



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mr Chouhaib

**Respondent**

TIC International Ltd (R1)  
Islamic Relief Worldwide (R2)

AND

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Midlands West

**ON**

14 – 23 May  
28 May – 31 May  
4 June 2024

**EMPLOYMENT JUDGE** Harding

**MEMBERS**

Mr Williams  
Ms Pelter

### Representation

**For the Claimant:** In Person

**For the Respondent:** Mr Ahmed, Counsel

## RESERVED JUDGMENT

**The unanimous judgment of the tribunal is that:**

- 1 The claimant's claims of direct race discrimination contrary to sections 13 and 39 of the Equality Act 2010 fail and are dismissed.
- 2 The claimant's claim of constructive unfair dismissal contrary to sections 94 and 98 of the Employment Rights Act 1996 fails and is dismissed.

3 The claimant's claim of constructive wrongful dismissal (unpaid notice pay) fails and is dismissed.

4 The respondent has not made an unlawful deduction from the claimant's wages, contrary to section 23 of the Employment Rights Act 1996, and this claim is dismissed.

5 The respondent's application to strike out the claimant's equal pay claim under sections 131(5) and (6) of the Equality Act 2010 is refused. The respondent has not proved that the work of the claimant and his comparators was given different values under a job evaluation study, as defined in Sections 64(4) and (5) and 80(5) of the Equality Act 2010. In the alternative, the claimant has proved that there are reasonable grounds for suspecting that the evaluation contained in the study was otherwise unreliable.

6 The case will be listed for a case management hearing in due course to decide how to progress the equal value claim.

## **REASONS**

### **Case Summary**

1 The claimant pursues claims of equal pay, direct race discrimination, constructive unfair dismissal, an unlawful deduction from wages and constructive wrongful dismissal (unpaid notice pay). He was employed by the first respondent from 20/2/2012 to 28/6/2021, as an HR and Health and Safety Adviser, latterly as an HR Manager. The first respondent introduced a job evaluation scheme in 2012 and has graded all of its office-based and managerial roles under this scheme since then. It is the claimant's case that the scheme is seriously flawed; he asserts job descriptions which were used to evaluate roles were inconsistent, inaccurate and often overinflated, decisions were tainted by race discrimination and managers manipulated the scheme in order to achieve certain results.

2 In relation to the equal pay claim, it is the respondent's position that this claim should be struck out on the basis that the work of the claimant and his comparators has been rated differently under a job evaluation scheme that complies with sections 64(4) and (5) and 80(5) of the Equality Act. This hearing, therefore, is determining what is a preliminary issue only in respect of the equal pay claim.

3 The direct race discrimination claims all relate to aspects of either the way in which the job evaluation scheme was applied or the results of the job evaluation scheme, as do most elements of the constructive unfair dismissal claim.

### **The Issues**

4 An agreed list of issues had been drawn up with the parties at an earlier case management hearing. At the start of this hearing we went through the list of issues again with the parties to confirm whether or not it was an accurate list of the matters that we were required to reach a decision on. It was confirmed that it is not disputed that the claimant was employed by R1. R2 is the parent charity of the first respondent. The claimant pursues the following claims:

Direct race discrimination

5 The claimant describes himself as Amazigh for the purposes of this claim. He asserts that the following acts were less favourable treatment because of race;

5.1 The following individuals were given a higher grade than the claimant under the respondent's job evaluation process (i.e. the claimant was graded lower than others because of his race): those others being Zaid Ahmed Grade 7 HR Services Manager and Onsite Therapist for R2, Junaid Ahmed, Head of Corporate Services, Grade 8, Mohamed Imran Sadiq, Grade 7, Senior HR Business Partner for R2 and Morshed Alam, Grade 5/6, WAQF Programme Manager for R2.

5.2 Mr Naser Haghamed devalued the claimant's role in the 2012/2013 JES.

5.3 Mr Azher Ayub challenged the claimant's job evaluation in 2020 – 2021.

5.4 The claimant was paid less than his comparators between 2012 – 2021.

6 The comparators relied upon by the claimant for all claims are; Zaid Ahmed, Junaid Ahmed, Imran Sadiq and Morshed Alam.

7 These are the only claims that are pursued against both R1 and R2. The remaining claims are pursued against R1 alone. We clarified with the claimant that these claims are pursued against R2 on the basis that it is asserted that R2 knowingly aided R1 to discriminate.

Equal Pay

8 It had been decided at an earlier case management hearing that only one issue relating to this claim would be decided at this hearing, which was as follows:

8.1 Whether the work done by the claimant and the work done by his comparators (Ritu Chadda, Magdalena Lukowska and Serena Kashim) has been rated differently under a job evaluation study complying with section 131(6) of the

EQA, and if so whether to strike out the claimant's equal value claim. It was agreed at the outset of this hearing that this, in fact, breaks down into two issues;

8.1.1 Whether the Respondents can prove the claimant and his comparators were rated differently under a JES that complies with Sections 64(4) and (5) and 80(5) of the EQA, and if so,

8.1.2 Whether the Claimant can prove the JES was otherwise unreliable. For the avoidance of doubt, the claimant does not assert that the JES was based on a system that discriminates because of sex. His case is that the JES was otherwise unreliable because it was tainted by race discrimination and because the system was deliberately manipulated in order to produce certain results and/or because job descriptions which were used to evaluate roles were inconsistent, inaccurate and often deliberately overinflated.

### Constructive unfair dismissal

9 The claimant resigned from his employment with immediate effect on 28 June 2021. It is the claimant's case that the respondent, by its conduct, cumulatively breached the implied term of trust and confidence. It is the claimant's case that the following acts breached the implied term;

9.1 In 2016 Azher Ayub failed to evaluate the claimant's role in accordance with the JES (which the claimant found out about in June 2021),

9.2 In 2020 Azher Ayub devalued the claimant's job role by removing elements from his job description before submitting it for job evaluation,

9.3 In 2020/2021 Azher Ayub challenged the grading of the claimant's role under the JES, and

9.4 The first respondent failed to investigate/indicated it was not going to investigate an alleged breach of Covid laws/guidance by the holding of a social gathering on or about 20 May 2021.

10 It is the first respondent's case that there was no fundamental breach of contract, in the alternative that the claimant affirmed any breach. The Covid incident aside it is said that the very latest date by which the claimant was aware of the matters on which he relies was 6 May 2021, and he did not resign until 28 June 2021. The respondent does not, in any event, accept that the claimant resigned in response to the asserted breach. It is the respondent's case that he resigned because of general dissatisfaction with his grading, and that he had decided to resign before the Covid incident occurred.

11 If we were to find that the claimant had been constructively dismissed the first respondent confirmed that it does not seek to argue in the alternative that any such dismissal was fair.

#### Constructive wrongful dismissal

12 Has the claimant proved the first respondent committed a fundamental breach of contract, and if so that he resigned in response to this? It is the claimant's case that if he was constructively wrongfully dismissed he is due three months' notice pay; the respondent's case is that if the claimant was constructively wrongfully dismissed he is due nine weeks' notice pay.

#### Unlawful deduction from wages

13 Was it an express or implied term of the claimant's contract that his salary would be determined by the application of a group salary scale which was applied to the second respondent's staff from 2017 onwards?

14 If so it is accepted that the first respondent made an unauthorised deduction from wages because the first respondent accepts that the claimant continued to be paid in accordance with R1's pay scales from 2017 onwards.

#### Evidence and Documents

15 We had three witness statements from the claimant; his particulars of claim, which he asked to stand as a witness statement, a statement which he prepared as a response to the respondents grounds of resistance and a document which was headed "Chronology" but was in fact a further statement. The claimant also produced a witness statement from Mohamed Shaibi, ex Security and Maintenance Supervisor for R2. From the respondents we had statements for; Zaid Ahmed, Head of HR Services and Wellbeing, Naser Haghamed, General Manager for R1 and CEO of R2, Aflak Suleman, Orphan and Child Welfare Manager for R2, Dr Ari Ahmed, Operations Director for HAD, a subsidiary of R2, Mohamed Imran Sadiq, Senior HRBP for R2, Azher Ayub, General Manager R1, Junaid Ahmed, Head of Corporate Services for IRUK, a division of R2, Noor Ismail, Head of Region, R2, Tufail Hussain, Director of R2, Mohamed Chahtane, Global Supply Chain Manager, R2 and Ritu Chadda, Head of People and Culture, R2. We also had a bundle of documents running to 1328 pages, and an ancillary bundle running to 84 pages. We explained to the parties that we would only read documents if we were asked to do so by the parties, either by way of a reading list, references in witness statements or being taken to the documents during the hearing. One new document was produced during the hearing, in the form of a composite pay scales document. This did not, however, contain any new evidence, it simply consolidated various different pay scales for the respondents, which were spread throughout the bundle, into one place.

## **Findings of Fact**

16 We set out the majority of our findings of fact in the section below. However some findings, particularly where they also form part of our conclusions, will appear in the conclusions section of these reasons. From the evidence that we heard and the documents we were referred to we made the following findings of fact:

16.1 TIC International Ltd, the first respondent, was established in 1993 by the second respondent, Islamic Relief Worldwide, following an influx of clothing donations in the aftermath of emergency appeals. It is a wholly-owned subsidiary of the second respondent. The business was set up to enable the second respondent to generate income from donated clothing, which in turn was to be used by R2 to help support and fund various projects.

16.2 The first respondent is, essentially, a textile and recycling business, although at certain points in time it has also managed the production of halal canned meat for use in food aid programmes. During the time of the events with which this case is concerned it grew from having about 80 employees to 120 employees, as well as having approximately 150 volunteers working for it. The first respondent operates a sorting facility, 14 Islamic Relief charity shops and a logistics department of approximately 13 drivers and vans. Donations are collected from all over the UK and throughout Europe.

16.3 The second respondent is an international non-governmental organisation with charitable status employing around 300 people in the UK and 3,000 people worldwide. It has a number of different divisions which are; Programmes Division, Corporate Finance Services, People and Culture, New Resource Development and Islamic Relief UK. It also has two wholly owned subsidiaries which are the Humanitarian Academy for Development (HAD) and Wafq.

16.4 At the time of the events with which this case is concerned the second respondent had approximately 13 HR staff. It is difficult for us to make detailed findings about the structure of the second respondent's HR department because organisational charts were inaccurate, there was a lot of change, and no witness dealt with this in a cogent way in their witness statement. Doing the best we can, Rita Chaddu was the Head of People and Culture, which was one department of HR, and there was also an HR Services Department. Towards the very end of the timeline with which this case is concerned Zaid Ahmed was appointed to the role of Head of HR Services and Well Being. Ms Chaddu reported directly into the second respondent's CEO. Ms Chaddu had three direct reports; a Senior HRBP and two HRBP's. The senior HR Business Partner in turn

had two direct reports who were HR Advisers, page 814. Mr Ahmed had line management responsibility for a number of direct reports who dealt with matters such as payroll and screening/immigration checks. There was also a Recruitment Manager who had one direct report, in the form of a Recruitment Officer. The HR department looked after both what the respondents termed employee relations issues – they meant by this working with Heads of Department and managers in relation to all people issues – and HR Services – payroll, databases, annual leave, well-being, global issues, and organisational strategy such as the global staff survey.

16.5 The first and second respondent are entirely separate legal entities, each with their own Board of Directors and their own management structure. The first respondent is a limited company registered at Companies House, and it files its own accounts each year, page 1059. The two respondents make decisions independently of each other, although decisions made by the second respondent will frequently also be adopted by the first respondent, and the second respondent on occasion shares systems or resources with the first respondent. For example, the first respondent's employee handbook is an adaptation of the second respondent's employee handbook.

### Introduction of the JES

16.6 In 2011 the second respondent decided to review its job evaluation scheme, which was considered to be old and out of date. The first respondent at this time did not operate a job evaluation process. The majority of its staff had, up until recently, been hourly paid workers who were paid the national minimum wage with only a small number of office based workers who were paid more than this. However, when the second respondent decided to review and revamp its job evaluation scheme, Mr Haghamed, the then General Manager for the first respondent decided that the first respondent would also adopt the scheme, which would cover office staff and managers only.

16.7 It was decided that the respondents would use a bespoke scheme. No evidence was led as to whether this scheme was based on another already established, well-known scheme. The respondents received advice from Anna Stobart, a job evaluation consultant, about how to design and implement the scheme. Ms Stobart was, in fact, commissioned by the second respondent to carry out two independent but linked pieces of work; firstly to assist them in designing and implementing a revised job evaluation scheme and secondly to carry out a salary benchmarking exercise so that the second respondent could revamp its pay scales. The second respondent was by this point aware that it was paying a lot less than market rate for roles compared to other charitable organisations, and this was causing high staff turnover.

### Job Evaluation Factors

16.8 Ms Stobart recommended that the following job evaluation factors should be used for evaluation purposes, pages 854 and 890-897; leading and managing people, planning and managing resources, decision-making, analytical, innovative thinking and problem solving, communication, quality, standards and service delivery and knowledge and skills. These factors were all adopted by the respondents. Each factor was then subdivided into different levels. By way of example, the leading and managing people factor was subdivided into 7 different levels. It was set out that:

Level 1 would apply to a job that required commitment to own personal development and growth,

Level 2 would apply to a job that required supervision and/or guidance of other staff such as volunteers and contractors or a job that involved providing basic advice, coaching and training to staff in an area of expertise such as people management,

Level 3 applied if the role required line management of one or more staff members, or the job holder might be required to manage change within their area and/or work with a complex matrix management structure, or the job holder provided a range of specialist advice, coaching and training to managers in areas such as people management or finance,

Level 4 required leadership and management of a department or programme area or a role that involved providing a high level advice, coaching and training to senior managers/directors in an area of specialist expertise, and so on up to a maximum of level 7, which was a role that required leadership at director level, page 890. Some of the factors had a maximum of seven levels, such as leading and managing people, communication had six levels, some, such as quality, standards and service delivery had five levels.

16.9 It was agreed that one mark was to be awarded for Level 1, two for Level 2 and so on up to seven marks for Level 7 (at one point there was also a Level 8 discussed but this was not adopted). In order to produce a factor score it was decided that the mark for each level would then be multiplied by 10. Therefore, one mark for level 1, under the factor of leading and managing people, would turn into a factor score of 10 for that factor. The factor score for each factor was then to be totalled up in order to give a total score.

### Job Score Sheets

16.10 Pro forma individual job score sheets were also developed, page 228. At the top of each sheet there were boxes for information to be added, such as the name of the evaluator, the job role being evaluated,



the division or department that the role was in and the date of the evaluation. Underneath this each of the job factors were listed and there was then a box for the evaluator to fill in the level awarded for each factor, a further box for the factor score and then a box for any additional comments to be added for each factor score. The name of the role holder was not included on this sheet.

### Grade Profile

16.11 The second respondent also developed a grade profile, pages 879 – 881, by which total scores would be translated into a grade. There were eight identified grades, the most junior being J2 up to the most senior, which was A11. The grade profile set out the total score that would be required under the job evaluation process for a role to be mapped across to each grade. For example, a job evaluation score between 150 – 170 equated to Grade G4, a score between 180 - 210 equated to Grade G5, F6 applied if there was a job evaluation score between 220 - 250, E7 if there was a score between 260 - 320 and D8 if there was a score between 330 - 380. The scores for the grades did not overlap, there was a 10 point gap between each grade range, meaning that a role, once scored, could only fall within one grade.

16.12 Each grade was also given a grade name and a grade description. H4, for example, was described as senior administrator/officer who provided senior and/or specialist administrative support, planned and prioritised a wide range of complex and varied tasks, delivered to internal or external customers and researched information and presented options for others to make a decision. G5 was described as a coordinator/officer/adviser who reports to a senior officer or manager, who may provide direct support to a director, is required to give professional advice and guidance within the remit of their role and is responsible for resources or processes used by others, page 880. F6 was described as senior officer/supervisor/partner coordinator who reports to a manager, manages a significant area of work which impacts across the organisation, has professional or advanced technical skills, is required to give accurate, complex advice and supervises staff. E7 was described as a manager or specialist adviser who reports to a head of department or senior manager (or in some cases to a director if managing a small team), who manages a small function or country programme with significant impact on the organisation, develops policy and strategy for their functional programme or leads on an area of specialist expertise, advises with a global remit and represents the second respondent at conferences and as a spokesperson. D8 was described as a Head of Department who reported to a director, managed a large functional programme with critical impact on the organisation, was a recognised internal expert in their field and contributed to corporate policy.

16.13 This grade profile was adopted by both the first and second respondents. It has remained largely as is apart from a minor change that was introduced in 2017 - 2018 to reflect the creation of a new role within the second respondent's organisational structure; that of deputy directors.

16.14 Under the respondents first version of this job evaluation scheme the jugging process, as it was known, (which stands for job evaluation grading) was a single-stage review which comprised either a desktop assessment by a single evaluator or a panel assessment by an evaluation panel. The decision on whether a role would go through to a desktop assessment or a panel assessment was made on the basis of business need - i.e. how urgently a role needed to be evaluated. Roles were to be evaluated by scoring the role's job description against the factor plan to arrive at a total score.

