asking other members of staff to take lunch at a particular time.
156. Ms Miles, in her evidence to the investigation into his grievance said that Mr Ujah always chose to take his lunch between 2 and 3 pm. Ms Miles has not been called to give evidence and Ms Ewington disputed that statement when it was put to her in cross examination, suggesting that Ms Miles might have been confusing with the time when Mr Ujah took his afternoon break.
157. This allegation, if accurate, would be a serious one. In many respects it would be more serious than the allegations about shoes or even the laptop computer. If Mr Ujah had been told that on a permanent and daily basis he could not arrange his lunch break in the same way that his colleagues had done then it would clearly amount to an obvious and serious difference in treatment.

158. However, if that were the case, it is difficult to see why Mr Ujah made no complaint in writing about it until December 2020 when he raised his grievance. Whilst it is fair to say that Mr Ujah was a new employee, it is also clear that he was not shy. Given the force with which he was willing to challenge Mr Rance about matters on 24 September 2020, if the allegation is accurate it is surprising that Mr Ujah did not raise it more forcefully before December 2020.
159. The answer to that question may lie in the way the allegation is phrased at page 161. Mr Ujah says that “others *appeared* to be able to take lunch as and how they pleased without any restriction...” (Emphasis added). Close scrutiny suggests, therefore, that Mr Ujah was not confident, when he made his allegation, that he was being treated differently to others.
160. There is no independent evidence in the bundle which shows that Mr Ujah was told that he must take his lunch break between 1 and 2 pm every day and there is no contemporaneous evidence that shows that Mr Ujah was being treated any differently to anyone else.
161. The precise terms of the allegation have varied a little over time in that in the document at page 160, Mr Ujah refers to being told that he must leave his desk between 1 pm and 2 pm and preferably the office completely but appears unsure about how others were required to take their lunch; in his evidence to the grievance investigation, Mr Ujah said that he was told he must leave the office for lunch but did not say that he was told that he had to take lunch between 1 pm and 2 pm
162. It is, perhaps, unfortunate that Mr Ujah’s witness statement does not go into more detail in relation to these allegations and that that Mr Ujah was not more specific at the time that he made his allegations in December 2020, but we must decide the case on the evidence which is before us and on that evidence, we are not satisfied that Mr Ujah has made out his case.
163. In those circumstances, again, we are not satisfied on the balance of probabilities that this allegation is made out.
164. Thus we are not satisfied that Mr Ujah was subjected to unwanted conduct or that he was treated less favourably than his white Caucasian comparators (or any comparators).

**Issue 3.1.8 Robert Rance between August and September 2020 refusing Mr Ujah to take annual leave despite repeated requests.**

165. This issue asserts that between August and September 2020, Mr Rance refused Mr Ujah to take annual leave despite repeated requests.
166. Again Mr Ujah’s witness statement only cross refers to the documentation and, in particular, Mr Ujah referred us to his document at page 160. That document puts the allegation as “Being ignored and refused leave after repeated requests, while others that asked for leave approval at the same

time, namely Georgina Karagul [Ewington], Ashleigh Akers, Evelyn McMurray were offered this immediately without reservation” (sic).

167. In cross examination it was put to Mr Ujah that what actually happened is recorded at page 205 of the bundle. That page is part of the evidence which Mr Rance gave to the grievance investigation where he agreed that he missed Mr Ujah’s first request for leave which was sent by email. However he said that he then agreed that Mr Ujah could take flexi leave every Friday to do his studies. He says that Mr Ujah did not miss out on leave. Mr Ujah agreed that was what happened but said that he made several requests for annual leave. Mr Ujah agreed that there are no documents in the bundle showing requests for leave. He did not say, in his evidence, that he had ever been refused leave by Mr Rance.

168. That version of events is somewhat different to what Mr Ujah told the grievance investigation in December 2020. He said “My leave request was also rejected and no response was given by Rob. When I asked him about this he would say that he would look at this but has other things to do. This was confirmed after 24/09” (page 248). Thus at that time Mr Ujah only referred to a single request for leave. It is difficult to work out how long the delay was before Mr Rance dealt with the request but given that it was dealt with by the 24<sup>th</sup> September 2020 and Mr Ujah did not start work until 10 August 2020, the delay cannot have been very long. The evidence to the grievance investigation is, also, somewhat difficult to understand. The leave request cannot have been both rejected and have received no response.

169. In answer to questions by the tribunal, Mr Ujah confirmed that he was happy that when his request was dealt with, it was dealt with by way of taking flexi time.

170. Mr Rance’s witness statement says that he does not recall any holiday which Mr Ujah requested which was denied. The statement does not deal with missing the first request. Mr Rance says that if Mr Ujah had been refused holiday that could have been because somebody else was already off and there was not enough cover.

171. Mr Panquang, in his evidence to the investigation into Mr Ujah’s grievance, said that he did not witness Mr Ujah being refused leave but said that he could remember at one point that Mr Ujah had asked him if his leave had been granted because his had been refused.

172. Again, with some reluctance, we are forced to conclude that there is simply not enough evidence for us to be able to be satisfied, on the balance of probabilities, that what Mr Ujah says is right. We say that we are reluctant to so conclude because tribunals should be slow to revert to the burden of proof in deciding issues such as this. Ideally tribunals should make findings of fact on the evidence which is before them. In respect of this allegation, however, Mr Ujah gives no details of when he made the request, if he made more than one request how many requests were made and when, when Mr Rance replied or what Mr Rance said. Not only does Mr Ujah not give that information, but we

are unable to find any such information from the bundle. Mr Rance gives no more assistance since he simply states that he cannot remember if he refused a request for leave, or if he did what the reasons would have been.

173. The most that we can be satisfied of is that;
- a. Mr Rance accepts that he overlooked an initial request for leave by Mr Ujah,
  - b. at some point before August 2021 (that being the date when Mr Panquang gave evidence to the grievance investigation), Mr Ujah had told Mr Panquang that he had been refused leave.
174. We are willing to make those findings of fact, but even then there are no facts from which we could conclude that either of those things were related to race or that a white person in the same position would have been treated any differently.
175. Thus while we are satisfied that the initial failure to deal with the claimant's request for holiday leave was unwanted conduct, we cannot find that there is any evidence from which we could conclude that it was related to or because of race.

**Issue 3.1.9 Robert Rance in August 2020 unfairly accusing the claimant of breaking social distancing**

176. It is alleged that in August 2020, Mr Rance unfairly accused Mr Ujah of breaking social distancing.
177. The document which starts on page 160 says that the accusation was made when Mr Ujah had not been breaking social distancing and Mr Ujah had to be defended by Ashleigh Akers and Georgina Karagul.
178. Mr Ujah's oral evidence was that he did not break social distancing rules.
179. In this respect, Ms Ewington's evidence was somewhat different to Mr Ujah's. She says that there was an incident when Mr Ujah was accused of breaking social distancing; she rose to Mr Ujah's defence and pointed out that everyone in the team broke social distancing and, in fact, Megan Miles and Ashleigh had been reprimanded by a work coach team leader for exiting the lift together. In cross examination she stated that Mr Ujah had breached social distancing when he was reprimanded. She did not refer to Robert Rance.
180. Mr Rance said that he was telling people off all the time about social distancing and it became the bane of his existence. He said that he held group meetings where he accused pretty much everyone of breaking the social distancing rules. He accepts he may have told Mr Ujah off for social distancing but says that he accused almost everyone.
181. In respect of this allegation, we do not accept the factual premise alleged. Mr Ujah in his oral evidence told us that he did not break social

distancing rules. However Ms Ewington told us that Mr Ujah had broken social distancing rules. Ms Ewington also told us that colleagues of Mr Ujah, Megan and Ashleigh, had been reprimanded by a work coach when they had broken social distancing rules.

182. On that basis, we find, on the balance of probabilities, that Mr Ujah had broken social distancing rules and was criticised in the same way that others who broke social distancing rules had been criticised. Thus whilst being told off for breaking social distancing rules was unwanted conduct and a detriment, he was treated no differently to his white Caucasian colleagues.

**Issue 3.1.10 By way of a meeting and an email in August 2020 refusing the claimant's request to work part time**

183. This issue alleges that by way of a meeting and an email in August 2020, the respondent refused Mr Ujah's request to work part-time.

184. Neither party has referred us to that email and Mr Ujah stated in cross examination that the request he made to go part-time was made orally. His evidence was somewhat unclear on whether he had made the request by email. Mr Ujah was unable to give the date of the request and he agreed that the grievance document at page 160 did not identify any specific email and that there was no email to that effect in the bundle.

185. The allegation at page 162 states that Mr Ujah asked for the opportunity to work part-time and there was no response. It does not refer to any request being made by email.