#### Job evaluation panel

16.15 Thirteen people were appointed to the panel. There were a mixture of employees from both the first and second respondent across a range of different roles. The panel members included Nabeel Al Azami, then HR Manager for the second respondent, Azher Ayub, then Head of Retail for the first respondent, Noor Ismail, then Supporter Care Manager for the second respondent, Nahid Saiyed, Administrative Assistant for the second respondent and Tasleem Shabir, Call Centre Assistant Supervisor for the second respondent. We did not understand it to be disputed that line managers were not permitted under the JES to evaluate the roles of their direct reports. We base this finding on the oral evidence of Junaid Ahmed and the email at page 452, which demonstrated that Mr Ayub, the claimant's line manager, was taken off the panel when the claimant's role was evaluated, for which see more below. We also find, based on the oral evidence of Mr Suleman, that it was not permissible under the respondents job evaluation process for an evaluator to evaluate and score the role of someone who was working within the same department as them.

16.16 At this time each evaluation panel comprised between three and five people. This remained the process until 2018. If a role was put through for a panel assessment the panel would pre-score the role individually using the factor plan and the job description and would then meet to review their scoring sheets and finalise an agreed score for the role. The job descriptions were sent through to the panel on an anonymised basis meaning that they would frequently be assessing roles without knowing who the current role holder was. That would not always be the case however; the job descriptions contained the job title, as did

the score sheets. Sometimes, therefore, if a stand-alone role was being assessed it would be evident to the evaluators who was in post.

16.17 As a means of seeking to ensure objectivity in the evaluation process it was not made common knowledge, when this process was implemented, how a particular job evaluation score mapped across to the respondent's grading structure. Those in HR were aware of this but others who sat on the job evaluation panel were not, initially at least. That said, we find that knowledge of how a particular score mapped across to a particular grade did become more widespread. We base this finding on the oral evidence of Mr Ayub who told us that he knew which scores equated to which grades.

### Appeal Process

16.18 Ms Stobart recommended that there should be a job evaluation appeal process; her recommendation was that this should be limited to a second review to be carried out by the same job evaluation panel who had evaluated the role, page 854. This recommendation was not implemented by either the first or second respondent. We find, based primarily on the oral evidence of Mr Zaid Ahmed, that there has never been any formal mechanism for employees to appeal their role's job evaluation. Nor have employees ever been entitled to see or be told about the scoring for their roles; an employee is simply told the grade that their role has been evaluated at, and that is it.

16.19 The respondent urged us to find that there was an informal appeal process, suggesting in closing submissions we should make such a finding based on the fact that the claimant challenged his own grading and managed to have it changed. In fact, all that the claimant did was inform his line manager that he was unhappy with his grade, and then, at a later point, ask his line manager to have his role evaluated again, for which see more below.

16.20 We find there was no right of appeal, informal or formal for employees. At most, we find, employees might be able to ask for a re-evaluation of their role, if their line manager agreed to this. We make these findings for the following reasons. In order for a process, informal or otherwise, to be considered an appeal, it would need to provide, it seemed to us, an effective mechanism for the affected employee to challenge the decision made. That, it seemed to us, would involve (i) the employee being able to decide whether to appeal or not and (ii) the employee being given at least some information to enable them to understand the basis on which the evaluation decisions were made so that they could identify the areas where they considered the evaluation of the role to be wrong. Here, the respondent's process was to provide the affected employees with no

information at all about the evaluation other than the result, paragraph 16.18 above, and the only gateway to having the role re-evaluated was if the line manager agreed to raise it, for which see more below.

16.21 Line managers have, however, always been able to contest evaluations, for which see more below. There is no formal or agreed process for them to follow when they do so.

#### Pay Scales second respondent

16.22 From 2012 until 2018 the second respondent's salary scales were based on the benchmarking process that had been carried out for them by Ms Stobart. We find, based on the oral evidence of Mr Haghamed, and the copies of the pay scales that were produced, that the second respondent had eleven grades each with six different incremental steps and an assigned salary for each step, see pages 2 and 4 of the composite pay scale document. For example in 2012 grade 5, which under the second respondent's new salary grading scheme was also known as grade F, had a salary of £27,000 for step one, £28,200 for step two, £29,400 for step three, £30,600 for step four, £31,800 for step five and £33,000 for step six, page 2 of the composite pay scale document.

#### Pay scales first respondent

16.23 We find, based on the evidence of Mr Haghamed, that once Ms Stobart had assisted the second respondent with the benchmarking exercise to develop their pay scales he commissioned her to conduct a similar process in relation to the first respondent. This was the first time that the first respondent had introduced or used pay scales of any form. Prior to this, on the respondent's own evidence, salaries for those who were not on the national minimum wage tended to be set on a subjective/historical basis.

16.24 It was decided that in order to reflect the fact that the first respondent had shops of different sizes the first respondent would introduce a pay scale of ten grades with eleven steps rather than the eleven grade six step system introduced by the second respondent, and this is what the first respondent brought in, page 3 of the composite pay scale document. In 2013 the first respondent's salary scale, for example, for grade 5, also known as grade F, was £27,258 for step one, £28,715 for step two, £29,339 for step three, £29,964 for step four, £30,588 for step five, £31,212 for step six, £31,836 for step seven, £32,460 for step eight, £33,085 for step nine, £33,709 for step 10 and £34,333 for step 11, page 3 composite pay scales document.

16.25 The second respondent's salary scale for grade 5 for that year was: £27,540 for step one, £28,764 for step two, £29,988 for step three, £31,212 for step four, £32,436 for step five, and £33,660 for step six. There was also then what was termed a step star which was £34,884, page 4 composite pay scales document.

16.26 The start and end points of the salary scales for a grade and some of the steps in between each end of the scale for the first and second respondents were similar, but generally there were small differences. As set out above, in 2013 Grade 5 for R1 started at £27, 258 and went up to £34,333. For R2 it started at £27,540 up to £34,884. In relation to grade 8, step one for the second respondent was £43,860, whereas step one for the first respondent was £44,061. Likewise, step one for grade 9 for the first respondent was £48,743, whereas for the second respondent grade 9 step one salary was £49,470. For grade 10 the step one salary for the second respondent was £59,160, whereas for the first respondent it was £54,465, pages 3 and 4 of the composite salary scale document.

16.27 It follows from this that whilst there were similarities in the two pay scales they were not the same. We therefore reject the claimant's evidence that the first and second respondent adopted and used the same salary scales. This was simply not borne out by the salary scales themselves.

16.28 The first respondent's pay scales, introduced for the first time in 2012, were updated by Mr Haghamed in 2013. However, he then left the first respondent to work for the second respondent, and the pay scales were not maintained or updated after that. Employees were, however, in some years given salary increases and consequently the first respondent's pay scales and salaries became out of sync with each other.

#### 2017 review of pay scales by R2

16.29 In 2017 the second respondent carried out a further review of its pay scales with the assistance of Croner, who were commissioned to carry out an independent benchmarking exercise for the second respondent. At this time the second respondent was struggling to attract and recruit staff for specialist roles and it wanted to introduce pay scales which were both based on functional areas and benchmarked against market rates for the charitable sector.

16.30 Following this review the second respondent, in 2018, changed its salary scales and introduced departmental pay scales. It adopted nine different salary scales with nine different steps, based on functional areas, and all staff were assimilated onto the new salary scales. For most this represented an improvement on their existing salary. Functional areas

included HR and LD, Funding and Marketing, Finance, IT and Facilities. Step 1 of Grade 6 of the L and D pay scale became £34,920 (previously £33,680), Step 9 £44,236 (previously £42,665), see the composite salary scales document. For Grade 7 the starting point was variable across the functional pay scales but all started at around £40,000 - £41,000. The starting point for Grade 7 on the L and D pay scale was £40,955, see page 7 of the composite pay scales document. We accept the evidence of the respondents and find that these new salary scales were not applied to the first respondent; neither respondent saw any reason to do so. The scales were introduced to the second respondent to deal with particular recruitment difficulties it was experiencing, which was not the case with the first respondent. There was also a significant difference in the size and function of the two organisations, which in the respondents view impacted rates of pay and meant that the two organisations should remunerate employees differently; the second respondent had an annual income in excess of £180 million (this is the figure as at 2021), the first respondent an annual turnover of circa £3 million. The first respondent was a charitable organisation primarily responsible for recycling textiles, whereas the second respondent was a global humanitarian organisation. The first respondent was based solely within the UK whereas the second respondent operated worldwide and the second respondent had 300 staff in the UK and over 3000 staff worldwide whereas the first respondent employed 120 staff across the UK. For all of these reasons it was decided there was no need to apply the updated pay scales to the first respondent.

16.31 The first respondent updated its own pay scales in 2020, for which see more below.

### Job descriptions

16.32 As set out above, it had been decided by the second respondent that job descriptions would form the basis of the job evaluation process, and this was adopted by the first respondent. In September 2011 there was a short training session run for managers in R1 on how to write job descriptions, page 1023. Written guidance for managers and staff was introduced in relation to how to write job descriptions, pages 656-664. It was explained that the job description would be used for the purposes of job evaluation and that it was therefore important that it provided a clear and comprehensive picture of the job, page 656-657. It was further set out that the job description should be written by the line manager and the job holder and should be jointly agreed and signed between them, page 657.

16.33 There was never any attempt made by the first respondent to agree the claimant's job description with him (for which see more below), despite the claimant's role undergoing some changes and numerous job evaluations. It is also apparent, as we set out below, that the re-writing of

job descriptions immediately prior to or following an evaluation was not uncommon. We infer and find based on this and on what happened in relation to the claimant's job description that the first respondent did not adhere to the guidance that the line manager and job holder should write the job description jointly, agree it and then sign it. What this meant, certainly in terms of the claimant, was that his role evaluations were, at times, carried out on the basis of what turned out to be contested information contained within the job description.

#### Training: job evaluation

16.34 In July 2012 Ms Anna Stobart held training for the job evaluation panel members, pages 211 – 228. As part of the training the panel members were provided with an explanation of how a job evaluation scheme worked. The panel were also required to carry out some training activities. They were given a list of occupations ranging from police officer to hospital cleaner and asked to rank them in the order of which should be paid the most. This was done with the aim of highlighting the issue of bias in decision-making. They were then set a number of scenarios to discuss as a group and finally they were required to carry out a mock job evaluation exercise. For this they were given a dummy job description, an individual score sheet and the factor plan.

16.35 The respondents produced a questions and answers sheet for employees which was issued in March 2012, pages 865-868. Employees were informed in this document that the factors and descriptors used to assess roles would be kept confidential to the job evaluation panel members and the HR team to maintain the integrity of the process. It was also explained in this document that not every role would be evaluated and that about 40 of them would be benchmarked. We find based on the oral evidence of Mr Zaid Ahmed that what was meant by this was that these roles were slotted in by considering the job as a whole against what were considered to be similar roles which had been evaluated.

16.36 One large-scale job evaluation process took place in 2012 with roles in the second respondent being evaluated first followed by the first respondent. It was decided that after this a role would receive a job evaluation if a new role was created or an existing role was deemed to have changed by 20% or more, page 868.

#### The claimant joins the respondent

16.37 Before the claimant started employment with the first respondent it had been receiving some HR advice and support from Peninsula Business Services, and it was also supported by a volunteer with an HR background. By late 2011 the first respondent had decided that they

needed to recruit someone into an HR role, in particular to deal with issues such as managing holidays, absenteeism and sickness, page 1024. The respondent wanted proper systems in place to manage these issues. By January 2012 the respondent had a significant issue with unauthorised absence and managing requests for time off and it was reiterated at a board meeting that an HR adviser was needed, page 1025. Mr Haghamed told the Board that it would be for them to set the policy on managing absence and for the HR adviser to conduct return to work interviews, page 1025.

16.38 In 2012 the first respondent advertised for an HR and Health and Safety Officer. The claimant responded to the advertisement and was successful in obtaining the role. He started working for the first respondent on 20 February 2012 and continued to work for the first respondent up until 28 June 2021, when he resigned with immediate effect.

16.39 The claimant's role was a stand-alone role in the sense that there was no other employee in the first respondent whose role was to provide HR and/or health and safety advice and expertise. He was recruited to provide general HR advice, to manage HR policies and to deal with all health and safety matters.

16.40 The claimant reported into the first respondent's then General Manager, Mr Naser Haghamed, who in turn reported into the first respondent's CEO. Mr Haghamed had a number of other direct reports, most of whom were in managerial positions. These included the Head of Retail, the Factory Supervisor, the Director of Food Supplies and the Logistics Manager.

16.41 The claimant was issued with a statement of the main terms of his employment, pages 941 - 942. These confirmed that his employer was TIC International Ltd, that his job title was HR and Health and Safety Officer and that his salary was £14,842 per year, payable monthly by way of credit transfer, page 941. The document was completely silent as to how pay rates would be set going forward. In particular, there was no mention of pay scales. It was not an express term of the claimant's contract that his salary would match or follow the pays scales of the second respondent. Notice provisions were set out which were that if notice of termination was to be given by the employer an employee with two years' service or more would receive one week's notice for each completed year of service up to a maximum of 12 weeks. Where notice of termination was given by the employee one week's notice was required for employees with more than one month's service, page 942.

16.42 We do not find that the claimant was responsible for managing approximately 40 staff in the factory; we considered that to be a significant



exaggeration of the true position. We prefer the evidence of Mr Haghamed and find that all that the claimant dealt with in relation to the factory staff was the time and attendance system, as well as general HR and health and safety enquiries. In relation to the time and attendance system, the factory operated a clock in/clock out system and as the employees in the factory were hourly paid this data in turn fed into the payroll system and enabled the payroll to be run at the end of the month. There was no computer at the factory, meaning the time and attendance system was not accessible at the factory, and so the relevant software was loaded onto a PC in the respondent's office. It was necessary to check that people were clocking in and out correctly and to check for any discrepancies because if the data was inaccurate the payroll could not then be run. Up until the claimant joining the first respondent the General Manager, Mr Haghamed, checked this data each month, and once the claimant joined this became his responsibility. In preferring Mr Haghamed's evidence we took into account that the claimant's evidence as to precisely what he was required to do in relation to the factory staff was inconsistent. Mr Haghamed's evidence, on the other hand, was entirely consistent and delivered in a credible and detailed way.

#### The claimant's 2012 job description

16.43 The claimant was provided with a job description, pages 1143 - 1148. Whilst the claimant's job description made reference under the heading "responsibility for resources" to the HR and Health and Safety Officer being responsible for the strategic leadership of the HR and Health and Safety department, page 1145, this did not, in fact, reflect the duties of the role. There was no department; the claimant was in a stand-alone role, as set out above. He also had not budgetary or line management responsibilities, and the job description reflected this.

16.44 It was confirmed in the job description that the claimant reported to the General Manager. The claimant's role was a generalist HR role (with health and safety responsibilities added on) and his job description reflected this. Under the heading job purpose it was said that the human resources officer was responsible for providing support in the various human resource functions, which included recruitment, staffing, training and development, performance monitoring and employee counselling. It was further said that the role holder was to coordinate the formulation, monitoring and implementation of the company's health and safety policy, to ensure that legislation is complied with and to act as the company's health and safety officer and fire officer, page 1143.

16.45 Key working relationships were set out as including regular liaison with IRW to ensure harmony in HR and health and safety policies and procedures, providing support and advice to both employees and

managers, regular liaison with payroll to ensure staff are paid correctly, liaising with external consultants, legal advisers and lawyers as and when needed and working with the software supplier of the HR system, page 1144.

16.46 In terms of the scope of the role it was said that the role holder provided advice and assistance to supervisors and staff including information on training needs and opportunities, job descriptions, poor performance reviews and policies. It was said that the role holder was responsible for coordinating staff recruitment and would provide advice and support to directors, managers and staff selection committees. It was set out that the role holder would provide a comprehensive advisory service to all managers and directors, department heads and employees on all matters affecting health and safety at work and the implementation of the company's health and safety policy, pages 1144-1145.

16.47 Under the heading responsibility for resources it was said that the role holder had responsibility for the strategic leadership and management of the HR and health and safety department, developing new policies and procedures, applying best practice and assisting departmental managers in staff development, recruitment and appraisals, page 1145. As we have already said, there was, in fact, no department for the claimant to strategically lead or manage.

16.48 There were then a number of key accountabilities for the role set out. The key accountabilities were: providing support to supervisors and staff to develop the skills and capabilities of staff, monitoring staff performance and attendance activities, coordinating staff recruitment and selection, providing information and assistance to staff, managers and the payroll department and ensuring that the company complies with the requirements of legislation, pages 1144-1146.

16.49 Each of these key accountabilities was then broken down into different elements. For example, under the key accountability of monitoring staff performance and attendance it was set out that this would include updating the computer system, investigating and understanding causes for staff absence, recommending solutions to resolve attendance difficulties, providing advice and recommendations on disciplinary actions and monitoring scheduled absences, page 1146.

16.50 Under the key accountability of ensuring the company complies with legislation it was set out that this included keeping the company's health and safety policy up-to-date, monitoring the implementation of the policy, being the first point of contact for dealing with identified hazards, establishing and implementing a system for reporting hazards, undertaking regular inspections of the company premises, conducting

investigations into accidents, being responsible for conducting fire drills, establishing and conducting risk assessments and attending steering committee meetings to report on health and safety matters, page 1147. Under the heading of experience it was said that the post-holder required experience of working within an HR and a health and safety environment at officer level, page 1147, as well as experience of providing specialist employee relations advice and a proven record of excellent interpersonal skills. There was no requirement for a degree or any formal HR qualification.

16.51 We find that this job description, broadly at least, accurately reflected the demands and responsibilities of the claimant's role at this time. His was a broad role covering a wide range of responsibilities.

#### The role's first evaluation

16.52 It was not disputed that the claimant's role was evaluated under the respondent's job evaluation scheme in 2013, albeit no job evaluation documentation from this time was before us. On 12 April 2013 Mr Haghamed wrote to the claimant to confirm that the results of his evaluation was that his role was now classed as Grade F (ie Grade 5) step 1, page 229. We accept the evidence of Mr Haghamed and find that he did not have any involvement in the job evaluation process, he simply confirmed the result to the claimant, as he was the claimant's line manager. We do not know who the evaluator/s were, we were not told this. It was confirmed to the claimant that this meant that his salary would increase to £27,000 per annum (up from £14,842). In fact, we did not understand it to be disputed that the claimant's salary actually increased to £27,540, page 943.

16.53 In September 2013 Mr Azher Ayub took over the role of General Manager from Mr Haghamed. At this time the claimant also took on responsibility for various in-house pensions and payroll tasks previously done by Mr Haghamed. This was something unique to the claimant's role; the second respondent used an outsourced payroll and pensions provider.

16.54 At this point the claimant became aware of what he considered to be some pay discrepancies. For example the Admin Support officer, who reported into the General Manager, the claimant believed had been graded as grade 4 under the JES but then been placed on grade 5 in the pay scale. Likewise, the Logistics Manager had been scored, the claimant believed, as a grade 5 but then placed on grade 6. The factory supervisor, who had line management responsibility for around 40 people, had been scored as a grade 5, and placed on grade 5, which was the same grade as the claimant. The claimant thought that he should not be on the same grade as the factory supervisor.

Fuad Abdo

16.55 Fuad Abdo worked as the Logistics Manager for the first respondent, reporting into Mr Ayub. In October 2015 his role underwent job evaluation and the role was evaluated as a grade 6 role. However, on learning about this Mr Ayub made a decision to increase Mr Abdo's salary by two steps. The justification given for this at the time was that there had been European responsibilities added to the role, page 261, which was considered to be an important area of responsibility. On balance we accept the evidence of Mr Ayub and find that whilst Mr Abdo had taken on European responsibilities this had not been reflected in his job description when it was sent for evaluation, which is why the pay increase was given. This, therefore, was an example of a job description not being accurate or up to date when sent for evaluation.

The claimant's role's second job description/ second job evaluation

16.56 On 7 October 2015 the claimant sent an email to Ziad Ahmed, then HR Services Manager for the second respondent, page 1120. He attached a job description to the email and requested that his role be evaluated, pages 253 - 260. Whilst the claimant had used the original job description for his role as a starting point he had also added to it. He had added a section to reflect the additional payroll and pension responsibilities he had now taken on, but he had made other changes also.

16.57 The section dealing with job purpose had been expanded and added to (with the added text highlighted by us for ease of reference); Under the heading job purpose it was said that the person in role was to act as an **experienced HR generalist** supporting internal needs with regard to HR, health and safety and payroll **with limited supervision**, page 253. It was said the individual was to **strengthen employee relations** and actively manage employee concerns and was **to lead, manage and develop staff through good practice policies and procedures**.

16.58 The section dealing with key working relationships had also been expanded and added too. It now included:

**Regular contact with the General Manager, Heads of Department and managers and staff across the organisation, regular liaison with the finance department on payroll and auditing issues, supporting the General Manager on key projects relating to HR and health and safety, liaising with external employment law and health and safety solicitors, liaising with Sage 50 payroll experts, keeping HR software up-to-date, liaising with the second respondent for HR support, liaising with external suppliers for fire safety and machinery maintenance and liaising with the Islamic Relief**

Academy on any learning and development tasks such as training courses, page 254.

16.59 The section setting out the scope of the role had been changed. It now included;

That the HR and Health and Safety officer had sole responsibility for providing comprehensive HR and health and safety advice/assistance to all managers and staff across the organisation. It was said that the role should be carried out in an autonomous manner with limited supervision and required the post-holder to plan their own work, page 255.

16.60 Alterations had been made to the section of the job description dealing with responsibility for resources, but these changes were relatively minor. In particular the claimant had retained from the original job description that;

The HR and Health and Safety Officer had responsibility for the strategic leadership and management of the Department.

16.61 An entirely new section had been added into the job description with the heading of Employment Relations:

It was said that key functions and responsibilities included; drafting and implementing all the HR and health and safety policies and procedures, being the first point of contact to deal with all ER and HR matters, preparing all documentation relating to ER and HR, coordinating and participating in disciplinary and grievance investigations, being the first point of contact with external lawyers, updating and reviewing holiday/toil entitlements, monitoring attendance and advising senior managers on all people issues page 256.

16.62 Changes had been made to the section of the job description with regard to accountabilities and tasks in relation to performance and attendance matters. In particular:

16.63 Under the heading performance management and training and development key functions this now included managing any performance issues, devising and implementing policies and strategies for the development of organisational performance, assisting and training managers on performance management and appraisals, identifying training and development opportunities, organising staff training sessions, developing effective in-house training and induction programmes, identifying training and development needs and managing and overseeing the process relating to company bonuses and benefits including annual salary reviews.

16.64 A new section had been added in to cover the claimant's additional responsibilities in relation to payroll. This section was as follows:

Key functions included being responsible for processing end-to-end company payroll on a monthly basis, being the first point of contact for any payroll/pension queries, updating and maintaining payroll records, liaising with staff and management on any payroll related queries, arranging the payment of staff salaries through the payroll system, advising staff of changes in pay, dealing with P45s and P 60s, and regularly liaising with Sage 50 payroll experts on any issues page 257.

16.65 The section of the job description dealing with health and safety tasks remained broadly the same as in the original job description. There had, however, been significant changes made to the section of the job description dealing with the required knowledge/experience for the role, page 259. There was now a new heading “knowledge, skills and qualifications”. It was written, amongst other matters, that the role holder required to be;

CIPD qualified or extensive HR experience,  
A degree in HR/business or equivalent,  
Hold or working towards NEBOSH General certificate in occupational health and safety or equivalent  
Proficient in processing payroll/pensions using Sage 50 payroll  
Basic knowledge of pensions.

16.66 Under the original version of the job description all that was required in terms of specialist experience or knowledge was experience of working within HR and a health and safety environment at Officer level.

16.67 This job description was once again, we find, a broadly accurate description of the role’s responsibilities and requirements save that;

- The claimant had no staff to lead, manage and develop,
- He had no HR department to run,
- And there was no requirement for the role holder to have a degree, be CIPD qualified or hold or be working towards a NEBOSH certificate.

The claimant did not seek to agree this job description with Mr Ayub.

16.68 Mr Zaid Ahmed queried why an evaluation was necessary, asking if the role had changed substantially and the claimant responded stating that the role had changed and deserved a re-evaluation, page 1119. Mr Ahmed confirmed to the claimant that they aimed to have a job evaluation panel every month, usually in the first week of each month, and he said that he would aim to get a panel by the end of next week, page 1119.

16.69 Mr Ahmed then contacted a colleague, Nabeel Al Azami, then Head of HR for R2, for advice on the constitution of the job evaluation panel for the purposes of the claimant’s evaluation; in particular he asked if the panel would normally include an HR partner, page 1116. Mr Al Azami

responded that it was best not to have a Birmingham HR partner do the job evaluation but instead someone in London or an RHRM (we were not told what this acronym stands for) “who are more removed”.

16.70 On 9 November 2015 Mr Zaid Ahmed emailed Junaid Ahmed, then an HRBP, asking him to carry out a desk evaluation of the claimant’s role, page 263. It was agreed that he would do the evaluation on Friday 20 November. As this was a desktop evaluation he was the only assessor.

#### Desktop evaluation December 2015

16.71 Mr Ahmed carried out a desk evaluation using the job description provided by the claimant and the second respondent’s factor plan. The factors to be used under this factor plan were, as set out above: leading and managing people, planning and managing resources, decision-making, analytical and innovative thinking and problem solving, communication, quality standards and service delivery and knowledge and skills, page 1159.

16.72 Mr Ahmed used the pro forma job score sheet and gave the role a level score and a factor score for each factor, page 1159. The score sheet identified that the role being evaluated was that of HR and Health and Safety Officer for TIC, page 1159. The claimant was assessed as being at level 2/3 in relation to the factor of leading and managing people, page 1159, which gave him a factor score of 30. It was noted that the claimant had no direct line management responsibility but that he was required to provide a range of HR and HS advice. He was scored at level 1 in relation to the factor of planning and managing resources giving a factor score of 10 on the basis there was little evidence of this factor being met in the job description. He received a factor score of 30 (level 3) for decision-making, with no notes recorded by Mr Ahmed as to why he had scored the role in this way and a factor score of 40 for analytical and innovative thinking, which Mr Ahmed noted was based on the fact that the claimant had to deal with ER issues and risk assessments. There was a factor score of 30 given for communication which Mr Ahmed noted was based on the claimant having to liaise with external lawyers, a factor score of 30 for quality, standards and service delivery, with no notes recorded by Mr Ahmed as to why he had scored the role in this way and a factor score of 40 for knowledge and skills, with no notes recorded by Mr Ahmed as to why he had scored the role in this way, page 1159. That gave the role a total score of 210, which equated to grade 5 under the respondents job evaluation scheme. It was the very top of grade 5, 220 points equated to a grade 6, page 880.

16.73 On 24 November 2015 an email was sent from the second respondent’s Rewards department confirming that the claimant’s role had

been re-evaluated and had come out as a grade 5, page 1119. Mr Ayub informed the claimant of this. On 1 December 2015 the claimant emailed Mr Ayub saying that he was unhappy with the results of his job evaluation. He stated that his level of pay was unfair and inconsistent within the current pay structure, page 247. He wrote that he had evidence to show that he was on the wrong grade and pay and he suggested there should be a meeting with a senior person from the second respondent.

16.74 On 2 December 2015 the claimant sent an email to Mr Ayub attaching various job descriptions and providing details as to the salaries for the roles. These included; HR Adviser on a salary of £27,540, HR Partner on a salary of £33,000 and HR Services Manager on a salary of £38,000, page 270. These were not, however, job descriptions or salaries for people employed by the first respondent. The comparison that the claimant sought to make was with employees of the second respondent. This became the claimant's focus from this point on; he consistently compared his role with HR roles in the second respondent.

#### Mr Ayub's assessment of the role

16.75 We accept the claimant's evidence and find that that at around this time he asked Mr Ayub to carry out a provisional exercise to score the role himself. Mr Ayub sent an email to the Rewards department on 4 December 2015. He wrote that noting the fact that the claimant provided HR and health and safety advice for nearly 115 staff, as well as payroll and pension set up, he believed the role was more than a grade 5. His reference to 115 staff reflected the fact that the first respondent had expanded in size since the claimant had been recruited. He noted that the role was not perhaps as complicated as an HR role for the second respondent but wrote that it was still a considerable task providing an HR service for 115 people. He further wrote that he had decided to evaluate the job himself and he made it a grade 6, page 1119.

16.76 Mr Ayub was one of the trained evaluators, see above. However, we do not find that Mr Ayub at this time carried out an assessment under the job evaluation scheme of the claimant's role. We reject this evidence for the following reasons. Had he assessed the role in this way it seemed likely to us that there would have been a scoresheet which the respondent would have been able to produce for the purposes of this hearing. No such document was before us. Not only that but Mr Ayub, whilst asserting that he had filled in a scoresheet, was very vague in his evidence as to what had then happened to that document. He told us that he "did not know" what he had "done with that piece of paper". Additionally, the role responsibility that Mr Ayub told us in evidence was critical to his evaluation of a grade 6, was that the claimant had HR and Health and Safety responsibility for 115 staff. When he was asked to explain how this



responsibility had fitted into the factor plan on his evaluation he was, initially, unable to do so. His initial response was that he would need to evaluate the job again and unless he did that he could not tell us. He was, moreover, asked to explain how he had arrived at a score that was equivalent to grade 6 and was unable to do so, commenting that it was difficult and he could not tell us.

16.77 We infer and find from this that what Mr Ayub in fact did was a subjective “felt fair” assessment of the claimant’s role; it felt fair that the claimant should be graded at grade 6, given the expansion to his role since he had been recruited, and so this is what Mr Ayub decided upon. We also took into account when making this finding that when Mr Ayub was asked what eventually changed to secure the evaluators agreement that the role should be graded at grade 6 (for which see more below), Mr Ayub was unable to tell us. He told us that he could not remember what had caused the change in position. Lastly, we took into account when making this finding that when Mr Ayub was asked to explain why, if the role had been evaluated a grade 6 on its current duties, additional responsibilities were then added at the point when the claimant was given a grade 6 (for which see below) his response was that he could not answer that question.

16.78 Mr Zaid Ahmed forwarded Mr Ayub’s email that day, 4 December, onto his colleague, Nabeel Al Azami, page 118. He wrote that as the role was an HR role he had asked Junaid Ahmed, who was then an HR Business Partner for the second respondent, to evaluate the role which had come out as a grade 5 but that both the claimant and his manager felt it should be a grade 6. He wrote that he had therefore asked Noor (Ismail), the respondent’s Head of Region (West Africa), and a member of the JEG panel, for a second opinion. Mr Ahmed emailed Noor Ismail asking if she could do a desk evaluation for the role by the end of the following week, page 265. He told Ms Ismail in the email that it was for a TIC role.

#### Noor Ismail’s evaluation

16.79 On 14 December 2015 Ms Ismail forwarded the results of her desk evaluation to Mr Ahmed, page 1107. She wrote that the job description was not well written and she had struggled to understand the role as a large portion of it seemed to be administrative but there were sections where references were made to managing and strategic leadership, which did not sit well with the rest of the job description.

16.80 To carry out her evaluation she had used the job description that she had been provided with for the claimant’s role (i.e. the one the claimant had amended) and had assessed this against the factors and factor levels. She did this using the pro forma job score sheet. The score

sheet identified that the role being evaluated was that of HR and Health and Safety Officer for TIC, page 266. She awarded a factor score of 20 for the factor of leading and managing people noting that it was level 2 as the role was generalist rather than specialist according to the job description, page 266. She awarded a factor score of 20 for the factor of planning and managing resources, noting that the role holder was not a budget holder, a factor score of 30 for decision-making, and a factor score of 30 for analytical and innovative thinking and problem solving. She noted that this factor score was based on the areas of accountability listed in the job description. She awarded a factor score of 20 for the factor of communication on the basis that the claimant was not involved in external communications which provided guidance of a specialist nature but rather was a point of contact with external lawyers. She awarded a factor score of 20 for quality standards and delivery and a factor score of 40 for knowledge and skills noting that the claimant had specialist administrative or technical skills. This gave a total score of 180, a Grade 5, page 266.

16.81 She added additional comments to her evaluation. These were that the role did not have line management responsibility although on the job description there was a section which stated the job holder led, managed and developed staff. She also queried why responsibility for strategic leadership and management of the department appeared under the section of the job description headed responsibility for resources and she queried whether part of HR and health and safety services were outsourced. She queried whether the role holder was managing any performance issues, page 267.

16.82 On 15 December Mr Ahmed emailed Mr Ayub explaining that Ms Ismail had carried out a second evaluation and the role had been scored as grade 5, page 1119. Mr Ahmed suggested that Ms Ismail and Mr Ayub speak to discuss the matter.

16.83 On 7 January 2016 the claimant again emailed Mr Ayub expressing his dissatisfaction with the job evaluation, page 269. He wrote that Mr Ayub had told him he would evaluate the job himself and then get back to him by the end of December, but that he had not done so. He said that his concern was not being taken seriously and pay was imbalanced across the organisation. He said that his current pay did not reflect his position compared with other positions in the IRW group and that it did not reflect the current market rate.

16.84 Mr Ayub responded to the claimant by email that day explaining that he had already spoken to Ms Ismail and would be meeting with her in the next day or two, page 1121. Mr Ayub did have a conversation with Ms Ismail to try to persuade her that the claimant's score should be increased to the equivalent of a grade 6, but she did not agree with this view. Mr

Ayub also discussed the claimant's role with Nabeel Al Azami, the Head of HR for the second respondent. He likewise told Mr Ayub that in his view the role was a grade 5. Mr Ayub informed the claimant of this on 29 January 2016.

16.85 Based on Mr Ayub's evidence we find that during this period he approached the evaluators on a number of occasions about the claimant's role and, effectively, lobbied the evaluators for a change in grade. Each time he was told that the proper grading for the role was a grade 5. He persisted and eventually, as we explain below, secured their agreement that the role should be changed to grade 6. As we have already commented, the respondents, and Mr Ayub in particular, were not able to provide any rationale for this change. We infer from this that Mr Ayub, effectively bypassed the job evaluation process.