186. In his evidence to the grievance investigation, Mr Rance said that initially Mr Ujah had asked for part-time hours but he had come in on a FT fixed term contract, so he said that annual leave was a better route (page 205). Michelle Atkins, who was interviewing him replied "so the bit about "fitting with policy" was about going part-time and so changed his original contract? Why had he applied for PT in the beginning? Had his circumstances changed?" Mr Rance replied "no he was doing his university studies when he joined"

187. In his witness statement, Mr Rance says that he did not think Mr Ujah ever made a request to go part-time so he denies that he refused any such application. We find that is incorrect, given what he said to the grievance investigation. We find that a request was made by Mr Ujah to go part-time, but it was not a formal flexible working request and, on the balance of probabilities, it was made orally rather than by email.

188. We have not been told the reason why Mr Ujah wanted to work part-time in September 2024, we do not know whether it was because of ill-health or because he wanted to focus on his university work, or some other reason. Mr Rance's evidence to the grievance investigation suggests that the reason for the request was because he wanted more time for his university course and, on the balance of probabilities, we find that was the reason.

189. Not being allowed to go part time would be unwanted conduct and could reasonably be seen as a detriment.
190. The question, then, is whether there are facts from which we could conclude that the reason he was not allowed to go part-time was because of his race.
191. The most contemporaneous evidence suggests that the reason why Mr Ujah was not permitted to work part-time was because he had been engaged on a full-time fixed term contract. That is the explanation that Mr Rance gave to the grievance investigation meeting. We can well imagine that a manager in the position of Mr Rance would take the view that when somebody has only just started their employment and they are employed on a full-time basis on a fixed term contract, it would be premature to move them to a part-time contract. If the same result could be achieved acceptably by using annual leave then that may well be a better way forward. In fact, as we know, the same result was achieved by the use of flexitime.
192. There are no facts from which we could conclude that a refusal to allow Mr Ujah to move to a part-time basis at this stage related to race or that a white Caucasian person in the same position would have been treated any differently.

**Issue 3.1.11 In August and September 2020 preventing the claimant from using annual leave and flexitime to attend university**

193. It is alleged that in August and September 2020, Mr Ujah was prevented from using annual leave and flexitime to attend university. In his evidence Mr Ujah confirmed this was the same allegation as 3.1.8. He said that Mr Rance did not work with him initially and said it was difficult to get him to sit down and agree when he could use flexitime to do university work. However, Mr Ujah also accepted that he did get what he needed at the end of the day.
194. We have not been given any evidence of when the request was made or when flexible working time was finally agreed. Whilst that might be a failure on the part of both parties, in terms of what evidence has been called, it means that we are in the position where we simply cannot find that Mr Ujah's treatment in this case was because of, or related to, his race.

**Issue 3.1.12 In September 2020 Robert Rance unfairly challenging the claimant for writing about the Chinese economy on the whiteboard**

195. The claimant says that in September 2020 Mr Rance unfairly challenged him for writing about the Chinese economy on a whiteboard. In cross-examination he confirmed this only happened on one occasion and the detail is set out in the document page 160.
196. Mr Ujah says that he had been writing on a whiteboard about the Chinese economy to explain it to Ms Ewington. Ms Ewington agrees. Mr Ujah says he was challenged for writing on the whiteboard and asked why he was writing about China. Mr Rance, in evidence to the grievance investigation, said

that he was told by the team leader at the time that Mr Ujah had been talking about the Chinese economy and that he had been told that some members of the team had found it difficult to concentrate on their work whilst he was going through it with a colleague.

197. Mr Rance says he saw the whiteboard and said “ be mindful when having conversations and ensure they are at an appropriate time.” He denies challenging Mr Ujah about using the whiteboard.
198. Ms Ewington told us that there were a number of other people in the room at the time of the discussion including Nikki Blanchard , Megan Miles and Joe Kiff. It is not in dispute that the office is an open plan one. Although both Mr Ujah and Ms Ewington told us that the discussion was not a political one, Ms Ewington said that Mr Ujah drew a map of Africa on the whiteboard and “we are having a debate about economies” and that Mr Ujah filled in Cameroon, Gambia and Nigeria. We find that would have been a discussion which could properly have been regarded as political. The fact that it was a debate and the fact that it was a debate about economies in the world makes it a political discussion (albeit not a party political one).
199. We have not been given any examples of other employees who raised political beliefs (whether in the same way or in other ways). We have not been given any examples of such employees being allowed to carry on expressing those views.
200. There are no circumstances and no facts from which we could conclude that Mr Rance’s admonishment to Mr Ujah was because of his race or that a white Caucasian person would have been treated any differently. In fact, we find that it is more likely than not that Mr Rance was only motivated by the fact that he considered the discussion, including use of the whiteboard, to be inappropriate. In those circumstances, this claim fails.

**Issue 3.1.13 Robert Rance in October 2020 unfairly challenging the claimant for wearing headphones while sitting at his desk.**

201. By this allegation Mr Ujah alleges that he was unfairly challenged for wearing headphones while sitting at his desk in October 2020.
202. The allegation as contained in the document at page 160 simply states “wearing headphones at my desk when we have no client calls to make. It made no sense!” Significantly, in our view, that allegation does not say that Mr Ujah was treated differently to anyone else.
203. According to the minutes at page 243 of the bundle, when he gave evidence to the investigation into his grievance, Mr Ujah stated; “I was wearing my headphones one time when there were no customers around. I was told I shouldn’t be wearing these as I wouldn’t be able to hear if anything happens i.e. if there is a terrorist risk. Georgina Karegal was also told this”.

204. In his evidence to us, Mr Ujah said that he was singled out and that no one else was challenged. However, that is a departure from what he said on 29 December 2020 when he said that Ms Ewington was told the same thing.
205. Ms Ewington gave evidence that she would wear earbuds during the day but only when she wasn't on the phone or during break times. She says that she was never told not to wear them but she did witness Mr Ujah being so told.
206. We think that the evidence at page 243 of the bundle is more likely to be correct than the evidence given at this hearing, particularly in the light of the way the allegation is written in the document which starts on page 160. On the basis of what Mr Ujah said in the grievance investigation we find that he was not treated differently to others and Ms Ewington was treated in the same way that he was.
207. Moreover, we accept the evidence of Mr Rance that the reason he told people not to wear headphones was so that they could hear if colleagues were getting into difficulty on calls and help out and also for security reasons. That evidence not only has the attraction of being logical, it is also consistent with what Mr Ujah said to the grievance investigation as set out above.
208. Thus, whilst we accept that this was unwanted conduct by Mr Rance, it was not related to race and a white Caucasian person in the same situation would have been treated in the same way (as Ms Ewington was).

**Issue 3.1.14 Robert Rance in September 2020 unfairly challenging the claimant for rolling cigarettes at his desk.**

209. This issue alleges that in September 2020 Mr Rance unfairly challenged claimant for rolling cigarettes at his desk.
210. In his document at page 162, Mr Ujah records that others did this as a matter of course in front of Mr Rance, he says he had to resort to going to the kitchen to roll cigarettes but was then told that was unacceptable which left him having to roll them at reception on the ground floor. He says that Mr Rance subsequently covered his tracks by informing the team on the third floor that having cigarette pouches on one's desk and rolling cigarettes once desk was not allowed.
211. Ms Ewington gave evidence in her witness statement to the tribunal that Megan and Ashleigh would roll cigarettes at their desk in front of Nikki Blanchard and Robert Rance but they were never told not to do so. Her evidence to the grievance investigation was somewhat different. At that time she said "... we were upstairs alone unsupervised there are no set break times. The two young girls would frequently roll cigarettes and go out whenever they needed a cigarette break." (Page 268). Thus, Ms Ewington appears to be making the point that the rolling of the cigarettes would take place when people were unsupervised, which would tend to suggest that it was not happening in front of Mr Rance and Ms Blanchard. Whilst it might be said that she was not specifically asked in the grievance investigation whether Mr Rance was aware



of the rolling of cigarettes, at the end of that interview she was asked if there was anything else you would like to raise. She then referred to the occasion when it was extremely hot and Mr Ujah was told that he must wear shoes, where she had taken her flip-flops off, but she does not raise her concern that Mr Ujah was being singled out in respect of tobacco use.

212. In his evidence to the grievance investigation, Mr Rance said that at the time Mr Ujah joined, he and several others stored tobacco and cigarettes on their desk. He told them not to put tobacco on the desks and not to roll them until away from the desk. He did not single out Mr Ujah. In his witness statement he refers to the fact that the team was hot desking and other staff members complained about people rolling cigarettes at their desk which was messy. In cross-examination Mr Rance said that he had spoken to Mr Ujah, Ms Miles and Mr Kiff about having tobacco on their desks but said that it was a quiet conversation at the desk (the implication being that others may not be aware of such a conversation).
213. Mr Ujah took a photograph of tobacco on somebody's desk and showed it to Mr Rance. He says that it was on Megan Miles' desk (page 795). Mr Rance agreed that he had seen that photo and said that he spoke to Ms Miles about it but also said that he had spoken to her before he saw that photograph.
214. In her evidence to the grievance investigation Ms Miles said that when she started work she kept tobacco on her desk but she was told about that by "Rob" and now she kept it in her pocket. She said "I was challenged by Rob and told not to roll cigarettes or keep the tobacco on my desk." (Page 287).
215. Mr Ujah's point, in this respect, is that Mr Rance only spoke to Megan Miles when he was forced to because Mr Ujah had caught him out by use of photography (caught him out in the sense that Mr Rance had been only telling Mr Ujah about tobacco up to the point when Mr Ujah took photographs).
216. In cross-examination, Mr Ujah accepted that if Mr Rance had challenged people about having tobacco on their desk, it is possible that Mr Ujah would not know that since he may have been on a lunch break or a smoking break.
217. This allegation is one which is difficult to resolve. The photograph would appear to show that Megan Miles was being treated differently to Mr Ujah. However, before that conclusion could be properly drawn it would be necessary to know when the photograph was taken by comparison with when Ms Miles was spoken to by Mr Rance and it would be necessary to know whether Mr Rance was aware of the tobacco on Ms Miles desk at the time when the photograph was taken. Mr Ujah accepted in cross-examination that Mr Rance probably was not there when he took the photograph and we remind ourselves of the evidence above about the limited amount of time Mr Rance spent on Mr Ujah's floor.
218. Given the difference between what Ms Ewington said to the grievance investigation and her witness statement, we do not feel able to place great reliance upon that statement.