16.86 That day the claimant emailed Mr Ayub saying that he wished to formally appeal the results of the job evaluation, page 272. He asked to be sent the most recent version of his scoring. On 1 February 2016 he also requested a copy of the job evaluation appeals process, page 272. There was, in fact, no appeals process for the job evaluation process, as we have set out above.

#### Claimant is given a Grade 6 HR Manager role

16.87 On 3 February 2016 the claimant and Mr Ayub held a meeting. During the course of this meeting the claimant was told he was being given the role of HR Services Manager at grade 6, with a starting salary of £32,640, page 276. It was made clear to the claimant that he would be required to take on additional duties which would include attending the Heads of Department (HOD) monthly meeting. This was confirmed to the claimant in an email also dated 3 February, page 276. The claimant responded on 6 February saying that he did not accept this offer and he asked for a further meeting with Mr Ayub, page 276.

16.88 Whilst the claimant had written that he would not accept the higher grade and pay rise he did, in fact, input the amendments required for his salary increase into the payroll system and from 1 March 2016 the claimant was on the higher salary of £32,640.

16.89 As this was technically a new role, then under the respondents job evaluation process it should have undergone a job evaluation. It did not do so.

16.90 So far as we know matters settled down somewhat after this, until 2019, see below.

Changes are made to the job evaluation process

16.91 Up until 2018 both respondents, as we have set out above, had been using a one stage job evaluation review process, which could be by way of either desktop evaluation or the job evaluation panel. This meant that job descriptions that were evaluated by way of desktop evaluation were only evaluated by one evaluator. Those that went to a panel would be evaluated by a minimum of three people and a maximum of five people and the respondent considered that the panel process was too slow. In 2018 changes were made to the process. So far as we know no input from either Ms Stobart or any other job evaluation expert was sought by the respondents at this stage. The process became a two-stage process for both respondents. The first stage was a desktop evaluation carried out by HR, who would pre-score the job descriptions against the factor plan. That evaluation would then be sent through to the evaluation panel, usually about a week before they were due to meet. Panels were to comprise a minimum of two people and a maximum of three. Each individual panel member would then review the job description and the job score sheet before the job evaluation panel meeting took place. The evaluation would be discussed at the panel meeting and changed if the panel considered that to be appropriate. The panel would try to reach a unanimous decision but if that was not possible then a factor score would be awarded based on the majority opinion. The total score was then sent back to the second respondent HR's team who mapped the score across to the equivalent grade on the first and second respondents shared grade profile. The panel were informed of this change on 2 February 2018, page 324.

16.92 Whilst that was the process that was set out we find, based on the evidence of Junaid Ahmed, that often the panel process would actually be done by email.

16.93 Training was delivered to the JEG panel on the new process, pages 869 – 881. It was evident from this document that there were other aspects to the evaluation process in addition to those set out above. These included (with our emphasis added) that the panel will meet, deliberate "*and may call the line manager to finalise scoring*", page 873. That the score would be returned to HR who would communicate the results to the line manager which would not be discussed with the individual "*until director approval*". And that where the panel and the line manager continued to be at odds the matter would be *escalated to the CEO "to make a decision based on business needs"*, page 873. We think it very likely that this was an accurate reflection of the process adopted by the respondents. There was no suggestion on the evidence that employees were ever told that director approval for each evaluation was required and neither was any evidence led by the respondent as to what the director approval process actually entailed and in particular how

decisions were made. We infer and find from this that there was no process for management intervention; no parameters set for when managers could intervene and on what basis, no criteria against which decisions had to be made and no record keeping or auditing of those decisions. We infer and find, moreover, from the fact that director approval was required for the evaluations that directors could override the results of the job evaluation, if they wished to do so. We infer and find, from the reference to CEO intervention based on business need, that on occasion a decision would be made about what grade a role should be based on matters such as affordability and a need to retain a particular person in the business. We do not know whether these were changes that were made in 2018, or whether they had existed from the start. What we can say is that they applied from 2018 onwards – that this was part of the process was covered in training at this time, pages 869 and 873.

### Mr Shaibi

16.94 Mr Shaibi was employed initially by R1, but latterly by R2, in the role of Security and Maintenance Supervisor. His line manager was Mohammed Tariq. His role was graded at grade 5 under the JES, which he was unhappy about. He felt that junior members of staff were being paid more than him. On 30 July 2018 he emailed his line manager setting out his concerns, see page 13 of his witness statement in which this email is reproduced. Mr Tariq discussed this with Imran Sadiq, a member of the job evaluation panel and an HRBP. Mr Sadiq in turn discussed the situation with Zaid Ahmed. On 17 July 2018 Mr Sadiq emailed Mr Tariq confirming that he had discussed the role with Mr Ahmed. Mr Tariq was told to provide a revised job description and was advised what to put into the job description with the hope they “can then progress the matter forward”, see page 13 of the witness statement. Discussions around the job description continued until on 22 March 2018 Sandra Fritz emailed Mr Tariq to say that more context had been added to the job description “and it comfortably achieved Grade 6 now”, page 10. Ms Fritz asked whether Mr Tariq would like to see a copy of the job description, “in advance of the evaluation meeting tomorrow”.

16.95 What we infer and find from this exchange is that (i) this job description was inaccurate and (ii) the respondent drafted job descriptions on occasion with the aim of achieving a particular grade in the evaluation process – i.e. the grade the respondent wanted to achieve for a role determined at least in part what went into the job description.

### 2019

16.96 On 9 May 2019, the claimant emailed Mr Ayub and asked for a copy of the job evaluation for his role of HR and Health and Safety

Manager, page 414. Of course, as we have set out above, one had never been done. The claimant wrote that he had checked the records and there was no scoring for his role. Mr Ayub responded that he was not sure where the scoring was if the claimant did not have it and the claimant responded that he had only received an email confirming the grade, there was no scoring sheet and he would like to know how the role had been scored. He asked if he should approach the second respondent, page 414.

16.97 On 13 May 2019 the claimant emailed Sofia Rafiq of the second respondent, and asked for a copy of the scoring for his role, pages 415-416. Ms Rafiq responded that day by email stating that scores were not normally shared and she queried what it was needed for, page 415. The claimant explained that he wanted to know how the role had been scored and Ms Rafiq responded that the process was that scoring sheets were not shared with either line managers or individuals and so it would not be possible to provide the claimant with a copy of his scoring, page 415. She did not, therefore, tell him that his current role had never been evaluated.

16.98 The claimant then asked for a copy of the evaluation policy (in relation to not sharing the scoring) and he was told by Ms Rafiq that there was no such policy, page 415. The claimant asked whether there was any document in which it was written that there was a policy that scores would not be shared and Ms Rafiq responded that there was not, it was something that had been discussed at JEG training she said, page 415. The first time that the claimant saw any of the scoring relating to either of his roles was when he made a data subject access request in 2021, for which see below.

## 2020

16.99 After this, matters again settled down until the summer of 2020. In July 2020 the first respondent made a decision to pay staff who were on furlough 100% of their salary, whereas previously they had been in receipt of 80% of their salary. The first respondent did this in order to bring their approach in line with the second respondent who was also paying furloughed staff 100% of their salary. The claimant emailed Mr Ayub to say that he disagreed with this approach but based on that approach having being taken he was requesting his pay to be reviewed because if everyone was to be equal then he “would like to be equal as per my position, responsibilities and pay structure”, page 423.

16.100 The claimant and Mr Ayub met on 16 July. The following day the claimant emailed Mr Ayub stating that he wanted his role evaluated fairly, page 1106. He asked that a comparison be carried out between his pay and the pay of his HR peers at the second respondent and IRUK, page

1106. He described that in his role he had sole responsibility for all aspects of HR for 120 employees, as well as dealing with all aspects of health and safety, pensions and payroll. The claimant emailed again on 28 July stating that he had not received a response to his earlier email, page 1105.

16.101 Mr Ayub responded on 6 August saying that he was disappointed that the claimant had reacted to the furlough decision in this way. He acknowledged the claimant's request for an evaluation and requested that the claimant provide an updated job description which should include his additional duties, page 1105. Mr Ayub also wrote that he would need to know how much time the additional duties took in order for the role to be evaluated.

### July/August 2020 first respondent pay scales review

16.102 As set out above, having introduced pay scales for the first time in 2012 these had fallen into disuse by the first respondent, had not been updated since 2013, and had fallen out of sync with actual salaries. It was decided in the summer of 2020 to update the pay scales and re-evaluate the job descriptions of office staff. As part of this Mr Ayub asked Mr Zaid Ahmed to look at the current salaries for office staff, including the claimant, and then look at where in the 2013 pay scale (the most up-to-date pay scale the first respondent at that time had) this salary (and others) would sit grade wise, pages 1108 – 1107.

16.103 By September 2020 revised pay scales had been produced for R1 which used the 2013 pay scales as a base scale and then reflected two cost of living increases of 2% that had been awarded since then, page 444. Grade 1 was removed from the pay scale as this was below the national minimum wage but aside from this the respondent retained the remaining grades, 2-10, each with 11 steps. It also introduced a system whereby each step was linked to length of service, page 451. The pay scales were formally approved for use in the first respondent by 27 November 2020, page 451.

### Job Description 3

16.104 The claimant, as requested by Mr Ayub, produced a revised job description. This job description, drafted by the claimant, was significantly different from the earlier versions. We find, based on the claimant's oral evidence, that the claimant wrote this job description to mirror the job descriptions of those holding senior HR positions in the second respondent. He did this, we find, based on the claimant's oral evidence, because he took the view that as he was in a stand-alone HR role for the

first respondent his role must be at least as complex/demanding as senior HR roles for the second respondent.

16.105 The effect of taking this approach, however, we find, was that the third job description was not an accurate reflection of the claimant's role because it included tasks/responsibilities which the claimant did not in fact have/do. These included the following.

16.106 Under the subheading job purpose, page 429; developing... the department strategy to achieve the department's objectives, and, leading, managing and developing staff to ensure the department is capable of fully achieving its targets.

16.107 There was no HR Department; the claimant was in a stand-alone role. It follows from this that he was not responsible for setting a department's strategy to achieve a department's objectives and that he had no staff to lead, manage and develop. We reject the claimant's evidence that in relation to this latter point he was referring to staff more broadly within the first respondent not to staff within an HR Department, because it is evident from the way that the paragraph is drafted that "the department" refers to an HR Department.

16.108 Under the subheading responsibility for resources, page 432: Responsible for the strategic leadership and management of the department, and, HR, H and S and payroll budgets.

Yet the claimant had no budgetary responsibilities. When the claimant was initially asked about this in cross examination he asserted that he was responsible for the £1.6M pay budget of the first respondent before accepting that, in fact, he was not permitted to make any decisions as to how this money was spent he simply administered this budget by way of managing payroll. His evidence then became that he disagreed with the fact that he had not been given a budget. He should have been, he asserted, because senior HR roles in R2 had an allocated budget. That, of course, is beside the point when it comes to describing the role holders actual responsibilities.

16.109 Under the heading human resources, page 433: Overall control and solely responsible for the HR function, operations and strategy, and, Liaising directly with the executive board and being accountable for the performance of the HR function and the departments within it, as well as providing strategic counsel on all people matters.



16.110 The claimant did not liaise directly with the Executive board or the directors. When asked about this in cross examination the claimant accepted that he liaised with the General Manager and the Heads of Department, not the Executive board. As we have already said, there was no HR Department and no requirement, therefore, to be accountable for the performance of departments within the HR function. When asked about this in cross examination the claimant asserted that his responsibilities for health and safety, HR, pensions and payroll all amounted to responsibilities for a department but that, with respect to the claimant, was in our view an exaggeration. Being responsible for a department is self-evidently different from being solely responsible for a particular task or function. The references to strategy, and having overall control of HR strategy we deal with below.

16.111 Under the subheading knowledge, skills and qualifications, page 436:

A degree in a management or social science related field, preferably in HR management and/or business studies,  
CIPD qualified or equivalent (extensive HR experience may also suffice in place) and,  
Nebosh or equivalent certified.

16.112 There was, we find, no requirement for a degree or for Nebosh certification for the role holder, albeit HR Managers were expected to be CIPD qualified. The degree and Nebosh certification reflected qualifications that the claimant held or had obtained whilst working for the first respondent, but they were not requirements for the role. These were not requirements for other HR Manager roles in R2, see for example page 892.

### Strategy

16.113 As to the references to being responsible for HR strategy, which appeared in multiple places in the revised job description, this was an issue that the parties spent very much time on during this hearing. The claimant's evidence on this issue was, however, very inconsistent, and for this reason not persuasive. Many times he told us that he was responsible for devising and implementing HR strategy, but at other points in his evidence he told us that there was no strategy at all within the first respondent, although there should have been, and that strategy should have been part of his role but was not. At other times he told us that if others in HR in R2 were doing strategic tasks then it was not fair that he was not. He also told us that strategic tasks and responsibilities should not have been something taken into account for the purposes of job evaluation.

16.114 Whilst both the claimant and the respondent repeatedly used the words “strategy or strategic” nobody defined what they actually meant by this. In our view, in broad terms, a strategic role or task is one which involves the role holder setting goals and/or priorities, usually to achieve a long-term aim, and then deciding actions and deploying resources to achieve those aims. We do not find that a significant element of the claimant’s role was strategic in this sense, principally because there was no cogent evidence led by the claimant of him carrying out any tasks that could, on a sensible, objective basis, be considered to be strategic, as defined, and also taking into account our assessment of his credibility on this issue. That is not to say that we do not find that on occasion there might have been a strategic element to the claimant’s work – as he was in a standalone role opportunities for this type of initiative, we find, would, more likely than not, have presented themselves on occasion.

16.115 To demonstrate “strategic” work the claimant principally relied on a presentation which he had compiled for R1’s management team in 2016, which was at pages 1002 – 1017. It is certainly the case that this presentation contained much useful HR information; such as how many people were employed by the first respondent and what the level of staff turnover was, page 1005, age and length of service of employees, page 1006, the cost of the payroll bill, page 1007 – 1008, the cost of overtime, page 1010, and levels of sickness absence and the cost of this, pages 1011-1012. It is a presentation of exactly the type of information which could then be used to make strategic type decisions. However, there was nothing obviously strategic within the presentation itself; no point where the claimant set out what could be drawn from this data in terms of issues and/or goals that needed to be achieved, the actions to achieve those goals/address those issues and the resources that would be needed to be deployed to do so. In fact the last page of the presentation, headed “any HR recommendations” simply said:  
“the company is in need of a business strategy, followed by departmental strategies. The company must monitor, analyse and evaluate on a weekly/monthly basis, followed by the usual timeframes (sic)”, page 1016.

16.116 The claimant also produced a document which was headed TIC International strategy implementation plan, pages 628 - 630. Whilst the document was undated this appeared to have been written in 2016 - 2017 as the deadlines for when things needed to be done were all in 2017. In this document various objectives were set out, such as to increase the collection of cloth and reduce reliance on external suppliers for clothing. There were targets, for instance to increase the collection of cloth by 3,200 tons, and how that target was going to be achieved was set out under a column headed key initiatives. There was also a column for responsibility (whose responsibility achieving the objective was) and a deadline.

16.117 HR objectives appeared on the scoresheet. There were two HR objectives; assessing and addressing company health and reviewing and improving existing policies, page 628. The measure set out to assess and address company health was that there was to be an anonymous staff survey carried out in 2017 with the management committee developing questions to be put out to staff in the survey and then once the survey had been conducted findings to be presented to the management committee and an action plan implemented. These latter tasks were identified as the claimant's responsibility. For reviewing and improving existing policies the measure to be adopted was revision of the employee handbook, which was to be done by the claimant.

116.118 This, therefore, was a strategy document. There was no suggestion, however, that this was a document written or devised by the claimant. To the contrary, the claimant accepted that the goals and measures to achieve those goals had not been set by him, he had simply been allocated what tasks he was responsible for and then did them. In particular, he accepted that it was a person (we do not know who) who was responsible for strategy in R2 who had set the objective of reviewing and improving existing HR policies. He also accepted that carrying out the anonymous staff survey was simply something he had been told he had to do. For these reasons we do not find that this document provided any evidence that the claimant's role had a strategic element to it.

16.119 The claimant told us at one point in his evidence that his role was strategic because "he did everything" and the assertion that he "did everything" and this was not properly taken into account was a constant refrain in his evidence. Whilst we do not agree that being responsible for all HR matters for R1 meant by and of itself that the claimant was responsible for HR strategy, we did consider that to be the most accurate description from the claimant as to what he was unhappy/concerned about with regard to the various evaluations of his role. In effect he was of the view that the evaluation process failed to properly take into account the *breadth* of his role. In this regard his role was unique, in that he was the only HR person in either the first or second respondent who was required to deal with HR, health and safety, pensions and payroll matters in a stand-alone role.

### 2020 re-evaluations

16.120 Having decided to review and revise its pay scales, as set out above, the first respondent also decided to re-evaluate all the job descriptions for all office-based staff. This process started in August 2020, page 427. Those employees working in the factory, the shops and drivers

were not included within this as their salaries were all based on the national minimum wage.

16.121 On 26 August 2020 the claimant sent Mr Ayub his revised job description, as Mr Ayub had requested, page 428. That day Mr Ayub emailed Zaid Ahmed to say that he had asked the claimant to update his job description which he had now received, page 428. He asked Mr Ahmed to go through it and let him know what he made of it. The subject matter of the email was “role evaluation”.

16.122 There was no response to this email in our bundle of documents. Mr Ahmed told us that he did not respond to this email because it was not his role to make sure that a job description was up-to-date and accurate. We rejected that evidence because we considered it to be unreliable. This is principally because the subject matter of the email sent to Mr Ahmed, as set out above, was “role evaluation”, page 428, it was not “job description”. Mr Ahmed was asked in the email to go through the job description and let Mr Ayub know “what you make of it”. Mr Ahmed was not asked in the email to go through the job description and check it was accurate. That is all consistent, in our view, with this email being about role evaluation (Mr Ahmed was one of the trained evaluators). There is nothing about this email, in our view, which suggested that Mr Ahmed was being asked whether the claimant’s job description was up-to-date and accurate. Indeed, given that Mr Ahmed was an employee of the second respondent with no line management responsibility for the claimant, it is not clear how he would know if the job description was up-to-date and accurate. We infer, from the wording of the email, and from Mr Ahmed’s unsatisfactory explanation of the email in evidence, that Mr Ahmed was being asked to give a view on what grade the re-drafted job description would likely be given in the evaluation process. In other words Mr Ayub was attempting to check with Mr Zaid Ahmed that the re-drafted job description would likely be allocated the grade that he (Mr Ayub) thought was right for the role.

16.123 On 15 September Mr Ayub forwarded the job description to Ms Rafiq, page 443. We infer from the fact that it was this version of the job description that went forward that Mr Ayub had received reassurance from Mr Ahmed that the role should be evaluated as a grade 6.

#### Desktop evaluation: Grade 6

16.124 On 24 September 2020 Abdikayr Ali, HR Officer for the second respondent, carried out a desktop evaluation of the claimant’s role, pages 1178 – 1179. The score sheet identified that the role being evaluated was that of HR and Health and Safety Manager for TIC, page 1178. The role was given a total score of 230, equivalent to a low(ish) grade 6 (the range was 220 – 250), page 1179. As Mr Ali was in HR it was not disputed that

he would have known that this score equated to a grade 6. The role was given a factor score of 30 for leading and managing people with the evaluator noting that the role holder was required to provide general health and safety advice to all employees and senior management, was assisting, training and coaching managers on performance management/appraisals and assisting on personal development plans and planning and directing training programs. The evaluator gave the role a factor score of 20 in relation to planning and managing resources noting that the role holder was responsible for a number of systems and databases as well as managing emergency procedures such as fire alarm drills and organising emergency teams. A factor score of 30 was given for decision-making on the basis the role holder was required to analyse management information and make recommendations for improvements to HR and the wider management team, was required to formulate strategy to help the company achieve its goals and was required to liaise directly with the executive board and be accountable for the performance of the HR function and the departments within it.

16.125 The evaluator awarded a factor score of 30 for analytical and innovative thinking and problem solving noting that the person in role was required to identify training and development needs, develop an in-house training and induction programme and devise and implement policies and strategies for the development of organisational performance. A factor score of 40 was awarded for communication, the evaluator noting that the role holder was required to liaise with contractors on external bodies, improve management and employee communications including mediating disputes and advising employees on how to minimise or avoid risks and hazards in the workplace. A factor score of 40 was also awarded for quality standards and service delivery with the evaluator noting that the post-holder was the champion for the GDPR and other matters and was responsible for all safety inspections. A factor score of 40 was awarded for knowledge and skills. The evaluator noted that there was a requirement for a degree in HR or business studies and for the role holder to be CIPD qualified.

16.126 There were, however, some striking omissions from this desktop evaluation. It requires to be remembered that Mr Ali was using the third version of the claimant's job description which had been recently drafted by the claimant. Key responsibilities that the claimant described in this job description included responsibility for three different budgets; HR, health and safety and payroll, which was not seemingly evaluated by Mr Ali as relevant to the factor scores. Budgetary responsibility comes under the factor of planning and managing resources, page 891, and as set out above the claimant received a very low score for this, a factor score of 20. Moreover, there was nothing included in the comments section about responsibility for three different budgets. Likewise, this version of the job

description set out that the claimant was responsible for leading, managing and developing staff to ensure the (HR) department was achieving its agreed targets, a responsibility directly relevant to the factor of leading and managing people. The claimant, again, received a moderately low score for this factor, a score of 30, and the only particular points identified in the comments section were that the claimant was required to provide general advice to employees and managers and to train managers. We did not hear from Mr Ali as a witness but Mr Suleman was called as a witness and gave evidence in his witness statement in relation to Mr Ali's involvement in the evaluation process. He accepted in his oral evidence that these factors would both have been very important to the evaluation process and that he would have expected to have seen these factors reflected in the evaluation. This evaluation we find, therefore, was inconsistent with the demands of the role as described in the job description and what we infer from this is that what was done here was an evaluation which was designed to achieve what Mr Ayub felt was the right grade for the role.

#### Role evaluated as Grade 7

16.127 On 9 October 2020 a copy of the claimant's job description and Mr Ali's desktop evaluation was sent to the job evaluation panel, page 447, together with two job descriptions for other roles for review. The panel were asked to spend some time reviewing the job descriptions to see if they agreed with the pre-score. The job evaluation panel comprised Shoab Ahmed, who was appointed to chair the panel, Aflak Suleman, the second respondent's Orphan and Child Welfare Manager and Belinda Ashina, HR Adviser for the second respondent.

16.128 The claimant's desktop evaluation was reviewed by the JEG panel who made changes to the evaluation, pages 1180 – 1182. The overall score was increased to 270, which equated to a grade 7 role. The claimant's factor score for leading and managing people was increased to 40 on the basis that he was responsible for the strategic leadership and management of the department, was liaising directly with the executive board and was accountable for the performance of the HR function and departments within it, was managing and overseeing all employee relations cases and leads, and was managing and developing staff in order to ensure the department was achieving its targets, page 1180. The factor score for planning and managing resources was increased to 30 on the basis that the role holder had responsibility for HR, health and safety and payroll budgets, page 1181. The factor score for decision-making was not increased but it was additionally noted that the role holder was responsible for the strategic leadership and management of the department, page 1181. The factor score for analytical and innovative thinking and problem-solving was increased to 40 on the basis that the

role holder was required to lead on the development, implementation and review of the department's strategy, policies, procedures and processes to achieve the agreed departmental objectives, pages 1181-1182, and the factor score for knowledge and skills was increased to 50 on the understanding that the qualifications listed in the job description were required for the role.

16.129 On 26 October Ms Rafiq emailed Mr Ayub the results of the evaluation confirming that the HR and Health and Safety Manager role had come back from the Jeg panel as a grade 7, page 443.

#### Syed Owais Ahmad's intervention

16.130 Mr Ayub was unhappy about the claimant's role being graded at grade 7; he thought it should be grade 6. On 28 October Syed Owais Ahmad, a Director of the first respondent, emailed Zaid Ahmed, page 1105. It can be inferred from the email that Mr Ayub and Mr Ahmad had discussed the results of the claimant's job evaluation study, and it can be further inferred from the content of the email that Mr Ayub had told Mr Ahmad he did not agree with the result. Syed Owais Ahmad wrote this; "lovely to talk to you and in conclusion PLEASE DO NOT SHARE WITH HICHAM THE RESULTS OF THE JEGGING (not our emphasis, this is as written in the email). I do not believe it is correct. He does not have anyone reporting to him, his job is mostly transactional and not strategic. I want to compare his job description with the reality of what he actually does. *I want to be involved in the approval jegging of his job* (our emphasis). Please can I see the other job descriptions also".

16.131 Mr Ahmad, as a Director, would not, we find, have had any direct knowledge of the duties of the claimant's role. He was not in the claimant's line management chain and the claimant did not liaise with him directly. We infer and find based on this email that Mr Owais was actively involved in deciding what grade the claimant's role should be, and that his view was that Mr Ayub was right to say it was a grade 6. We do not find that Mr Ahmad knew that the claimant identified as Amazigh (or Moroccan). No evidence whatsoever was led to this effect.

#### Mr Ayub makes changes to the role JD

16.132 Mr Ayub then made changes to the version of the job description that had been produced by the claimant. We accept his evidence and find that, in terms of elements he removed from the job description, he did this because he considered that the claimant had overinflated aspects of his role so that the job description no longer accurately reflected the tasks and requirements of the role.

16.133 The changes that he made included the following; pages 1318 – 1326. All references to strategy and strategic direction and leadership were removed, the reference to leading, managing and developing staff to ensure the department was achieving its agreed targets was removed, the reference to being responsible for HR, health and safety and payroll budgets was removed, as was the reference to liaising with the executive board. Removing these elements had the effect of devaluing the claimant's role in the sense that some of the important tasks and responsibilities set out in the job description were taken out. Some additions were also made; for instance Mr Ayub added in that the role holder was required to carry out risk assessments in the factory/office and retail areas of the business, page 1323. Mr Ayub did not seek to agree these changes with the claimant nor, in fact, did he inform him that these changes had been made. We additionally find that the elements that were removed from the job description by Mr Ayub were correctly removed, in the sense that he removed descriptions of tasks and responsibilities that the claimant did not in fact have. We do not, however, for the avoidance of doubt go so far as to say that the job description as then drafted completely and accurately reflected the claimant's tasks and responsibilities. We simply do not know on the evidence that was before us.

16.134 On 27 November 2020 at 1:07 PM Mr Ayub emailed Ms Rafiq saying that he had gone through the job description and made some changes, and he attached a copy of the updated job description, page 449. He wrote "can I add this is an operational/advisory role and definitely not a strategic" (sic). He wrote that the role needed to be evaluated on the needs of the company and asked for the role to be jugged again.

16.135 Shortly after this, at 3:05pm on 27 November, Mr Zaid Ahmed emailed Mr Naser Haghamed, page 1123. Mr Haghamed was not the claimant's line manager at this time. His only involvement with the first respondent at this time was that he was a non-executive director for the first respondent and Mr Ayub had a reporting line into him in this capacity. He was, at the time, the second respondent's CEO. Mr Ahmed wrote that the claimant's role had come back as grade 7 but that Mr Ayub felt that was too high as it was a supportive role and not strategic. He stated that it would be sent back to the panel *and would most likely be a grade 6* (our emphasis). It can be inferred from this that the job description produced by Mr Ayub had already been looked at, most likely informally, and an assessment made as to what grade it was likely to be evaluated at.

16.136 On 16 December 2020 Ms Rafiq emailed Shoaib Ahmed, page 1115, about the claimant's role. He had, of course, chaired the panel that had evaluated the role as a grade 7, paragraph 16.127 above. She wrote that in October the role had been pre-scored as 230 but after a panel



evaluation it came back as 270. She stated that the line manager had then clarified that the role was solely a supportive/operational one with no strategic involvement from the role holder only advice and implementation of HR and Health and Safety, and so amendments to the job description had been made. She asked Shoaib Ahmed as chair of the panel to review the job description, and wrote that *if he agreed the scoring should be changed* (our emphasis) could they then set up a conversation with the panel that originally reviewed the job description.

16.137 Pausing there, that was not within the respondent's job evaluation process. It built in an extra step for Mr Ahmed to review the job description to see if he agreed the evaluation score should be changed, and only if he did to put it through to a panel. No further emails from this exchange were included in our bundle. However, we infer from the fact that the job description was then sent for review (a desktop review followed by a panel evaluation) that the indication from Mr Ahmed was that he would agree a change to the scoring.

16.138 Ms Rafiq emailed Abdikayr Ali on 23 December, page 1114, attaching a copy of the claimant's job description. She stated that the role had gone to a panel in October and come back a grade higher and that the line manager had since clarified the role was supportive/operational with no strategic involvement. She stated there were a number of changes to the job description and asked if it would be possible for Abdikayr Ali to re-score the updated job description by 6 January. It was evident from the paperwork that the role being evaluating was HR and Health and Safety Manager for TIC, page 1159. We infer from this that Mr Ali would have known he was evaluating the role held by the claimant.

#### Desktop evaluation Abdikayr Ali

16.139 On 29 December Mr Ali emailed Ms Rafiq with the results of his desktop evaluation, page 1114. He attached his scoresheet to the email and wrote that he had taken Azher's (Mr Ayub's) "feedback into account and revised JD", and this had a bearing on factors one and four. It would appear, therefore, that both feedback from Mr Ayub and the content of the JD were taken into account by Mr Ali when evaluating the role. He stated that the revised score was 250, equivalent to the very highest mark for a grade 6. He stated that it was borderline grade 7 but 10 more points were needed. He wrote that he thought it would be good for Shoaib (Ahmed) to have another look at the job description for a second opinion as the changes from Mr Ayub had come after the panel had convened.

16.140 For the factor of leading and managing people Mr Ali gave the role a factor score of 30, page 1224. He noted that the role entailed offering general health and safety advice to all employees and senior management

and assisting, training and coaching managers in planning and directing employee training programs. He also noted that feedback was that the role was solely supportive and operational and was not strategic and that the requirement to provide specialist advice was also taken into account in factor 3. Planning and managing resources also received a factor score of 30. In the comments it was recorded that the role holder was responsible for confidential information on numerous databases and systems and was responsible for managing emergency procedures. The reference to HR, health and safety and payroll budgets was included in the comments column of the job score sheet, page 1224. An additional comment had been added, namely that the role was varied ranging from ER, payroll and health and safety and the latter required a considerable amount of planning.

16.141 For decision-making there was a factor score of 30. The notes for this were that the role holder was required to analyse management information and make recommendations, formulate systems and strategies appropriate to the company's corporate mission, liaise directly with the executive board, be accountable for the performance of the HR function and departments within it, and was required to authorise payments on behalf of the company, page 1225. Analytical and innovative thinking and problem-solving received a factor score of 30. In the comments, it was recorded that the role holder was required to identify training and development needs and develop an in-house training programme. An additional comment had been added that there was no strategy involvement, page 1225. Communication received a factor score of 40. In the notes column it was recorded that the role holder was required to liaise with contractors and external bodies, improve management/employee communications and advise employees on how to minimise or avoid risks. Quality standards and service delivery received a factor score of 40. In the comments column it was recorded the role holder was the champion for various matters such as the GDPR and was responsible for all safety inspections. Knowledge and skills received a factor score of 50. In the comments the following was recorded; degree in management or HR or business studies, ensuring compliance with employment law, Sage payroll certification at level III, and CIPD qualified.

16.142 Once again, there were anomalies with this evaluation. At this point, as we have set out above, Mr Ali was evaluating Mr Ayub's version of the claimant's job description. References to the claimant being a budget holder, liaising directly with the executive board and being accountable for the performance of the HR function and the departments within it had all been removed from the job description, pages 1321 and 1322. Yet these all remained in the job evaluation scoresheet as comments in relation to the scores that had been awarded, pages 1224 – 1225. Moreover, a degree was not required for the role but seemingly was

taken into account in the evaluation. Mr Suleman had given evidence in his witness statement about this evaluation by Mr Ali and so we asked him for an explanation of this. He simply told us that he could not comment. Most strikingly of all, however, Mr Ali gave the role a *higher* mark, 250 points in this evaluation, compared with the first evaluation when he gave the role 230 points, paragraph 16.124 above, despite that first evaluation, nominally at least, being based on the claimant's overinflated version of his job description. If Mr Ali had been carrying out a genuine evaluation the first desktop evaluation should, clearly, have produced a higher score than the second, and we infer from the fact that it did not that Mr Ali was working to achieve the grade that was felt by management to be right for the role, as opposed to carrying out an independent job evaluation.

#### Panel Evaluation January 2021

16.143 A number of job descriptions which were to be reviewed by the panel were sent to the panel on 8 January 2021 by Ms Rafiq, page 453. The panel at that stage comprised Mr Ayub, Mr Sadiq and Mr Ali. The claimant's job description and scoresheet were then additionally sent to the panel, also on 8 January, page 452. At this point Mr Ayub was taken off the panel and Faysul Maruf from the Finance Department was appointed, page 452. Mr Ali remained on the panel. He had, of course, carried out both of the previous desktop evaluations and was aware that the previous grade was disputed, paragraph 16.138 above. It was outwith the respondent's process for Mr Ali to be on the panel. The desktop evaluation was meant to be separate from the panel evaluation.

116.144 The panel met and evaluated the claimant's role, pages 1227 – 1229. It was evident from the paperwork that the panel were evaluating the role of HR and Health and Safety Manager for TIC. The role scored a total panel score of 230/240, page 1229. This equated to a grade 6, page 880. There were, however, anomalies in the panel scoresheet. The panel were, in this exercise, evaluating the job description that had been drafted by Mr Ayub. As we have already set out, he had removed from the job description reference to budgetary responsibilities, being responsible for liaising directly with the executive board and being accountable for the performance of the HR function and departments within it.