219. At the end of Mr Ujah's evidence, he was asked by the tribunal whether there were any specific examples that could be given of when Mr Rance had turned a blind eye to those who were keeping tobacco on their desks or rolling at their desks and Mr Ujah said there were not.

220. The simple fact of the photograph does not show that Mr Ujah was being treated differently to others in the office. It is equally consistent with Ms Miles not listening when she was told not to have tobacco on her desk (or even having briefly forgotten). Whilst we can understand a sense of grievance on the part of Mr Ujah, particularly in circumstances where he was of the view that he was being treated differently to others, we are not able to find, on the balance of probabilities, this allegation is made out. We accept that Mr Ujah was told not to store tobacco on his desk or to roll cigarettes at his desk, we are not satisfied that he was treated differently to anyone else. We have not found facts from which we could conclude that Mr Ujah was told not to store tobacco on his desk or to roll cigarettes at his desk for reasons related to or because of race.

**Issue 3.1.15 Robert Rance in September 2020 preventing the claimant from leaving the office for fresh air or food without permission**

221. It is alleged that Mr Rance, in September 2020, prevented Mr Ujah from leaving the office for fresh air or food without permission.

222. Again, there is nothing in Mr Ujah's witness statement about this allegation but in the document at page 160 he says that "I informed others on the team that I was merely stepping out for a few minutes, these were actions that were undertaken with ease by others, and without the need to inform a manager" (p163). At that stage the allegation, therefore, appears to be that others could leave the office without needing to inform a manager, whereas he could not.

223. In evidence Mr Ujah said to us that he had been prevented from leaving the office on several occasions although he did not have the dates. He went on to say, however, that he was scared of Mr Rance, either he was forced to go out or he could not go out without permission. Later in his evidence Mr Ujah said that he did leave the office for food or fresh air.

224. Mr Tinnion argues, therefore, that this allegation is unsustainable because Mr Rance did not, as a matter of fact, prevent Mr Ujah from leaving the office- Mr Ujah did go out. We consider that to be an incorrect reading of the natural meaning of the words. If an employer tells somebody not to do something, they are being prevented from doing it; it is not necessary for them to be physically restrained before they are being prevented.

225. Ms Ewington did not, in her evidence, recall an occasion when Mr Ujah left the office with or without permission. However, when she gave evidence to the grievance investigation she said that Mr Ujah had said that he was going to pop out to get some fresh air and was told he could only go out at lunchtime. Initially she drew a contrast with two "young girls [who] would frequently roll cigarettes and go out whenever they needed a cigarette break" but then went

on to say that Mr Ujah did go out for cigarette break but not as frequently as the others, usually at break times at lunchtime.

226. In his evidence to those investigating his grievance, Mr Ujah said that Mr Rance said he must leave the office for lunch and could not sit at his desk (page 249). Thus it is apparent that Mr Ujah was, at least, allowed to go out at lunch time.

227. In his witness statement Mr Rance says that staff are free to leave during the unpaid lunch break but during quick breaks he needed staff to remain inside or get permission to leave for safety reasons. He said that he needed to know where everyone was in case there was a fire alarm. He said that Mr Ujah would sometimes leave even when it was not time for his break and would be gone for too long. He would then walk in with a coffee and no one would know where he had gone.

228. Thus, there is some similarity between the terms of the original allegation (page 163) and what Mr Rance says. Mr Ujah said, initially, that he needed to inform a manager and Mr Rance agrees with that, at least at break times.

229. The question, then, is whether Mr Ujah was treated differently from anybody else. There is no evidence that he was. Although at page 163 Mr Ujah states that “these were actions that were undertaken with ease by others”, that is mere assertion. We have not been taken to any evidence that any person, apart from Mr Ujah was able to leave during a non-lunch break without informing a manager. Ms Ewington’s evidence does not assist Mr Ujah. She talks about Megan and Ashleigh going out together for a cigarette break, but she also accepted in the grievance investigation that Mr Ujah could go out for cigarette breaks.

230. We find that Mr Ujah was allowed to take cigarette breaks in the same way that everyone else was and was allowed to leave the office at lunchtime without seeking permission. We find that if Mr Ujah wished to leave the office (apart from for cigarette breaks) other than at lunchtime he needed to get permission. We are not satisfied that any other person was treated differently to Mr Ujah.

231. In those circumstances, whilst we accept that being told that the claimant needed permission to leave the office outside of lunchtime and cigarette breaks would be unwelcome conduct (and possibly a detriment), there is no evidence that the claimant was treated differently to his white Caucasian colleagues. Thus there is no evidence that this treatment was related to or because of race.

**Issue 3.1.16 On about 12 August 2020 within two days of commencing employment feeling sufficiently threatened about the possibility of disciplinary action such as to feel the need to join a trade union.**

232. Issue 3.1.16 states that within two days of commencing employment Mr Ujah felt sufficiently threatened about the possibility of disciplinary action to feel the need to join a trade union.

233. Mr Ujah ultimately withdrew this allegation during the course of his evidence but it is of some assistance to look at why he did so. His evidence was that during the induction week many things were said about actions which could lead to being “sacked”. Those things, Mr Ujah said, were said to the cohort that had just joined, including Ms Ewington, Joe Kiff and Ashleigh Akers. He accepted that some of those people were white and went on to say that he had only been there for three days and could not form an opinion as to whether being given those instructions was racist or not. In recognition of that fact, he then withdrew the allegation.

234. It is a reflection of the honest and realistic way in which Mr Ujah gave evidence that he was willing to withdraw this allegation. However, this is also evidence of Mr Ujah having a belief that something was caused by his race when the objective evidence does not support such a belief.

**Issue 3.1.17 Robert Rance in September 2020 warning the claimant about which people he was entitled to speak to in senior management.**

235. The allegation is that in September 2020, Mr Rance warned Mr Ujah about which people he was entitled to speak to in senior management.

236. At page 163, Mr Ujah says that he was warned about who he could and could not speak to within senior management and that Mr Rance had attempted to contain and manage any ideas he wanted to raise with senior management. He points out that he had been told on several occasions by senior management that they had an open door policy and were open to ideas and discussions with junior members of staff.

237. He was asked to consider paragraph 20 of Mr Rance’s witness statement which is as follows:

Alex alleges that I warned him that he could not speak to certain members of senior management. This is not true. Alex would raise complaints and would then want to speak to someone about it. I would explain that there are systems and a hierarchy for this. If you have an issue with your line manager there is no point in going straight to the Secretary of State about it. I had to explain to Alex that there were different levels to go through that were more appropriate before approaching higher level individuals. I was not denying Alex access to anyone, I was trying to encourage him to follow appropriate channels.

238. The claimant agreed that is what Mr Rance had done but said that he had always been told that staff had the opportunity to speak to anyone within the organisation.

239. Ms Ewington gave evidence that Mr Ujah had asked her to raise the question of the extension of fixed term contracts at a town hall style meeting because he was afraid to raise the issue. She did not tell us what had been said

to Mr Ujah prior to the meeting which stopped him being willing to raise the matter himself.

240. Mr Ujah's document which deals with the incident on 24 November 2020 (page 188) says that during the conversation on that day Mr Rance had said that he could not speak to Sarah Carhart and that he had no permission to do that. This was not an allegation which was put by Mr Ujah in cross-examination to Mr Rance and we note that it is some two months after the date referred to in this allegation. Neither party cross-examined the other about this allegation and we are unable to make findings of fact about it in those circumstances.

241. We find that there was nothing wrong with Mr Rance telling Mr Ujah that a hierarchy should be respected. It goes without saying that senior managers in the organisation will not have time to deal with all of the personnel type issues which arise within the organisation. It's for that reason that there are managers with levels of authority to deal with particular issues. The fact that senior management say that they have an open door policy does not mean that an employee should leapfrog their line manager or that person's line manager as a matter of course. Doing so is not only discourteous to line managers, but is also likely to lead to chaotic decision-making and make it more likely that issues remain unresolved since one person may well not know what another is doing.