16.145 Yet these responsibilities/requirements of the role remained in the job scoresheet in the comments section as comments explaining the factor scores that had been awarded. Mr Sadiq was asked about this in his evidence. He told us that he "could not comment" on why these remained in the panel score document. Given that Mr Sadiq was a member of the panel, and had specifically been called as a witness to give evidence about this, we considered that answer to be a striking one.

16.146 We infer and find that the respondent manipulated the evaluation process in order to make sure it achieved the result the respondent, and Mr Ayub and Mr Owais in particular, thought, on a subjective “felt fair” basis, was correct for the role. The decision had been made before the evaluation that this role should be a grade 6 and the process was set up to achieve that. We make these findings based on;

(i) Our finding that Mr Ayub received reassurance from Mr Zaid Ahmed that the role would be a grade 6, paragraph 16.123,

(ii) The fact that Mr Ali sat on the panel when he had already done both desktop reviews and was aware of the background, paragraph 16.138,

(iii) Our finding that Mr Ali was working to achieve what management felt was the right grade for the role, paragraph 16.142,

(iv) The fact that irrelevant factors (on Mr Ayub’s version of the job description) remained in the panel scoresheet and Mr Sadiq was unable to explain this,

(v) The fact that relevant factors were not take into account during the first desktop evaluation and, more significantly, irrelevant factors remained in the second desktop evaluation, and the respondent had no explanation for this,

(vi) The respondent’s failures to follow its own process - in particular building in an extra informal review stage which was done by Shoaib Ahmed,

(vii) The fact that it was said by Ms Rafiq that the job description would go back to the panel for review *if* (our emphasis) Mr Shoaib Ahmed agreed (in advance) the score should be changed,

(viii) Our finding that Mr Ahmed then indicated that he would agree to a change in the scoring (in advance of the evaluation process taking place), paragraph 16.137,

(ix) The involvement of Syed Owais Ahmad, a Director of the first respondent, in the role evaluation, with him having specific input that the claimant’s role should be grade 6, paragraph 16.131, when he had no direct knowledge of the claimant’s role, and,

(x) The involvement of Mr Haghamed in the process and the early indication to him that the role would likely be a Grade 6.

16.147 On 15 January 2021 Mr Sadiq sent the completed evaluation back to Ms Rafiq, page 452. Ms Rafiq then emailed Mr Ayub (we do not know the date of this email because, for some reason, the date did not appear on the face of the email). She informed Mr Ayub that the claimant’s role had been evaluated at grade 6, page 450. There was then a delay in communicating this to the claimant, we know not why. On 1 February 2021 Mr Ayub emailed the claimant informing him that his role had come back as a grade 6 and asking him to process his salary on grade 6, step five, back dated to November, page 458. This would have given the claimant a pay increase of about £3,000, as he was still on step one at

that point. The claimant was unhappy about the evaluation result, he responded that day to say he would not accept the pay rise, page 458. The claimant did not, in fact, accept this pay rise. His rate of pay remained unaltered. Mr Ayub did not tell the claimant about his intervention in the process or the involvement of Mr Syed Owais Ahmed or that of Mr Haghamed.

16.147 The claimant then emailed Tufail Hussain, a director of the first and second respondent, requesting a meeting with either the CEO or the trustees, page 458. The claimant followed that up with an email to Mr Hussain, sent on 4 February, in which he listed what he termed his credentials, namely his qualifications and his work experience. He also attached his job description, page 457.

16.148 On 4 February 2021 the claimant spoke with Mr Hussain via Microsoft Teams. He told him that he believed he had been undervalued and underpaid since he started work with the respondent in 2012. The claimant drew comparisons with HR staff of R2 who were, of course, paid in line with the second respondent's pay scales. He also told Mr Hussain that someone had told him that his role had initially been graded at grade 7 but that his job description had then been sent back to Mr Ayub for amendments to be made without his knowledge.

16.149 On 12 February 2021 the claimant asked Mr Ayub directly whether he had removed elements from his job description without his knowledge, and Mr Ayub confirmed that he had done this. The claimant messaged Mr Hussain via Microsoft Teams that day to inform him that this is what Mr Ayub had said, page 460.

16.150 On 26 March 2021 Mr Hussain emailed the claimant to confirm that his understanding was that his job description was revised to include the current responsibilities of the required role for the first respondent, and it was then re-evaluated by a job evaluation panel where it was concluded that the role should be a grade 6. He wrote that the decision reached by the panel followed the usual process of evaluation and that he had deduced that the process followed was fair correct, page 462. He wrote further that it was up to the organisation to decide the requirements of any role and that job descriptions were written to reflect and meet those requirements. He also reminded the claimant that the first and second respondent were separate organisations and he wrote that it was not therefore reasonable for the claimant to compare the HR Manager's role at the first respondent with roles at the second respondent.

16.151 The claimant responded to this email that day saying that he wished to raise a formal grievance, page 461. He wrote that he had been exploited, underpaid and undervalued since starting work with the

respondent. He requested certain information, which included a copy of the job evaluation policy and procedure for appeal, a copy of the pay structure, his evaluation results, in particular how the position was scored and a copy of the job description that was scored, a list of all HR positions and grades within the respondents group and the HR to employee ratio for the second respondent and its divisions, page 461.

16.152 This grievance was forwarded on to Mr Ayub, who acknowledged it on 7 April, page 461.

16.153 The claimant did not receive the information he had requested and accordingly on 15 April 2021 he emailed Mr Hussain again, page 1110. He stated that he was requesting the information again and if it was not possible to provide the information he wanted to know why this was the case. He also requested further information in the form of the grades for various positions including HR Manager, HR Business Partner and HR Adviser at the second respondent. The claimant wrote that he was confident that a formal process would demonstrate that his pay was incorrect and that the evaluation process was flawed.

16.154 On 23 April 2021 the claimant was invited to attend a grievance meeting to take place on 30 April 2021, page 522. At this point he still had not received any of the information he had requested.

#### Independent evaluations

16.155 In the meantime, the claimant had endeavoured to carry out further evaluations of his role. On 8 April 2021 he had contacted Ms Stobart from Hafton Consultancy ( who was initially involved in setting up the job evaluation scheme for the respondents) and he asked her to evaluate his role based on the job description the claimant had written.

16.156 Ms Stobart carried out a desktop evaluation, pages 479 – 480. She gave the role a total score of 300, which was a grade 7 under the respondents grading scheme, and was just 30 points short of a grade 8 role. The leading and managing people factor received a factor score of 40 on the basis it was a stand-alone role providing the main source of HR and health and safety support to the organisation. Planning and managing resources received a factor score of 40 on the basis of responsibility for HR, health and safety and payroll budgets, which she indicated she assumed meant setting and monitoring the budgets each year. A factor score of 40 for decision-making was awarded on the basis that it was a senior advisory role which needed to have strong influence, albeit the role holder had no direct line reports and it was line managers who made the final decisions. Analytical and innovative thinking received a factor score of 50 on the basis the role holder contributed to strategy and policy

development and should be anticipating future HR and health and safety needs. Communication received a factor score of 50 on the basis the role holder needed to be a strong influencer and communicator. Quality standards and service delivery received a factor score of 40 on the basis the role required monitoring and challenging of non-compliance and acting as a role model across the organisation, and knowledge and skills received a factor score of 40. This was on the basis that the role holder needed sound specialist HR and health and safety knowledge but that the role holder's qualifications were higher than the requirement for the role. Pausing there, it is to be noted that this was an evaluation that took out extraneous elements, such as the qualifications the claimant held that were not required for the role, and also recognised and took into account the breadth of the role that the claimant was undertaking and the fact he was in a stand-alone role. It also, however, took into account budgetary responsibility (as this was in the version of the job description provided for evaluation), when this was not part of the claimant's role, and contributions to strategy, which was an area of dispute between the claimant and respondent.

16.157 Ms Stobart sent the evaluation back to the claimant, who was not happy with it. He emailed Ms Stobart on 9 April querying why it had not been scored as a Head of Department role, page 475. He complained that some of her scores were, in his opinion, a little low. In a further email he wrote that the profile of the role fitted a Head of Department position (i.e. a grade 8). Ms Stobart emailed in response to say that if this was a Head of Department grade then it was not evidenced very strongly in the job description, page 474.

16.158 The claimant also commissioned a report from Croners. This was to serve two purposes; to evaluate the claimant's role and also to provide benchmarked salary data. The claimant's role was evaluated by Ms Simpson as a high rank two, page 485. The claimant was not happy with this; he immediately queried why the role had not been scored as rank one, page 486. He asked why, if the role was stand-alone and did everything from in-house payroll to HR to health and safety, it was not a rank one. After further email discussion Ms Simpson amended her evaluation to a rank one, page 484. As to the level of salary, Ms Simpson pointed out that it was ultimately the organisation's decision as to where the role holder sat on the salary scale but she provided the claimant with information as to the median market rate, page 481.

16.159 In the meantime the claimant continued to pursue information from the first respondent. On 27 April he emailed Mr Ayub once again asking for a copy of the job description which had produced the grade 6 evaluation, page 1109. This was emailed to the claimant on 28 April, page 527. The claimant responded by email on 4 May asking why he had not

been consulted about the changes and for an explanation as to why the changes had been made, page 527. He also requested a copy of his evaluation score and job description from 2016. Mr Ayub responded to this email on 10 May, pages 526-527. He stated that the job description had been changed by him without reference to the claimant because as the line manager of the post he knew it to be a procedural job rather than a strategic one. He stated the job description had been changed quite considerably from the original, in particular the section on knowledge, skills and qualifications. He wrote that the original job description had been written with the requirements of the post in mind and that in the knowledge, skills and qualifications section the claimant had added a degree qualification or similar, CIPD qualification and NBOSH qualification, whereas the original job description did not require these. He stated this in his judgement and experience the position set out in the original job description "still holds". Of course, that was not correct – the claimant had since then taken on additional responsibilities and had been promoted to HR Manager. Lastly, he informed the claimant that a copy of his score for the 2016 evaluation (which did not exist) would be included in the claimant's data subject access request.

16.160 The claimant had also, by this point, made a data subject access request, page 528. Information that he requested under this included the original job evaluation for his role, and a copy of any other evaluations that had been done along with the job descriptions used, confirmation of how many times the role had been evaluated and a copy of any correspondence relating to the evaluation of his role.

16.161 The grievance meeting was rescheduled at the claimant's request and it took place on 6 May 2021 with Mohamed Chahtane, pages 534 – 555. Nyela Ali from HR was also present, as was Harpul Singh from HR, to take notes. The meeting was lengthy. During the course of the meeting the claimant explained that he was solely responsible, with no supervision, for all HR, health and safety and payroll matters, page 537. He explained that he was providing HR support in relation to 120 employees and compared this to the HR/employee ratio at the second respondent, page 540. He complained that in 2017 the second respondent on their own accord and without consulting with the first respondent had organised their pay grades into different (functional) areas and this meant that a person who came in at grade 6 at the second respondent got paid more than him, page 546. The claimant stated that he should not be a grade 7, he should be a grade 8, page 547. There was discussion about the evaluations that the claimant had arranged which were done by Ms Simpson and Ms Stobart, page 549.

16.162 The claimant stated that he had emailed HR to ask if he could have the results of the evaluation process and it was confirmed to him that



the respondent does not provide the breakdown, page 550. The claimant stated that his was a Head of Department role, page 551. He also complained that the job description had been manipulated behind his back, page 551. The claimant complained that Mr Ayub had taken everything to do with strategy and leadership out of his job description, and there then followed a discussion about strategy. The claimant said that he had evidence that he had been doing strategy from the beginning, page 553. He said that strategy was only a plan and that he had been planning from day one, page 553. Ms Ali stated that “our argument is that strategy comes from the CEO and is cascaded down to the levels of management”.

16.163 On 6 May Mr Chahtane emailed the claimant asking him, amongst other matters, to share any strategy documents that he had with him, page 557. The claimant emailed in response to say this was not relevant, page 557. Mr Chahtane emailed the claimant on 2 June to say that he was unsure why the claimant was not happy to provide this information as it would substantiate the fact that he had strategic tasks assigned to him, page 587. The claimant’s response to this was that he had mentioned strategy at the meeting because he had discovered it had been taken out of his job description without his knowledge before it went for evaluation but that he was not making any claims regarding strategy and the evaluation of his pay grade, page 586. He subsequently sent some information to Mr Chahtane, which comprised a certificate he had received recognising him as a “One Man Army”, the covering page of an audit and the presentation that he had done for the management meeting referred to in paragraph 16.115 above.

### The Gathering

16.164 On 20 May 2021 the first respondent hosted a post Eid celebration in the form of an indoor meal for approximately 65 people including the CEO and Directors of the second respondent. This was in breach of Covid restrictions at the time. The claimant attended this gathering. We do not, for the avoidance of doubt, find that the claimant felt particularly uncomfortable attending the event, as he suggested in evidence before us. Had he done so we think it likely he would have complained quickly after the event had taken place, which he did not do. We also took into account that the claimant did not suggest in his particulars of claim, which he asked to stand as one of his witness statements, that he had felt uncomfortable attending the event. What he complained about in this document was that the first respondent had bypassed him (by not taking advice/involving him in the decision about whether to have the event) and had then breached Covid/H and S laws by hosting the event. We think that was a much more accurate reflection of

what upset the claimant about this incident; it fell within his remit and he was not consulted about it before it took place.

16.165 A few weeks after the event it was leaked to the press that the event had taken place and an article was published about it on 15 June on the Birmingham Mail website, page 642.

16.166 The Birmingham Mail article led to the CEO of the second respondent sending an internal email later that day to all staff. It was recognised in the email that the required social distancing rules were not adequately followed and the CEO apologised for this, page 634. It was further recognised that it was the responsibility of senior management to take the safety of staff seriously during the pandemic.

16.167 On 16 June 2021 Mr Ayub asked the claimant via Microsoft Teams if he had seen the Birmingham Mail website article. The claimant said that he had and he asked if the incident would be investigated. On 17 June 2021 Mr Ayub responded that he did not know. The claimant did not, we find, request that an investigation be carried out. As we have set out above, we have found that his primary concern at the time was that he should have been consulted about the event, and was not.

16.168 We do not find there was an investigation by the respondents into the gathering for the following reasons. Mr Ayub led no evidence about this in his witness statement, and he likely would have done if there had been an investigation. Instead, he mentioned it for the very first time in answer to a question from the tribunal. There was, additionally, no evidence of an investigation in our bundle of documents. As the assertion of a failure to investigate was identified on the list of issues as being relevant to the constructive unfair dismissal claim, the failure to adduce any evidence about the investigation was a striking omission and one from which it could be inferred, in our view (taken together with the other factors mentioned), that no investigation took place. The respondent at one point suggested that the apology from the CEO was evidence of an investigation, but we did not agree with that assertion; it would have been self-evident from there having been an indoor gathering involving 65 people that Covid restrictions had been breached and so no investigation was required in order to enable this apology to be given.

16.169 On 4 June the claimant was emailed a link to access files relating to his data subject access request. Due to technical issues he was not able to open the files until 7 June 2021. He received the job scoresheets for the 2020/21 evaluation and the score sheets for the 2015 evaluation. This was the first occasion on which the claimant had received any formal confirmation that his role had initially been graded as grade 7 in the 2020/21 evaluation and had then been downgraded to a grade 6 following

Mr Ayub challenging the valuation. It was also the first occasion on which the claimant became aware that there was no scoring whatsoever in respect of Mr Ayub's 2016 assessment of the role.

16.170 On 8 June the claimant emailed Mr Chahtane to say that he was heartbroken and working under protest, having received information under his subject access request, page 578.

16.171 On 22 June 2021 Mr Chahtane emailed the claimant the outcome of his grievance investigation, pages 639 – 641. It was explained in the letter that the claimant's grievance had been partially upheld, page 639. Mr Chahtane noted that an agreed job description should have been submitted to the evaluation panel and he concluded that as this had not happened a fair and inclusive process had not been followed. He stated that there was an urgent need for the first respondent to strengthen HR processes and procedures, and he identified several areas for improvement. He also explained that he had concluded that a true representation of the claimant's work needed to be "mapped". He recommended that the first respondent appoint someone external to review the claimant's current duties and compare them against the grade 7 job description that was prepared by the claimant so that the independent person could assess the work actually being carried out by the claimant. If the independent review substantiated that the claimant did indeed carry out some strategic HR or health and safety elements this would need to be taken into consideration on a re-evaluation. In a grievance report that Mr Chahtane produced he also recommended that the employee handbook should include the job evaluation process and an appeal mechanism, page 618.

#### Claimant's resignation

16.172 On 28 June 2021 the claimant wrote to Mr Hussain resigning with immediate effect, page 651. He wrote that he was resigning because of the repudiatory breaches of his contract by the first respondent. He stated that there had been continuous breaches of trust and confidence examples of which included routine misuse of company assets and finances, failing to investigate fraudulent expenses claims, unjustified discretionary pay rises being given in conflict with the job evaluation scheme and a failure to investigate a genuine health and safety breach. He further wrote that aggravating factors had led to a point of no return which included the manner in which his grievance had been handled, finding evidence that the job evaluation scheme was flawed and discriminatory and discovering via the data subject access request that he had been exploited, and that his job description had been deliberately manipulated and devalued in order to reduce his pay.

16.173 So far as we know (the evidence on actual earnings from both claimant and respondent was very limited) the claimant was earning £33,771 gross pa when he left the respondent.

Comparators for equal pay claim

16.174 The comparators for the purposes of the equal pay claim are Ritu Chadda, Magdalena Lokowska and Serena Kashim. As we are only dealing with a preliminary point in relation to the equal pay claim our findings of fact at this stage can, subject to one point in relation to Ms Lokowska's role which is relevant to the issues more generally, be mainly restricted to whether the roles occupied by these individuals underwent the same job evaluation process as the claimant's role. The evidence in relation to this was quite limited. Doing the best we can we find as follows:

16.175 Ritu Chadda was initially employed by the second respondent as an HR Business Partner before becoming Senior Manager People and Culture in 2014. At some point, we know not when, this role appeared to be renamed Head of People and Culture. We say this because Ms Chadda confirmed in evidence that the applicable job description for the "Head of" role was the Senior Manager People and Culture job description which appeared at pages 665- 670. The role of Senior Manager People and Culture underwent the respondents job evaluation process in October 2019 and achieved a total score of 330, page 906, which mapped across to a grade 8.

16.176 Magdalena Lokowska was first employed by the second respondent on 17 February 2019 as a Partnership and Programmes Manager. She became HAD Business Development Manager from October 2019. Her job title was changed on 14 July 2022 to Head of Business Development, albeit this was not a promotion it was a change in job title only arising out of an organisational restructure. The role of Business Development Manager had been evaluated under the job evaluation process in 2017 prior to Ms Lokowska joining the respondent. We do not know who the incumbent in the role was at this time. However it can be seen from the email that appeared on page 308 and the job score sheet that appeared at page 899, that the Business Development manager role was evaluated and came back a grade 7.

16.177 Changes were then made to the job description to make sure it accurately reflected the duties and responsibilities of the role, page 308, and the job description was then resubmitted for evaluation and the role was re-evaluated at grade 8, page 308 and page 900, which was then considered to be a satisfactory outcome. What can be inferred from this (and Mr Shaibi's experience as set out above) is that job descriptions were often inaccurate and/or there was a practice of amending them and then

resubmitting them for evaluation, if it was felt the outcome was not right, in order to see if this could bring about a change in the evaluation.

16.178 Serena Kashim was employed as an HR Business Partner by the second respondent from 20 February 2017, page 1972. The role underwent the respondents job evaluation process in October 2017. It was evaluated at Grade 7, pages 901 - 903.

### Comparators for race discrimination claim

#### Zaid Ahmed

16.179 Zaid Ahmed is employed by the second respondent and has worked for the second respondent since 2008. He describes himself as British Pakistani. He has had a varied career with the respondent; he started off as a Personal Assistant to the Director of Business Development and then held a number of different roles before becoming an HR Manager. He was then appointed HR Manager and on-site Therapist, which is the role he occupied during the claimant's employment with the first respondent, before becoming Head of HR Services and Well-being in June 2021.

16.180 In his role of HR Manager and on-site Therapist he reported into the Head of Human Resources and had line management responsibility for 3-4 HR service coordinators and officers, page 1230. Critical responsibilities were identified as being managing immigration compliance, global screening and other legal standards to ensure the second respondent did not employ staff with any illegal, criminal, fraudulent or terrorist background, page 1230. The role was described as being responsible for leading and managing the entire employee life-cycle for the second respondent's staff and expatriates (who number 250+). His responsibilities included supporting and managing key strategic and operational HR projects and representing the Head of HR at events where necessary, page 1231. He had some budgetary responsibility, as he was responsible for managing the HR services and on-site therapy budget, page 1231. Key responsibilities included setting the strategic direction of the HR services function, leading, managing and developing staff, serving as the HR focal point for external and internal auditors, ensuring the respondent's global screening system was fit for purpose, managing all immigration issues, processes and documentation relating to sponsored staff, supporting and attending remuneration appointment committee meetings, overseeing all aspects of the job evaluation process, working closely with external consultants on pensions, dealing with recruitment and absence management and leading on, developing and managing relations with HR suppliers, pages 1231-1232. He also had overall responsibility for management and delivery of the well-being agenda and

therapeutic services, page 1233. Essential requirements included a degree, a professional HR qualification and knowledge and skills in providing counselling/therapeutic base support, page 1234.

16.181 Whilst he was in the role of HR Manager and on-site Therapist the role was graded at grade 7 under the job evaluation scheme, page 1236. We do not know what Mr Ahmed was earning whilst the claimant was employed by the first respondent although we infer and find that he was on a rate of pay applicable to grade 7. When the revised pay scales were introduced in 2018 the salary range for grade 7, HR and LD pay scale, was between £40,955 - £51, 880, page 7 composite pay scales document.

#### Junaid Ahmed

16.182 Junaid Ahmed was employed by the second respondent between August 2012 and October 2023. He describes himself as Asian Bangladeshi. He initially worked as an HR Business Partner, grade 6. He then became HR and Corporate Services Lead, grade 7 before finally becoming Head of Corporate Services, grade 8. As far as we know Mr Ahmed was appointed to the role of Head of Corporate Services around December 2015, having been interviewed for it on 8 December 2015. We do not know what he was earning at the time the claimant was employed by the first respondent although we infer and find that he has been on a rate of pay applicable to grade 8 since 2015. When the revised pay scales were introduced in 2018 the salary range for grade 8, HR and LD pay scale was between £46, 638 - £59,080, page 7 composite pay scales document.

16.183 The role of Head of Corporate Services reports into the Director Islamic Relief UK, page 1238. The role has a total of eight direct reports and second line management responsibility for a further 12 post holders, page 1240. The role is a very broad one covering areas such as HR services, facilities, ICT, procurement and accounts, page 1240. Mr Junaid is a member of IRUK's executive board and has regular contact with directors of the second respondent, page 1240. Key responsibilities include managing an annual budget of between £1M - £1.2M, managing and supporting his team, providing HR functions for IR UK, leading on managing the IRUK finance SLA to ensure robust financial services are delivered, leading and managing the IR UK ICT SLA to ensure robust IT services are delivered, leading and managing the IRUK facilities and procurement SLA to ensure robust services are delivered, and managing the development of organisational strategy. Required qualifications include a degree and being CIPD qualified, page 1244.

#### Mohamed Imran Sadiq

16.184 Mohamed Imran Sadiq has been employed by the second respondent since 3 July 2017. He describes himself as British Pakistani. He was originally employed as an HR Business Partner, Grade 6, before becoming a Senior HR Business Partner, Grade 7 in 2019. He obtained the role of Senior HR Business Partner as a result of a reorganisation in which the second respondent decided to introduce HR Adviser roles, with the role of Senior HR Business Partner to have line management responsibility for these new roles. The position was advertised internally and Mr Sadiq submitted an expression of interest and was successful following an interview. We do not know what he was earning as a Senior HRBP although we infer and find that he was on a rate of pay applicable to Grade 7, and prior to that Grade 6. When the revised pay scales were introduced in 2018 the salary range for grade 7, HR and LD pay scale, was between £40,955 - £51, 880, page 7 composite pay scales document.

16.185 In the role of Senior HR Business Partner he is required to act as an experienced senior HR generalist with line management responsibility for two HR Advisers, page 1278. He reports into the People and Culture Manager. Whilst he has no direct budget responsibility he is expected to have input into budget decisions, page 1279. He is required to guide and support other HR staff and work in an autonomous manner with limited supervision, page 1279. He is required to deputise for the People and Culture manager when required. He is also expected to be able to provide expert HR advice including employment law advice. Key responsibilities include ensuring the unit's objectives are achieved and the efficient planning and management of the units work, page 1280. He has responsibility for ensuring that all of the second respondent's staff are appraised annually and is expected to develop and roll out HR courses to senior managers and Heads of Department. He is expected to lead on the HR policy group on updating policies and practices and play a key role in setting up talent management initiatives, page 1280. He is also the lead for diversity monitoring and development of interventions to improve awareness and representation, and is expected to provide support on job evaluation matters. A degree and a CIPD qualification are a requirement for the role.

#### Morshed Alam

16.186 We did not hear evidence from Mr Alam and were provided with only very limited evidence about him by the respondent. We do not know how Mr Alam describes himself but both parties referred to him before us as being "Asian". Mr Alam was recruited into the role of Waqf Programme Manager on 1 January 2018. He was an employee of the second respondent. This role was evaluated as a grade 6 role, page 1269 -1270, albeit Mr Alam was in fact recruited at grade 5, i.e. one grade lower than the claimant, on a one year development plan. His salary at the time was

£28,735, page 1276. He passed this development plan successfully and was moved to grade 6 with effect from 1 January 2019. He received an increase in salary at this point, although we do not know what his salary was increased to. We infer and find that since the introduction of the new pay scales he has been on the Grade 6 Funding and Marketing pay scale and was therefore earning somewhere between £34,920 - £44, 236.

16.187 Very little evidence was led about WAQF, but we understand that in broad terms this is a fundraising division of the second respondent. It is divided into two units; the programme unit and the marketing unit and Mr Alam was recruited to head up the programme unit. He had six direct reports in the form of project coordinators, page 1264. Key responsibilities included overall management of projects implemented across the world, page 1265, and developing projects that were economically viable and legally and Sharia compliant. He had responsibility for a budget, page 1266, although we do not know the size of this. He was required to develop strategies and business plans for the unit, to establish and maintain good relationships with all stakeholders including emerging markets, the respondent's field offices and the Middle East. He was required to promote and manage project activities globally, page 1276. Essential qualifications and experience included a degree, familiarity with Sharia rulings and a good understanding of Islamic financial principles, page 1268.

16.188 We accept the respondent's evidence and find that, the respondents considered that matters such as line management responsibilities, strategic elements to roles, budgetary responsibilities and the extent of any global remit were important considerations when it came to the grading of a role.

#### Knowledge that the claimant identified as Amazigh

16.189 The claimant identifies as Amazigh, or Berber. We do not find that Zaid Ahmed, Junaid Ahmed, Noor Ismail, Mr Sadiq or Aflak Suleman knew that the claimant identified as Amazigh, nor that he is Moroccan; their oral evidence, which we accepted, was that they did not know this. As to whether others who had evaluated the claimant's roles knew of this (Mr Ali, Mr Shaoib Ahmed, Mr Maruf and Ms Ashina) there was no direct evidence led on this by either the claimant or the respondent. Doing the best we can we would infer, from the lack of knowledge of the individuals listed above, that more likely than not Mr Ali, Mr Shaoib Ahmed, Mr Maruf and Ms Ashina did not know that the claimant identifies as Amazigh (or Moroccan). We accept Mr Ayub's oral evidence and find that he did not know that the claimant identifies as Amazigh but he did know, however, that the claimant is Moroccan. Mr Haghamed, we find, did not know this.



## **The Law**

### **Direct race discrimination**

17 Section 13 of the Equality Act 2010 states that:

(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.

Section 23(1) provides that on a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case.

18 The burden of proof is set out in section 136 of the Equality Act which states:

(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.

19 It is now well established that the term "because of" in the Equality Act has the same meaning as that given to the words "on the ground of" under the legacy legislation; see for example **Onu v Akwivu [2014] ICR 571**. Accordingly, we directed ourselves in accordance with the legacy case law as follows. When dealing with claims of direct discrimination the crucial question that has to be determined in every case is the reason why the claimant was treated as he was, Lord Nicholls **Nagarajan v London Regional Transport [1999] ICR 877**. As Lord Nicholls stated in the case of **Nagarajan**;

“Section 1(1)(a) is concerned with direct discrimination, to use the accepted terminology. To be within section 1(1)(a) the less favourable treatment must be on racial grounds. Thus, in every case it is necessary to inquire why the complainant received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job? Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances. The crucial question just mentioned is to be distinguished sharply from a second and different question: if the discriminator treated the complainant less favourably on racial grounds, why did he do so? The latter question is strictly beside the point when deciding whether an act of racial discrimination occurred. For the purposes of direct discrimination under section 1(1)(a), as distinct from

indirect discrimination under section 1(1)(b), the reason why the alleged discriminator acted on racial grounds is irrelevant.”

### Burden of Proof

20 So far as the burden of proof is concerned, the proper approach has been addressed by the Court of Appeal in Igen Ltd v Wong [2005] IRLR 258, Madarassy v Nomura International plc [2007] ICR 867 and Laing v Manchester City Council [2006] IRLR 748. The Supreme Court in Royal Mail Group v Efoji [2021] EWCA Civ 18 confirmed that the law remains as set out in these cases despite changes to the wording of the burden of proof provisions in the Equality Act.

21 In summary, as per **Igen**, the burden is on the claimant to establish facts from which a tribunal could conclude on the balance of probabilities, and absent any explanation, that the alleged discrimination had occurred. At that stage the employer’s explanation for the treatment - the subjective reasons which caused the employer to act as he did - must be left out of the account. It was also explained in **Madarassy** that the facts from which discrimination could be inferred can come from any evidence before the tribunal, including evidence from the respondent, save only for the absence of an adequate explanation.

22 The need for there to be something more than a difference in treatment and a difference in status for the burden to move across to the respondent has been emphasised repeatedly by the EAT, see for example Hammonds LLP & Ors v Mwitwa [2010] UKEAT 0026\_10\_0110 and Mr Justice Langstaff in BCC & Semilali v Millwood UKEAT/0564/11. However, whilst something else is needed to reverse the burden “not very much” needs to be added to a difference in status and a difference in treatment in order for the burden to be on the respondent to prove a non-discriminatory explanation, paragraph 56 Veolia Environmental Services UK v Gumbs UKEAT/0487/12 and Deman v The Commission for Equality & Human Rights [2010] EWCA Civ 1279, paragraph 19; “we agree with both Counsel that the “more” which is needed to create a claim requiring an answer need not be a great deal”.

23 Although a two stage approach is envisaged by s.136 it is not obligatory. In some cases it may be more appropriate to focus on the reason why the employer treated the claimant as it did and if the reason demonstrates that the protected characteristic played no part whatever in the adverse treatment, the case fails. It was explained in Amnesty International v Ahmed [2009] ICR 1450 that where explicit findings as to the reason for the claimant’s treatment can be made this renders the elaborations of the “**Barton/Igen** guidelines” otiose. “There would be fewer appeals to this tribunal in discrimination cases if more tribunals took this straightforward course and only resorted to the provisions of s54A ( or its cognates) where they felt unable to make positive findings on the evidence without its assistance.” This approach was expressly endorsed by the Supreme

Court in **Hewage v Grampian Health Board [2012] UKSC 37**. That said, the EAT in **Field v Steve Pye & Co Ltd and ors [2022] IRLR 948** cautioned against an automatic application of this approach. The EAT highlighted the earlier guidance in **Hewage** that the burden of proof provisions require careful attention where there is room for doubt.

24 At the second stage, the respondent is required to prove that they did not contravene the provision concerned if the complaint is not to be upheld. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever because of, in this case, race. That requires the tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that (in this case) race was not a reason for the treatment in question. Since the facts necessary to prove an explanation would usually be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof, **Igen**. If the respondent fails to establish that the tribunal must find that there is discrimination.

#### The Comparator

25 It is trite law that direct discrimination requires there to have been less favourable treatment of the claimant. That is not the same as unfavourable treatment. Treatment may be unacceptable, inappropriate, bullying or irrational but it may nonetheless be no less favourable than that given to others. It is implicit in the concept of direct discrimination that a person (actual or hypothetical) in a similar position to the claimant who did not share the claimant's protected characteristic would not have suffered the less favourable treatment. Establishing less favourable treatment therefore involves a comparison of the claimant's treatment with the treatment of others, actual or hypothetical, (the statutory comparison). Section 23 identifies how that comparison should be made; the circumstances between the claimant and their comparator must be the same or not materially different. Of course by establishing that the reason for the detrimental treatment is the prohibited reason the claimant will necessarily establish at one and the same time that he or she was less favourably treated than a comparator who did not share the prohibited characteristic. Accordingly, a finding of discrimination can be made without a tribunal needing specifically to identify the precise characteristics of the comparator at all, paragraph 32 **Ladele**. Moreover as was said at paragraph 33 of **Ladele** because the circumstances of the statutory comparator must be the same or at least not materially different (which is the same thing) to the claimant in practice there will rarely be actual comparators who fall into this category. Where an actual comparator is relied on by a claimant there will often be a dispute as to whether the circumstances between the comparator and the claimant are the same or not.