242. We are entirely satisfied that insofar as Mr Ujah was told that he should not speak directly to senior management, that was nothing to do with his race but because of Mr Rance's view that hierarchies should be respected. Therefore this allegation fails.

**Issue 3.1.18 Robert Rance unfairly revoking the claimant's ability to authorise printing in September 2020**

243. The allegation is that Mr Rance unfairly revoked Mr Ujah's ability to authorise printing in September 2020.

244. Again this is not dealt with in Mr Ujah's witness statement but is dealt with in a second document which Mr Ujah created for the purposes of the grievance headed "Incident 1 – 24<sup>th</sup> of November 2020" (page 188).

245. In that document Mr Ujah states:

In continuance of this second conversation, I told him that my printing rights seemed to have been arbitrarily revoked and I didn't know why, and that I needed to print university material – to which Mr Rance told me that printing University material from the office printers is seen as Theft, and that who gave me the permission to do this, I told him Mr Robert Branigan and that Georgina Karagul was present when this permission was given, this conversation ended... [sic]

246. It is not in dispute, therefore, that the printing which Mr Ujah was doing was not work-related but related to his university course. Ms Ewington, in her statement, said that Mr Rance had previously given permission to Mr Ujah to

print off some personal documents, he was told “fill your boots”. In fact, Mr Ujah’s evidence was that Mr Branigan, had given him permission to do the work. That is consistent with the document that Mr Ujah created on 29 December 2020 at page 137 of the bundle.

247. Mr Rance told us, and we see no reason to doubt, that Mr Branigan fulfilled a technical support type role. Again that is consistent with Mr Ujah’s document of 29 December 2020 which describes Mr Branigan as setting up his printing rights and assigning him the printer on the third floor.

248. Mr Rance told us that he did not revoke Mr Ujah’s ability to authorise printing, he would not be able to do that, but said that he did speak to him about making sure that he did not use printers at work to print university material.

249. Mr Ujah’s evidence is not that Mr Rance sought him out to tell him off or threaten him dismissal about the printing, but that he (Mr Ujah) initially raised the issue with printing with Mr Rance to tell him that his printing rights seemed to have been revoked. There is no evidence which would suggest that when Mr Rance told us that he had not revoked Mr Ujah’s printing rights and did not have the ability to do that he was not telling us the truth. All of the evidence points to Mr Branigan as being the person who dealt with setting up printer rights.

250. Mr Ujah has made an assumption that Mr Rance was involved in the fact that his computer was no longer printing to the third floor office with no evidence in support thereof.

251. We do not consider that such evidence exists in the fact that Mr Rance told Mr Ujah that printing private material from office printers would be seen as theft. That may well have been Mr Rance’s view. One can easily understand why the DWP might not want people to print personal material at work. However, that is not to the point. The issue is whether Mr Rance revoked Mr Ujah’s ability to print and, as we have said, there is no evidence that he did. We are therefore not satisfied that there was unwanted conduct in this respect or that Mr Ujah was subjected to a detriment. This claim must fail.

**Issue 3.1.19 Robert Rance abusing his authority by referring to non-existent policies to justify his unfair actions in September 202**

252. It is alleged that Robert Rance abused his authority by referring to non-existent policies to justify his unfair actions in September 2020.

253. The document at page 160 does not give any specifics in relation to this allegation, nor does the document at page 188. When he was questioned about it, Mr Ujah said that this was a repetition of allegation 3.1.4 about the threat to dismiss him in relation to the laptop.

254. Mr Ujah returned to the issue when cross-examining Mr Rance and the only non-existent policy that he was able to recall that had been referred to by Mr Rance was the one in relation to his laptop. The tribunal asked if he wanted

to put any other allegations of this nature to Mr Rance and Mr Ujah said that he could not remember any others or the dates on which they occurred.

255. We accept that Mr Rance said words to the effect that having a laptop open on the desk would be a breach of the security policy and we accept that, in fact, the security policy did not say that. As we have set out above, Mr Rance came back to Mr Ujah the next day to explain to him that he had been wrong and that Mr Ujah could have his laptop open on the desk.
256. Having heard Mr Rance's explanation, we accept it. We accept that people in Mr Ujah's position would have access to a large amount of confidential information about claimants/customers including their names, addresses and national insurance numbers. We can understand why Mr Rance, initially, would be taken aback by the fact that a member of staff would have a personal laptop open in close proximity to that confidential information. The fact that Mr Rance was willing to return to Mr Ujah the next day and say that he was wrong and that Mr Ujah could have his laptop open suggests that he was not bullying Mr Ujah and we find that he acted because of genuine concerns about security breaches.
257. Mr Ujah's stated comparators are not valid comparators in respect of this claim because they did not have a laptop open on the desk next to them. Although they had mobile phones, we do not think that they were in the same factual situation as Mr Ujah. Having a phone on one's person and using it to play games is not the same as having a laptop open next to confidential information and does not have the same visual impact.
258. Having heard from Mr Rance, we are satisfied that his actions in this respect were nothing to do with race and a hypothetical white Caucasian person who had a laptop open in similar circumstances would have been told the same by Mr Rance.
259. Thus, whilst we accept that being told that Mr Ujah could not have his laptop open was unwelcome conduct and possibly a detriment, we are satisfied that Mr Ujah was not treated differently to his white Caucasian colleagues. Thus there is no evidence that this treatment was related to or because of race

**Issue 3.1.20 Robert Rance creating a coercive environment for people of colour and in particular creating (i) a hostile toxic environment which was divided and unequal;(ii) filled with fear, trepidation and distress;(iii) a conscious and unconscious biased work environment in which racist bullying and micro-aggressions is the mainstay; and (iv) an environment in which career progression for people of colour is completely circumscribed**

260. In cross-examination, Mr Ujah said that Arrey Panquang was afraid of Robert Rance in the same way that he was. He made that point again to Mr Rance when he cross-examined him. He did not point to any other employees who felt that way, although he said that there were others but was unable to name them.

261. In his witness statement, Mr Rance states; “I do not believe that I created a hostile environment for people of colour or that career progression was circumscribed. I feel passionately about fairness to people and people being abused because of their characteristics. I grew up ginger on a housing estate where I was persecuted and my nose was broken by people who didn’t like the colour of my hair. But the people of colour had it much worse than me and I used to be the guy who would help scrape them off the pavement. I can’t describe how much it hurts to be accused of discriminating against people because of their race. I find this very difficult and it has affected me significantly and impacted on my mental health. I do not think I created a hostile environment and I do not have the power to stifle the career progression of people of colour but I do not recognise that as a feature of the department I work for”.
262. Mr Rance’s oral evidence was that Arrey Panquang had worked on his team for two years without any complaint and had moved on to work as an executive officer.
263. As we have set out above, Mr Panquang had been interviewed as part of the investigation into Mr Ujah’s grievance and was asked about the wrong use of names. His evidence to the grievance investigation included the statement “Rob was under a lot of stress he is a nice gentleman...” Mr Panquang made no suggestion that he had struggled to progress under Mr Rance or found the atmosphere to be coercive or toxic for him. Mr Ujah was not able to contradict Mr Rance’s evidence that Mr Panquang had worked under him for two years without complaint and moved on to be an executive officer.
264. There is simply no evidence which would enable us to find that Mr Rance created a coercive environment for people of colour or a hostile toxic environment as alleged by Mr Ujah. This allegation is not made out.

**Issue 3.1.21 On 24 September 2020 Robert Rance stating that he knew how the claimant’s “people” felt because he (Robert Rance) was ginger**

265. It is alleged that on the 24 September 2020 Mr Rance said that he knew how Mr Ujah’s “people” felt because he was ginger.
266. Mr Ujah’s document at page 163 states, “ Presented with these facts Mr Rance then said “he knew how my people felt” that he has ginger hair and got bullied as a child for it – at this point I wished that the ground would open up and I would disappear! Did this person have any comprehension on what he had just said? By “my people” did he mean people of colour, a tribe, clansmen, what? I steadied my nerves and refactored myself as it was beyond comprehension what I had just heard!”
267. Mr Rance does not appear to have been asked about that question in the grievance investigation.
268. In his oral evidence, Mr Rance denied that he had referred to Mr Ujah’s “people” but admitted that he had referred to the fact he was ginger. He said “I did say my ginger hair left me open to persecution, I was spat on, beaten and



left bloody... I had some view on how you may feel- not in relation to the racial prejudice black people are felt for hundreds of years”.

269. As we have set out above, the first written complaint of any racism was made in December 2020. Mr Ujah’s case is that Mr Rance referred to his “people” on 24 September 2020. He also says in his document at page 164 that on the next day, 25<sup>th</sup> September, when Mr Rance came to him to explain that the policy did not prevent him having a laptop on his desk “[Mr Rance] then said he would look at all the issues I had raised, I said fine – and that he should please note that this time around I would not be seeking disciplinary action against him as long as I was left alone in future, in peace, to get on with the job. We then shook hands and the meeting ended.” (Page 164).

270. Given the strength of feeling which Mr Ujah says he felt, we consider it most unlikely that if Mr Rance had said “he knew how my people felt” Mr Ujah would have been willing to shake hands with him the next day. It is much more likely that he would have taken such a comment further by way of an immediate grievance.

271. We take that view not only because of the evidence we have set out above but, also, because the evidence of Melanie Cramer that Mr Ujah would threaten her with raising a grievance when she made decisions he did not like. On 7 April 2022, she wrote to Mr Ujah saying:

Following our phone conversation yesterday, we discussed the use of language and comments that you have made and how these comments and statements have made me feel. As noted in our conversation when we have discussed your current role, what is deemed as work and not work-related tasks within contracted hours, and in response to this you then responded with the following comments:

“I don’t want to pull you into any disputes, but I will”

“be careful otherwise I will have to raise a grievance”

Whilst I want to ensure that I am providing you with the supportive measures you require in your role to undertake current work duties assigned, I do not accept any form of inappropriate or threatening language towards myself...” (Page 830)

272. We acknowledge that email was sent considerably after the events which we are considering but it shows a willingness on the part of Mr Ujah to raise grievances and it is clear that willingness existed in September 2020 which is why Mr Ujah said to Mr Rance that “this time around I would not be seeking disciplinary action”.

273. Thus, on the balance of probabilities, we do not accept that Mr Rance stated that “he knew how my people felt”.

274. There is no doubt, however, that Mr Rance referred to his own experience as somebody with ginger hair in communicating with Mr Ujah.
275. Having considered the words which Mr Ujah says that Mr Rance said and having heard the evidence of Mr Rance, we have no doubt that in saying what he said, Mr Rance was attempting to show Mr Ujah that he wanted to be his ally, he was trying to express empathy for him. In cross-examination, Mr Ujah asked Mr Rance how “my people” felt after 400 years of denigration and slavery. We do not think, however, that Mr Rance was trying to equate the history of people of colour with his experience as a person with ginger hair, he was simply, as he says in his witness statement, trying to show some empathy by stating that he knew what it was like to be targeted because of something that makes you different.
276. As we have set out above, Mr Ujah raised a grievance against Mr Rance which included a grievance about this comment. The grievance was not upheld and Mr Ujah appealed and the appeal was heard by Mr King. Mr King gave evidence at this tribunal and was, in our view, an impressive witness. His evidence was clear and measured and he could substantiate the opinions he held and the conclusions he had reached. Mr King is black and told us that he takes race very seriously, he told us about the race initiatives which he had been involved in. He made the point that he had reached the conclusion that whenever there is a disagreement between Mr Ujah and his managers and Mr Ujah was told what to do, if he disagreed, in his mind it automatically became a matter of race.
277. Mr King’s evidence on Mr Rance’s comment about being ginger was that he did not think it was racist. He said that everything had to be put in context, Mr Rance and Mr Ujah had been engaged in conversation and Mr Ujah was upset. He said that in his opinion Mr Rance was seeking to empathise and connect and share an understanding of how Mr Ujah was feeling. He said that he acknowledged that the choice of words and the comparison was not great but the intention was not to cause offence but to build a bridge.
278. We find that Mr King’s assessment shows a high degree of insight into the situation and we accept it as accurate.
279. We must then apply these findings of fact to the legal test of harassment.
280. We accept that in referring to himself as ginger and saying that he knew what it was like to be targeted, Mr Rance made a comment which was unwanted by Mr Ujah.
281. We also accept that the comment which Mr Rance made related to race, he would not have said it if Mr Ujah had not been referring to the fact that he felt discriminated against because of his race.
282. We do not find that Mr Rance had the purpose of violating Mr Ujah’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive

environment for Mr Ujah when he made the comment. Indeed, we find that his purpose was the opposite of doing that.

283. In considering whether Mr Rance's comment had the effect of violating Mr Ujah's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Mr Ujah, we take account of Mr Ujah's perception as someone who is understandably sensitive to matters of race but on occasion believes that he has been discriminated against because of his race when on further reflection he does not think that. We take account of all of the circumstances of the case including that Mr Rance had picked Mr Ujah up about not having shoes on, about wearing headphones, about having his laptop open, about needing to ask permission to leave during non-lunch breaks and those other matters which we have referred to above. We also consider the question of reasonableness.

284. In our judgment it should have been obvious to Mr Ujah and anyone in his position that Mr Rance was, in the words of Mr King, attempting to build a bridge with him, not to cause offence. Whilst it would be reasonable for Mr Ujah to think that the choice of words was unhelpful, we do not find that it was reasonable for the effect of the words to violate Mr Ujah's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for him.

285. In those circumstances the claim of harassment in this respect fails.

286. We must then go on to consider whether there was direct race discrimination in this respect. The correct comparator is a person who felt that they were being singled out and treated unfairly because of a particular characteristic but who was white Caucasian. The named comparators do not have those characteristics, but we will consider a hypothetical comparator. We are wholly satisfied that Mr Rance would have made the same comment to such a person. He would have been trying to build a bridge with such a person in the same way that he was trying to do that with Mr Ujah. Thus Mr Ujah was not treated less favourably than such a person.

287. In those circumstances the claim of direct discrimination in this respect fails.

**Issue 3.1.22 On 24 September 2020 Tracey Quinn abusing her position of trust to encourage the claimant to raise a grievance against Robert Rance**

288. This allegation, that Tracey Quinn abused her position of trust to encourage the claimant to raise a grievance against Mr Rance was withdrawn.

**Issue 3.1.23 On 24 November 2020 Robert Rance and Tracey Quinn stereotyping the claimant as an "angry black man"**

289. It is alleged that on the 24 November 2020 Mr Rance and Ms Quinn stereotyped Mr Ujah as an "angry black man".

290. In the bundle at page 188, Mr Ujah sets out the events of the 24 November 2020. The account cannot be a full account since it starts by describing Mr Ujah engaging with Mr Rance in his office while Mr Rance remained seated but, without giving any description of Mr Rance leaving the office, then states that Mr Ujah asked Mr Rance to step into his office to have a conversation behind closed doors. It is at that point which it is said Mr Rance feigned fear saying that he would not step into an office with Mr Ujah alone.
291. Mr Rance's witness statement describes Mr Ujah as becoming more and more angry on the day in question and states that he was frightened that he was about to be assaulted. He says that Mr Ujah kept leaving his room and then coming back in to it, pointing at him and shouting at him. He says Tracey Quinn then joined them. In her witness statement Ms Quinn says that she was worried about Mr Rance's safety on the day and that Mr Ujah kept leaving the room and came back into the room with his finger pointed at Mr Rance. She says that Mr Ujah would not listen to her appeals for him to stop and leave and there was no mistaking that he was angry.
292. In Mr Ujah's cross-examination of Ms Quinn it was put to her that she was falling into the trap of applying an "angry black man" trope or stereotype to Mr Ujah. He asked Ms Quinn whether she could see how he may have been seen as attacking when he was merely trying to express a point. Her answer was that she thought he was aggressive because his voice was extremely raised, he threw his phone on the desk, he was speaking in circles, he was not letting Mr Rance answer questions, he left and returned multiple times and each time he was even more agitated.
293. It is not suggested that either Mr Rance or Ms Quinn stated that Mr Ujah was an "angry black man". The allegation is that insofar as Mr Rance and Ms Quinn said that Mr Ujah was aggressive, they were either wrongly applying a stereotype (that black people are angry) or they were misinterpreting Mr Ujah's way of speaking as being aggressive.
294. We were impressed by the evidence of Ms Quinn in this respect, she gave a spontaneous and clear description of the way that Mr Ujah was behaving. Her account corresponded with that given by Mr Rance. We think it is more likely than not that Mr Ujah was cross when he believed that Mr Rance had revoked his printing rights and that he did behave as suggested by Ms Quinn and Mr Rance. We find that they were entitled to describe him as aggressive, they were not applying a trope or a stereotype, there were stating what they had seen.
295. In those circumstances, we are satisfied that the description they gave of Mr Ujah was not related to race and that if a white Caucasian person had been behaving in the same way they would have described him in similar terms. Thus even if being described as aggressive was unwanted conduct or a detriment we are satisfied that the claimant was treated no differently to how a white Caucasian colleague would have been treated. Thus there is no evidence that this treatment was related to or because of race. This claim must fail.

296. In those circumstances this allegation fails.

**Issue 3.1.24 in November 2020 the deliberate destruction by the Senior Delivery Team of CCTV footage of the micro-aggressions of Robert Rance which was evidence in support of the claimant's claims**

297. It is alleged that in November 2020, the deliberate destruction by the senior management team of CCTV footage was an act of harassment and direct discrimination.

298. In cross-examination Mr Ujah stated that the request he made for the CCTV footage was in relation to the incident on 24 November 2020.

299. We find Mr Ujah first made a request for the CCTV footage on 10 December 2020. That is apparent from the wording of the email to Ms Rix at page 375 where Mr Ujah writes "... I wonder if it would be possible for you to secure the CCTV footage from the manager's office on the ground floor... on 24 November 2020"

300. Ms Rix replied the following day stating "I have sent an enquiry to a WCTL in Basingstoke. I will be in touch as soon as I have a reply". We have not been provided with any further emails in relation to that request.

301. In his grievance, Mr Ujah was represented by his trade union through Mr Lowman. On 17 August 2021 Mr Lowman wrote to Mr Ujah stating "as I explained at the outset the CCTV is only kept by G4S for a very short space of time before the discs are copied over as far as I am aware. I don't think there was ever any chance that they would be available and certainly not by the time the first request went in. This knowledge comes from cases I have had previously and also in cases where we have had customer-related incidents in offices. If the footage is not reviewed almost immediately it is gone." (Page 281)

302. However, on 17 August 2021, Tina Bige wrote to Ms Briggs stating, "I have checked with G4S and they only retain CCTV for three months so this would not be available for 24 November 2020. They do not recall any previous requests for CCTV for this date..." (Page 376). Thus it is likely that if the respondent had dealt with Mr Ujah's request as soon as he made it, the CCTV footage would still have been available.

303. In cross-examination Mr Ujah was asked why he was accusing anyone of discriminating on the grounds of race in respect of this allegation. His reply was that he did not accuse them of not securing the CCTV on the grounds of race and that he was not accusing them of race discrimination, because he did not know why it wasn't secured. He was asked, then, whether he was withdrawing this allegation and said "no" because if the events could not be proven then his complaint would be discarded.

304. Thus, the argument of Mr Ujah is that if there is a loss of evidence which would prove an act of race discrimination, the loss of the evidence is, in itself, an act of race discrimination.

305. We do not think that argument is correct.

306. The correct analysis, insofar as this is a claim of harassment is as follows. The loss of the CCTV footage was an unwanted act - it was unwanted conduct. However, there is no evidence from which we could conclude that the loss of the CCTV footage related to race. Mr Ujah, himself, says that he does not know why the CCTV was not secured. It is likely that Ms Rix requested the CCTV to be secured (as per her email at page 375) but the tribunal simply does not know why that did not happen. We do not know who, if anyone, picked up Ms Rix's email and what they did with it. We do not know if there was a failure on the part of the respondent or on the part of G4S. In our judgment, Mr Ujah has not discharged the burden of proof which is upon him to show facts from which we could conclude that the failure to secure the CCTV was related to race.

307. Similarly, in respect of the claim of direct discrimination, the loss of the CCTV footage could reasonably be seen as a detriment by Mr Ujah. The named comparators are not helpful in this case, since they did not request CCTV footage (or indeed any other evidence to support a grievance), but we will consider a hypothetical comparator. There is no evidence that a white Caucasian person in the position of Mr Ujah, someone who had raised a grievance and requested the CCTV to be secured, would have had any different experience to Mr Ujah.

308. In those circumstances this allegation fails.

**Issue 3.1.25 Between December 2020 and October 2021 failure thoroughly to investigate the claimant's grievances set out above**

309. The allegation that between December 2020 and October 2021 there was a failure to thoroughly investigate the claimant's grievances was withdrawn.

**Issue 3.1.26 Junior King's refusal to uphold the claimant's appeal in relation to the above which decision was delivered on 24 March 2022**

310. This allegation asserts that Junior King's refusal to uphold Mr Ujah's appeal in relation to his grievance was an act of discrimination or harassment.

311. Mr Ujah made clear in his cross-examination that he believed that this was an act of race discrimination (or harassment) because Mr King did not consider the grounds of appeal. He accepted that he had been given extensions of time in relation to the making of the appeal and that Mr King was black, however he asserted that Mr King collaborated with others to produce the outcome.

312. The grounds of appeal in respect of the grievance appear at page 371, the outcome letter is at page 511. The grounds of appeal are points about failures in the investigatory process such as constructive destruction of evidence to undermine the investigation process, failure to consider witness

statements, nullification of verbatim evidence and so on. The appeal outcome letter addresses the original complaints made by Mr Ujah such as the mixing up of his name, his inability to raise issues with senior managers, the issue with his shoes.

313. It is right to say, therefore, that the outcome letter did not address the grounds of appeal. The appeal appears to have been treated as a rehearing of the original grievance by Mr King rather than a review of the original decision. That is consistent with Mr King's witness statement where he sets out the investigation reports and interview notes that he received and states that he could see from the evidence that Mr Ujah would have been challenging for a manager to deal with and that he behaved in ways that were divisive and inappropriate – giving the example of the reference to the Audi car. He says that he saw a clash of personalities and not any racism.

314. Mr King was asked by the tribunal why he had not addressed the alleged defects in the original grievance investigation process in his outcome letter. He told us that it was because he had had a meeting with Mr Ujah at which Mr Ujah had listed 20+ points which he wanted Mr King to deal with. He said that his response to the appeal was based on those 20+ points and that he believed that in doing so he had covered off the points which Mr Ujah had raised in his grounds of appeal.

315. Whether that was the best approach or not is not something which we need to consider. We are satisfied, having heard Mr King's evidence, that there was a rational reason for him treating the appeal as he did which was not to do with Mr Ujah's race. As we have already said, we found Mr King's evidence to be impressive and we accept what he told us.

316. There is no evidence that the decisions made by Mr King were because of race or that he would have reached any different decision in relation to the appeal of a white Caucasian person in the same circumstances.

317. Thus even though the dismissal of the appeal was unwanted conduct and a detriment there is no evidence that the claimant was treated differently to his white Caucasian colleagues. Thus there is no evidence that this treatment was related to or because of race

318. For those reasons, this claim fails.

**Issue 3.1.27 In March 2022 failing to offer the claimant an interview for the role of Embrace Race Network Lead (when in his capacity as a disabled person he should have been guaranteed an interview)**

319. It is alleged that in March 2022 the respondent failed to offer Mr Ujah an interview for the role of Embrace Race Network Lead when in his capacity as a disabled person he should have been guaranteed an interview.

320. Mr Ujah confirmed that he was pursuing this allegation as one of race discrimination and harassment.

321. Mr Ujah expressed an interest in this role on 16 March 2022 (page 473). On its face, the form stated that the respondent had made a firm commitment to guarantee a place in the final assessment stage to all disabled applicants that;
- a. met the minimum criteria at the application and
  - b. had a disability.
322. Somewhat unhelpfully the form does not state what the minimum criteria were. Ms Wilson, in her evidence, told us that she scored all of the applicants against the essential criteria and they were required to score a minimum of four in order to be entitled to an interview.
323. Ms Wilson's evidence was, however, that when she received the applications they were presented to her as anonymized. She said that she had no way of knowing the race of anyone who was applying for a role. She would know if they had a disability because of the box ticked on the expression of interest forms. Ms Wilson explained how the south-west business support team created an inbox where applications for the role were sent. She was sent the forms to sift without identifying data. Thus she would receive the part of the form which were at pages 474 to 476 of the bundle, but not page 473. She then sifted the application forms marking them as "A", "B", "C", etc. She told us that she had no discussion with the person who carried out the anonymisation process and did not know that Mr Ujah had applied for the job. She worked in Plymouth and had not met Mr Ujah in person although she had interacted with him via Teams.
324. Mr Ujah agreed when he was being cross-examined that he could not dispute that when the expression of interest forms were received by Ms Wilson they were in an anonymised form or that she would not have known from his application whether he was black or white. His allegation, as he explained when being cross-examined, was based on the fact that he was active in pointing out racial disparities and felt that because of the position he had taken he was not allowed to go forward for this role. He said that he had referred to Ms Wilson as somebody who was guilty of racial disparity. When Mr Ujah was asked how Ms Wilson would know he had applied for the job, he replied that he had assumed that she knew.
325. We have no reason to doubt what Ms Wilson told us that she had no idea that Mr Ujah had applied for the role or that his application was one of the ones that she was scoring. She would not have known from the application form which she scored, that she was scoring the form of someone who was black. The amount of detail which Ms Wilson was able to give as to the way in which the process is anonymised leaves us with little doubt that Mr Ujah's assumptions in this respect are unfounded.
326. In those circumstances this allegation fails because although the failure to offer Mr Ujah an interview was unwanted conduct, we are satisfied that it was not related to race and anybody who had completed the application in the same



way that Mr Ujah had, including a white Caucasian person, would not have been offered an interview.

327. In terms of the claim of direct discrimination, although this claim would fall within s39 Equality Act 2020 in that there was failure to give a promotion or transfer, we are satisfied that the failure was not because of race.

### **Reasonable Adjustments.**

328. The reasonable adjustment claim is based on the premise that the respondent had a provision criterion or practice of marking down Mr Ujah's performance when he could not make telephone calls on the recommendation of occupational health. There is no dispute that Mr Ujah had been told by occupational health that he should not make phone calls with customers and that he was not required to do so thereafter.

329. Mr Ujah says that his inability was taken into account when the decision was taken to not renew his contract for the final time. The respondent denies that it was.

330. Mr Ujah was originally engaged on a fixed term contract which, according to Ms Salter, was due to terminate in February 2021 unless Mr Ujah achieved a satisfactory score in order to be offered a permanent contract. Ms Salter says that the contract was then extended until May 2021 to allow for an outcome to be issued in relation to a disciplinary matter that had been raised. It was then extended again to December 2021 to allow for the application of reasonable adjustments and again until March 2022. We were not taken to any documents in support of that chronology and Mr Ujah, in cross-examination of the respondent's witnesses, stated that his contract had only been extended once in February or March 2022.

331. It is not necessary for us to resolve this dispute in order to determine the issues which have been raised, however we observe that given that the original contract was for six months (page 116), the contract must have been extended before February 2022.

332. According to page 463 of the bundle, on 1 March 2022 Ms Salter wrote to Ella Durant within the DWP requesting a three month extension to Mr Ujah's contract to enable the implementation of reasonable adjustments and to provide a fair assessment in regards to a decision on potential permanency of a role. That extension was approved on 2 March 2022 (page 464).

333. On 18 March 2022 Melanie Cramer wrote to Mr Ujah stating:

The decision has been made to extend your FTA contract to the 18th June 2022. The reason for this decision is so that we are able to consider any reasonable adjustments that are not already in place to support you in work and to allow for a fair decision on permanency. You are aware that without you engaging in this assessment we will not be able to score

you and consider a permanent contract. Therefore your current contract would automatically end on 18th June 2022.

As this time you have advised us that you are not prepared to participate in the process, but you are still willing to take part in the OHS to consider reasonable adjustments. If this changes, please let me know.

334. Mr Ujah replied on 18 March 2022 stating:

As mentioned in my discussions with you yesterday on Teams and earlier today with Cassandra Slater, I am unprepared to undergo any further evaluative processes to assess my competency to do the job I currently do and have done in the past successfully, prior to me suffering Racism, Bullying, Harassment and Intimidation at the hands of other members of staff, and within the departments culture in which such behaviours are endemic, such that it has placed my health and safety at risk .

335. On 25 March 2022, Ms Cramer sent a series of questions to the respondent's occupational health provider which show that the respondent believed that Mr Ujah was resisting coming back to the office following the covid pandemic, refusing to state which four hours of the day he was working (by now his contract had been reduced to 4 hours per day), was logging onto his work as early as 7 AM and was still logged on at 8 PM at night, seemingly without structure to his day and was working on the basis that if he cleared the work set any remaining time could be dedicated to BAME work . Ms Cramer asked the questions:

What medical reason does Alex have to not complete 4 hours of AO duties as per the AO job description in a structured timeframe each day? What reasonable adjustments, if required, could be put in place to allow Alex to work within his job description for his contracted work time?

What medical reason does Alex have to not request additional AO duties, once what he has been asked to do is completed within his 4 hour working day? What reasonable adjustments, if required, could be put in place to allow Alex to ask for additional work within his contracted work time?

336. The occupational health report dated 4 April 2022 stated that Mr Ujah could work at least 1-2 days from the office carrying out non-customer facing duties and suggested a stress risk assessment be carried out.

337. It is not in dispute that around March/April 2022 Rahima Begum began to co-manage Mr Ujah. Ms Begum and Ms Cramer assert that was because Ms Cramer was experiencing difficulties in managing Mr Ujah and he was often refusing to speak with her. That is, in part, borne out by the exchange we have set out above.

338. It is further borne out by the fact that Mr Ujah states in his witness statement that, on 13 April 2022, he refused to participate in a one-to-one session with Ms Cramer because he could not see himself having a sincere conversation with her on matters of racism within the Department.
339. There is a dispute between Mr Ujah and the respondent as to exactly what was said by Mr Ujah in respect of that refusal. Ms Begum stated that Mr Ujah had said that he would not meet with Melanie Cramer because she was white. She also stated that, later, he said that he would not sit on an open floor in the office because he did not want to sit with white people. Mr Ujah vehemently denied that he had said either of those things, stating that he had simply said that because Ms Cramer considered herself colour-blind (she described herself as just viewing the person and not their protected characteristics, which amounts to largely the same thing) she would not be able to understand his perspective as a black man who had been subjected to racism.
340. Ms Begum told us that she verbally warned Mr Ujah about saying that he would not meet with Ms Cramer because she was white and would not sit with white people, however no other action was taken.
341. If Ms Begum's account is accurate then the policies and procedures at the DWP would appear to be being ignored in an alarming way. The statements allegedly made by Mr Ujah are clear examples of race discrimination. It is difficult to see why he was not immediately subjected to a disciplinary procedure. It would be a matter of concern if the DWP was applying its disciplinary policies with less force to some people who commit acts of discrimination than others. The alternative, of course, is that at this remove from events Ms Begum's account is inaccurate. Ultimately we have not needed to resolve this factual dispute in order to resolve the issue. On any account, Mr Ujah was refusing to meet with his line manager.
342. A meeting took place between Mr Ujah and Ms Begum and, thereafter, Ms Begum sent an email to Mr Ujah on 5 May 2022. It set out the expectations on Mr Ujah in respect of his four hours per day working hours, including that he should not be doing personal work during that time and there was discussion about his working pattern. It was agreed that Mr Ujah would come into work on Wednesdays rather than work from home all week (the evidence did not disclose when Mr Ujah had started working from home and that is not a matter we need to resolve). Ms Begum suggested the use of an informal Performance Action, Learning Plan (PAL) as a positive enabler to inform performance and ensure clear communication. A number of other things were discussed.
343. Mr Ujah replied to say that he had felt it impossible to have Ms Cramer at the meeting due to the psychological impact of racism on him, that he had spent a significant amount of time on the issues of race and racism in the meeting, that Ms Begum's minutes failed to mention the incompetence that he has to meet over and over again with different colleagues in reference to his four hour day or that there was inadequate record-keeping or the environment of racist oppression in the office. He, also, referred to a number of other matters.

344. On 11 May 2022, Ms Cramer attempted to conduct a PAL meeting. The plan had been drawn up by Ms Begum and Ms Cramer and, according to Ms Cramer's statement, it detailed the areas in which Mr Ujah was not delivering and planned how they could be improved upon. The plan is at page 635 of the bundle.

345. A meeting took place on 11 May 2022 between Mr Ujah and Ms Cramer but Mr Ujah would not go ahead with the meeting in respect of the PAL. Evidence of the meeting is contained in an email which appears at page 570 of the bundle and states as follows:

We had a meeting booked today, 11.05.2022, to discuss your PAL (Performance Action and Learning plan.) I emailed you a copy of the plan at the beginning of the meeting and gave you time to read through it, ready to discuss.

When you read that it was about meeting objectives and / or demonstrating required behaviours, you refused to continue with the meeting and said that the reasons of the PAL were not explained to you by Rahima at your previous meeting. That you felt that this was a trap and want to speak to Paul Lowman (Union Rep) about this prior to a meeting. I asked you to read the whole plan before you made that decision, which you did.

346. It is apparent that additional matters were discussed at the meeting, as set out in that email. Those things included the amount of diversity and inclusion work which Mr Ujah was seeking to do in his working hours and further training courses that Mr Ujah would like to attend to assist him. It is recorded that Mr Ujah had suggested attending Debrett's courses for business development, HULT-Leading through Influence and a course from the Harvard Kennedy School. Mr Ujah made comments on that email at page 578 of the bundle.

347. Ms Begum told us that she had a further meeting with Mr Ujah on 16 May 2022 where she confirmed with him the duties that he should be carrying out in a day and asked him to email Ms Cramer or herself at the end of each day as to what customer IDs had been actioned. (Page 604). It appears there was also a meeting on 17 May 2022 at which Ms Begum told Mr Ujah that she had assigned herself as his line manager with the additional support of Ms Cramer and asked him to email her in future with any correspondence (page 601).

348. At this time, the question of extension of Mr Ujah's contract arose again. On 17 May 2022 Ella Durant had written to a number of people stating that Mr Ujah's contract was due to end in one month and the business were of the mind that extending further would be detrimental but she was enquiring as to whether there was a possibility to extend further should it be required (page 613).

349. Brooke Ahmed replied to state that the absolute maximum the contract could be extended was to 8 July 2022 and "under the FTA and CS regulations we have to end contracts before they reach 2 years, ideally at 23 months...

This would mean the assessment period can start 6 weeks prior which would be 27th May, so it does not give much additional time for you I'm afraid."

350. On 18 May 2022 Ms Durant replied:

Thanks Brooke, given that we do not think that Alex scoring will change over the next weeks and that it may be detrimental to his health to extend owing to previous exchange with him where he was unhappy about contract extension, the business are going to endeavour to score him and return scores before the 2nd June.

They will offer him two opportunities to meet to discuss the process and any evidence or concerns he wishes to submit and if following he declines they will score based on evidence we have, they will make sure he has information around what scoring process entails. He has previously been aware of this so it will be a reminder rather than a first advising. (Jo I have asked for sight of email before sent)

351. According to the statement of Ms Begum, Mr Ujah began to set his status light on Teams as orange/away as a default which meant it was difficult to know when he was contactable and he had also re-routed Teams to his mobile phone which, she considered, was impermissible because it was not proper to attach a non-DWP piece of equipment (a personal phone) to DWP equipment (the Team's facility). Mr Ujah disputed that he should not be able to set his Team's light as showing away and also that he was not allowed to forward calls to his mobile phone. Ms Begum wrote to Mr Ujah to that effect on 17 May 2022. Mr Ujah replied challenging what she had said and demanding a clear and unambiguous policy statement, lifted from the policy document where she got her directives from (page 606 – 607).

352. Ms Begum was then required to score Mr Ujah to decide whether his contract would be extended or not. The scoresheet is at page 692. It allowed for scores to be given of one to five, where a score of five showed outstanding levels of performance, a score of three showed a good standard of performance and a score of one showed that the colleague was not meeting all required standards.

353. In relation to performance Mr Ujah was scored a one. Ms Begum wrote:

Any expectations and duties assigned were communicated to AU, however he was non-compliant with reasonable management asks and failed to provide daily assurances of work completion. I undertook sense checks of his work and found there was lack of consistency in his work and duties he was undertaking on a daily occurrence and as a result was not meeting the minimum standards or business needs. In my checks, I also found that AU was undertaking work related tasks after his contractual hours (9am to 1pm) and that within his working hours he was undertaking personal work. AU was reminded more than once that any personal work that he wished to complete would need to be requested via line management. I advised that any allowances would be dependant

on the type of request and that any work that is not related to DWP whether personal or within his role would need to be completed in his own personal time.

AU was also assessed on the following behaviours. Scores are noted alongside the behaviours and table of definitions.

Managing a Quality Service - 2  
Making Effective Decisions - 3  
Communicating and influencing -2

As noted below in the tables AU evidence limited positive behaviour without consistency across Managing Quality Service and Communicating and influencing. There was moderate positive evidence of Making Effective Decisions, however without consistency. Thorough checks were undertaken on cases that AU had worked on and of those that he also supplied as supporting information/evidence. On review there were gaps in dates that work has not been supplied for and the minimum standards were not met. AU agreed with his previous line manager that he would aim to complete a minimum of 12 claimant to do's/ cases, however on undertaking checks this was not apparent. One of the examples is from 4th April to 28 April, AU had worked on 88 claimants to do's some of which belonged to the same case. Within that period on average, he would have completed only 3 claimants to do's each day which were below the minimum standard. On further checks some days these cases were completed outside his contractual working hours and therefore, there were no evidence work to take into account in his working hours.

Across the 3 behaviours, AU had met most of the weaker examples as oppose to the stronger examples.

354. It is clear from the scoring exercise that Mr Ujah was not expressly scored down because of any inability to make telephone calls. That criteria did not appear in the scoresheet.
355. We have, however, set out at length some of the evidence around Mr Ujah's performance since we have also considered whether Mr Ujah's refusal to make telephone calls to customers was taken into account in other ways (such as Melanie Cramer or Rahima Begum marking Mr Ujah down for his attitude to work). We do not think it was. We are satisfied that the view which Ms Begum reached when scoring Mr Ujah was objectively justified and was based on matters other than whether he would or would not make calls to claimants/customers. It is clear that Ms Begum and Ms Cramer had raised concerns with Mr Ujah over a period of time and his behaviour had not changed. He had not shown any willingness to take feedback on board or improve.
356. We are fortified in our view by the witness statement of Mr Lowman. He states; "I remember that there was a meeting but not what was discussed other

than to say that Alex felt his KPI's (as he refers to them) were a maximum and that once completed the rest of his reduced working day was his own to carry out what he felt needed to be done which included working on his case." That is evidence, called by Mr Ujah, which indicates that he was doing personal work within his working day, which is one of the reasons why Ms Begum did not give him a high score.

357. In those circumstances, we conclude that the respondent did not have a PCP of marking Mr Ujah's performance adversely when he was following occupational health advice that he should not make telephone calls and therefore Mr Ujah was not put at a substantial disadvantage by any such PCP.

358. This claim, therefore, fails.

### **Standing Back- The Overall Picture**

359. As we said earlier, it is important not to focus only on the individual detail of each issue and, therefore, risk losing the bigger picture. We have, therefore, taken a step back and considered whether when we look at the situation overall, there are facts from which we could conclude that Mr Ujah has been subjected to harassment or direct discrimination.

360. Again, we think that the view of Mr King is perceptive in this respect. He told us that he believed that Mr Ujah would have been challenging for a manager to deal with and that he behaved in ways that were divisive and inappropriate. He said that he saw a clash of personalities and not any racism.

361. There is objective evidence to support that view. Much of it we have quoted above, for instance;

- a. the discussion about the Audi,
- b. the comment that Mr Ujah made at the end of his first week's employment (albeit to a friend) that his colleagues were a flock of egomaniacs and that management consisted of a group of sophisticated talentless individuals,
- c. his statement to Mr Rance on 25 September 2020 that "this time around I would not be seeking disciplinary action against him as long as I was left alone in future, in peace, to get on with the job"
- d. his threats to Ms Cramer to be careful otherwise he would have to raise a grievance about her,
- e. Mr Ujah's refusal to meet with Ms Cramer as his line manager.

362. There is, also, other evidence to support that view.

- a. In the document that Mr Ujah submitted as part of his grievance, which begins at page 160 of the bundle, in talking about Mr Rance he stated

“This person is unqualified to herd a flock of sheep how much less a multi-racial departmental office...” (p164).

- b. In Mr Ujah’s witness statement he records his account of when he refused to carry out habitual residence test (HRTs) in 2021. He states “... I am a person of colour and have the cultural sensitivity to defuse ugly situations created by my Caucasian colleagues. I said furthermore that I did not want to place myself in a situation anymore of gaslighting members of the public”. Whilst Mr Ujah’s views may well have been genuinely held, the expression of them in a way which treats his Caucasian colleagues as a homogenous block was at best, unhelpful.

363. Moreover, the things which Mr Rance raised with Mr Ujah were perfectly normal management matters. There was nothing wrong with telling members of staff they should not have bare feet, that they should not be wearing earphones or headphones at work, that they should not be rolling tobacco at their desks, that they should not be printing private material on DWP resources or that they should seek permission before leaving the office on a paid break (as opposed to an unpaid lunch hour). It would be wrong, if as Mr Ujah contends, he was singled out for such treatment, but we are not satisfied on the evidence that he was.

364. In considering the bigger picture we have not found facts from which we could conclude that Mr Ujah was the victim of harassment related to race or direct race discrimination. We find that the respondent’s managers were doing their best to manage Mr Ujah, but struggled to do so. Their behaviour was not because of or related to his race.

## **Time**

365. Given our findings that none of the claims succeed, it is not necessary for us to consider whether those claims that have succeeded were presented within time or not.

366. We have considered whether we should set out our views on the question of time in the alternative, in case this case goes further. Ultimately we have decided that is not feasible. In a case with a small number of issues it is relatively straightforward to say “we have decided that the allegation is not factually made out but had we decided otherwise, on the question of time we would have decided...”. However where there are 28 allegations, it is not simply a case of stating what we would have decided if we had found Mr Ujah’s case proved on issue 3.1.1 or 3.1.2, we would also have to consider every possible combination of findings, such as finding issue 3.1.1 proved but no others, or finding issue 3.1.1 and issue 3.1.26 proved. Such a hypothetical task is not feasible.

## **Overall Conclusions**

367. We have dismissed all of Mr Ujah’s claims. In respect of many of the issues we have not been satisfied that Mr Ujah’s factual allegation has been



made out. In those cases where we consider that Mr Ujah has been subjected to unwanted conduct or a detriment, we are either not satisfied that the conduct was related to race or are not satisfied (in the case of harassment) that the conduct reasonably had the effect of violating Mr Ujah's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. We find that none of the conduct complained of had the purpose of violating Mr Ujah's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Mr Ujah.

368. In respect of the reasonable adjustments claim, we do not find that Mr Ujah was subject to the provision criterion or practice which he alleges.

369. As we have said earlier in this judgment, we have not found that either Mr Ujah or his witnesses have attempted to mislead us. Indeed we have not found that any of the witnesses we heard from have sought to mislead us. We must make the decision on the evidence which has been presented to us. The contemporaneous evidence is relatively limited but that which does exist does not, in our judgment, support Mr Ujah's case in the way that he believes. As we have set out above, we think that all of the witnesses to the events in 2020 were somewhat hampered by the passage of time in giving their evidence.

370. We are grateful for the way both Mr Ujah and Mr Tinnion presented their cases. We pay tribute to the way in which Mr Ujah presented his claim. He was unfailingly polite to the tribunal and persevered in circumstances of significant personal difficulty. He did his best to focus on the issues and marshal his questions accordingly. Mr Tinnion presented his client's case in a helpful and clear manner.

Employment Judge Dawson

Date 14 April 2024

JUDGMENT SENT TO THE PARTIES ON  
13 May 2024 By Mr J McCormick

FOR THE TRIBUNAL OFFICE

## **Notes**

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