26 Where there is a true actual comparator, asking the less favourable

treatment question may be the most direct route to determining if there has been less favourable treatment and what the reason was for the less favourable treatment; but where there is a hypothetical comparator or a dispute as to the relevant circumstances of the actual comparator relied on it may be better to focus on the reason why question rather than getting bogged down in the often arid and confusing task of constructing a hypothetical comparator or identifying the relevant circumstances for the purposes of an actual comparator. This is because the relevant characteristics of the appropriate hypothetical comparator/actual comparator will be those which actually influenced the mind of the alleged discriminator, **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285**, and these cannot be identified until the grounds for the alleged discriminatory treatment have been determined. In essence it is often not possible to state whether the hypothetical comparator/actual comparator would have been treated differently independently of knowing why the claimant was treated in the way he was.

### Section 112 Equality Act

27 Section 112 of the Equality Act imposes liability for A (in this case R2) knowingly helping another B (in this case R1) to commit what is termed a basic contravention. A basic contravention is defined in section 112(1) as being an act which contravenes parts 3-7 of the Equality Act (and part 5 contains the provisions regarding work), This section requires both (i) the act of helping and (ii) a mental element of doing so knowingly. Guidance on the meaning of section 112 is given by the Code of Practice for Employment. The Code says at paragraphs 9.27 and 9.28 that help should be given its ordinary meaning and in relation to “knowingly” that the person giving the help must know at the time that they give the help that discrimination, harassment or victimisation is a probable outcome. But the helper does not have to intend this outcome should result from the help.

### Equal Pay; rated as equivalent and equal value

28 Section 65(1)(b) of the Equality Act states that A’s work is equal to that of B if it is rated as equivalent to B’s work.

29 Section 65(4) states that:

A’s work is rated as equivalent to B’s work if a job evaluation study-

(a) gives an equal value to A’s job and B’s job in terms of the demands made on a worker, or

(b) would give an equal value to A’s job and B’s job in those terms were the evaluation not made on a sex-specific system.

65(5):

A system is sex-specific if, for the purposes of one or more of the demands made on a worker, it sets values for men different from those it sets for women.

30 Pausing there, section 65(5)) is therefore very limited in scope. It would appear to apply where the scheme sets different values on the same demands for men and women.

31 Section 80 (5) of the EQA states that:

A job evaluation study is a study undertaken with a view to evaluating, in terms of the demands made on a person by reference to factors such as effort, skill and decision-making, the jobs to be done-

(a) by some or all of the workers in an undertaking or group of undertakings.

32 Section 131(5) of the EQA states that:

Subsection (6) applies where-

(a) a question arises in the proceedings as to whether the work of one person (A) is of equal value to the work of another (B), and

(b) A's work and B's work have been given different values by a job evaluation study.

Subsection (6) states:

the tribunal must determine that A's work is not of equal value to B's work unless it has reasonable grounds for suspecting that the evaluation contained in the study-

(a) was based on a system that discriminates because of sex, or

(b) is otherwise unreliable.

33 Subsection (7) states that:

for the purposes of subsection (a), the system discriminates because of sex if the difference (or coincidence) between values that the system sets on different demands is not justifiable regardless of the sex of the person on whom the demands are made.

34 A job evaluation study can serve two different purposes. It can be used by a claimant to establish that their work is equal to that of their comparator thus enabling the claimant to benefit from the implied sex equality clause in section 66 or it can be relied upon by an employer to block an equal value claim if the claimant's job has been given a different rating to that of their comparator. It is well established that the party who is seeking to rely on the JES in an equal pay claim (which as just set out may be either the respondent or the claimant) has the burden of proving that it satisfies the requirements set out in the EQA, **Bromley and ors v H and J Quick Ltd 1988 ICR 623, CA.**

35 In this case the respondent seeks to use the JES as a shield to block the claimant's equal pay claim. Discharging the burden of proof involves leading evidence to justify the scheme against relevant factors, **Armstrong and others (the HBJ claimants) v Glasgow City Council and anor [2017] CSIH 56.** The burden of proof is not satisfied merely by the respondent laying a scheme before the tribunal nor is it satisfied by an assertion that the scheme is prima facie compliant, paragraph 41 **Armstrong**. In order for a JES to be compliant it must

be rigorously tested. It is only if, after rigorous analysis, the scheme is found to meet the requirements of (now section 80(5)) that it will provide the protection envisaged by the employer. It is not for the claimant to pick holes in the scheme or find deficiencies in it, paragraph 41, **Armstrong**.

36 Where a respondent has chosen to use a bespoke scheme, as opposed to adopting a methodology widely used, the respondent must put evidence before the tribunal that the scheme is compliant. Where an employer is using a scheme which has already been used by others and has been considered, tested, analysed and found to be compliant it may be that less evidence will be required to discharge the burden of proof of compliance, paragraph 43 **Armstrong**.

37 In order to be a study within the meaning set out in section 65(4) and 80(5) a JES must:

- (i) be thorough in analysis, **Eaton Ltd v Nuttall 1977 ICR 272 EAT**.
- (ii) take into account demand factors connected with the requirements of the job, not factors related to the person doing the job, **Eaton**,
- (ii) be analytical in assessing the component parts of a particular job rather than simply their overall content on a whole job basis, **Eaton** and **Bromley**,
- (iv) be a single study covering both the claimant and their comparator,
- (v) be complete ( but not necessarily implemented), **O'Brien and ors v Sim-Chem Ltd 1980 ICR 573 HL**).

38 The study must therefore be thorough in its analysis, i.e. rigorous. See for example **Diageo Plc v Thomson EATS/0064/03** in which a respondent decided to replace the well established Hay evaluation scheme with its own JES. The EAT upheld a finding that the new scheme was insufficiently rigorous and that the respondent had therefore failed to prove that a JES as defined under (then) section 1(5) of the Equal Pay Act had been carried out; it was not subject to the Hayes scheme, there was no job evaluation panel and the process was carried out by only one trained evaluator. There were no audit reports or rationale sheets and the tribunal had been correct to conclude the JES was not thorough in its analysis despite the fact that no particular calculation or rationale could be shown to be in error.

39 To be a JES falling within what is now section 80(5) the study must be analytical, **Bromley**. The word analytical conveniently summarises the requirement for there to be a study that values the jobs of each worker covered by the study in terms of the demands made on the worker under various headings, **Bromley** paragraph 24. This entails breaking jobs down into component factors and assessing each factor individually in order to arrive at the jobs overall value (as opposed to simply comparing jobs as a whole without breaking them down into component factors). Evaluation on a whole job basis is not sufficient, **Bromley**. It is necessary that both the work of the claimant and of his chosen comparators has each been valued in terms of demands made on the

worker under appropriate headings, **Bromley**, paragraph 24, in order for it to be a study falling within section 80(5).

40 Neither the words thorough or analytical are a gloss on the statute, they are implicit in the wording of section 80(5), **Bromley** and **Element and ors v Tesco Stores Ltd [2022] EAT 165**, paragraph 113.

41 The EAT (The Honourable Mrs Justice Stacey DBE) conducted a comprehensive review of the case law on job evaluation studies in **Element and ors v Tesco Stores Ltd [2022] EAT 165**. It was explained that although the wording of section 80(5) of the EQA is not exactly the same as the predecessor legislation the change in wording has not changed the law in relation to equal pay, paragraph 106. The EAT then reviewed the test set out in **Eaton**, namely that in order to be a job evaluation study within the meaning of what is now section 80(5) of the EQA, the job evaluation had to be “thorough in analysis and capable of impartial application”. It was explained, paragraph 109, that whilst the first limb of the **Eaton** test has stood the test of time the second element of the test has not. The second limb of the test was, in fact, overturned by the Court of Appeal in **Bromley**.

42 The test of whether a job evaluation study is a study that falls within section 80(5) remains the same whether the JES is being used as a “sword” by claimants or as a “shield” by respondents. It is only if section 131(6) comes into play that the second part of the **Eaton** test – capable of impartial application – is relevant, **Element** paragraphs 109 and 113. It is relevant to what a claimant has to show to dislodge a presumption that a JES ascribing different values to men’s and women’s work is sufficient to strike out an equal value claim, **Element**, paragraph 110. That said, this amendment to the **Eaton** test should not, in reality, significantly affect what is essentially a fact-finding exercise for a tribunal when considering whether a study is a JES. If the study is not capable of evaluating the jobs by reference to the demands on workers it will not be capable of being applied impartially, **Element** paragraph 119.

#### Reasonable suspicion

43 If the claimant can prove that there are reasonable grounds for suspecting that the evaluation contained in the study either;  
(a) was based on a system that discriminates because of sex, or  
(b) is otherwise unreliable,  
an employer cannot rely on it to defeat the claimant’s claim at a preliminary stage.

44 In this regard the burden of proof rests with the claimant, see for example **Element** paragraph 109. It requires to be remembered that all that a claimant is required to establish is that there are reasonable grounds for suspecting that the evaluation contained in the study was unsuitable to be relied upon. There is no

requirement for particularly cogent evidence, nor indeed for evidence that an element of the study is actually unsuitable, paragraph 57 **Armstrong** (obiter). All that is required is reasonable grounds for suspicion.

45 It is not necessary for a claimant to lead expert evidence in this regard, nor even to provide cogent evidence of reasonable grounds for suspicion. All that is required is sufficient evidence before the tribunal to raise a reasonable suspicion of unsuitability - ie whether there are reasonable grounds to suspect that the JES was not suitable to be relied upon. As the tribunal in **Hartley and ors v Northumbria Healthcare NHS Findation Trust and ors ET Case No 2507033/07** put it;

Whilst it is not sufficient for the claimant to rely on mere assertions, she must point to evidence, the evidence need not be strong enough to show unsuitability (or discrimination for section 131(6) (a) purposes) on the balance of probabilities. It need not even be strong enough to enable the tribunal to draw an inference of discrimination or unsuitability in the absence of a satisfactory explanation by the respondent. It must however be strong enough to give the tribunal reasonable grounds for suspicion. The question for determination will be whether the tribunal is left with reasonable grounds for suspicion even if there is not sufficient evidence to make a positive finding of discrimination or unsuitability.

Based on a system that discriminates because of sex 131(6)(a)

46 Whilst there is no specific authority on the point tribunals have taken the view that 131(6)(a) is confined to any sex discrimination that may be inherent in the demand factors and weighting, in contrast, allegations of discrimination in relation to non-systemic factors - for example bias in the application or implementation of the scheme – have generally been considered under 131(6)(b).

Otherwise unreliable

47 Section 131(6)(b) appears to be very broad in scope. It would appear to allow for any challenge to the JES that does not fall within the remit of section 131(6)(a). In **Surtees v Middlesbrough Council ET Case No; 2501390/03** the tribunal considered that it would encompass the situation where the tribunal had reasonable grounds to suspect that the valuation was inaccurate for any reason or combination of reasons.

48 While so far as we know there is no authority on the point it would certainly seem to be wide enough to encompass a situation where a JES is said to be tainted by some other form of discrimination, such as race discrimination. It would also, in our view, cover situations where results of a JES are being deliberately manipulated by an employer in order to produce certain evaluation results.



Constructive unfair dismissal

49 When dealing with a constructive dismissal claim there are two questions to be considered;

Firstly are the circumstances in Section 95(1)(c) of the ERA met ( i.e. has there been the dismissal) and if so is the dismissal fair or unfair under Section 98 of the ERA.

50 In order to establish that there has been a dismissal the authorities show that the claimant must prove on the balance of probabilities five matters namely: 1. The existence of a relevant express or implied contractual term. 2. There must be a breach of contract on the part of the respondent and this may be either an actual breach or an anticipatory breach. 3. The breach must be sufficiently important (fundamental) to justify the claimant resigning, or else it must be the last in a series of incidents which justify him leaving. 4. He must leave in response to the breach and not for some other unconnected reason. 5. He must not delay too long in terminating the contract in response to the employer's breach otherwise he may be deemed to have affirmed the contract.

51 The term relied on in this case is the implied term of trust and confidence. The House of Lords in **Malik v BCCI [1997] IRLR 462** held that the term was an obligation that:

“The employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.” The implied obligation covers a wide range of situations in which a balance has to be struck between an employer's interests in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited. The burden lies on the employee to prove the breach on a balance of probabilities.

52 In **Hilton v Shiner Ltd Builders Merchants [2001] IRLR 727** the EAT described the words “reasonable and proper cause” as set out in **Malik** as being vital words with which Lord Steyn qualified the test. It was explained thus at paragraph 22: in order to determine whether there has been a breach of the implied term, two matters have to be determined. The first is whether, ignoring their cause, there have been acts which are likely on the face of them seriously to damage or destroy the relationship of trust and confidence between employer and employee. The second is whether that act has no reasonable and proper cause. There is an element of artificiality which must be recognised in dividing the test in this way, because it may be that the act is seen by the employer and employee as so bound up with legitimate reasons for doing it that it is unlikely to damage the relationship of trust and confidence between them, or that, conversely, it is certain to do so. It is not therefore a test to be applied to any set of facts by rote but it is nevertheless an important part of the test to be applied. This was confirmed more recently by the Court of Appeal in **North West Anglia NHS Foundation Trust v Gregg [2019] EWCA Civ 387** in which it was set out

that there were two issues to be considered; whether the employer's actions would seriously undermine the relationship of trust and confidence and, even if so, whether there was reasonable and proper cause for the conduct, paragraph 99.

53 The case of **Woods v WM Car Services ( Peterborough) Ltd [1982] ICR 639** is authority for the proposition that to constitute a breach of the implied term it is not necessary to show that the respondent intended any repudiation of the contract. The tribunal's function is to look at the respondent's conduct as a whole and determine sensibly, reasonably and objectively whether it is such that it would entitle the employee to leave. As the test is an objective one the perceptions of the employee are also not determinative. Even if the employee genuinely but mistakenly views the acts as hurtful and destructive of trust and confidence this is not enough. The act or acts must destroy trust and confidence judged objectively. Of course, whilst almost all breaches of the implied term of trust and confidence are going to amount to unreasonable behaviour, not all unreasonable behaviour amounts to a breach of the implied term.

#### Constructive wrongful dismissal (unpaid notice pay)

54 In such claims it is for the claimant to prove that the respondent was in fundamental breach of contract (in this case asserted to be a breach of the implied term of trust and confidence) and that the claimant has accepted the breach and resigned, with immediate effect, in response.

#### Unlawful deduction from wages

55 Section 13 of the Employment Rights Act 1996, states, in so far as is relevant, as follows:-

“(1) An employer shall not make a deduction from wages of a worker employed by him....

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this part as a deduction made by the employer from the worker's wages on that occasion.”

#### Implied Terms

56 There are two broad categories of implied term; those which are implied in fact and those which are implied in law. A term implied in fact would ordinarily be an individualised term which it is argued can be implied from the particular provisions of an individual's contract when considered against their specific

contextual setting. This is in contrast to terms which are implied by law, which are terms which are inherent in the particular type of contract under consideration, such as the implied duty of mutual trust and confidence. The traditional approach to terms implied as a matter of fact has been to consider whether in the light of the express terms and the facts and background known to the parties at the time the contract was made it can be said that, objectively, the parties would necessarily have agreed to the term had they turned their minds to it and/or it can be presumed that this is what they intended. Both the business efficacy test and the officious bystander test address these questions. It is well established that the proposed term must be reasonable, it must be a term which both parties would have agreed (and the subjective understanding of the parties is irrelevant), and it must not be inconsistent with the express terms of the contract. In the Privy Council case of **BP Refinery (Westernport) Pty Ltd v President, Councillors and Ratepayers of the Shire of Hastings (1977) 52 ALJR 20,[1977] UKPC 13, 26**, Lord Simon explained it thus:

"For a term to be implied, the following conditions (which may overlap) must be satisfied: (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that 'it goes without saying'; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract."

57 Terms may also be implied from the conduct of the parties/custom and practice on the basis that the conduct /custom and practice of the parties is evidence of what the parties must actually be taken to have agreed, see for example **Albion Automotive v Walker [2002] EWCA Civ 946**.

### Submissions

58 Mr Ahmed, for the respondent, provided written submissions and supplemented these with oral submissions. When we read the respondent's written submissions it was evident that the respondent had repeatedly asserted that the claimant had failed to put his case to a witness. On one occasion it was specifically said that it would be unfair to the respondent to make an adverse finding against Mr Ayub because it had never been put that Mr Ayub had manipulated or unfairly changed the job description. We did not entirely agree that the claimant had failed to put his case as the respondent described. Whilst he may not have used the word manipulation for instance, much of the claimant's cross examination in fact focused on the issue of the conduct/influence of My Ayub in the JES process. In any event, we were concerned that the very first time there was any suggestion from the respondent of the claimant having failed to put his case was in closing submissions, particularly as the respondent was represented and the claimant was not. The claimant, as an unrepresented party, would not have known of the need to put his case and, it seemed to us, that if there had been any such omission (which we did not necessarily agree there had been, it seemed to us to be more of a case of different terminology having been

used), the fairest way to remedy this would be to recall the relevant witnesses so the particular point could be put and the witness could be given a chance to comment on it. This would remove any perceived unfairness to the respondent, whilst also balancing this against the need to put the parties on an equal footing where possible. We raised this with Mr Ahmed. He asked for a break to take instructions, which we granted. Following the break Mr Ahmed indicated that the respondent did not wish for witnesses to be recalled and he confirmed that the respondent was prepared to withdraw these points.

59 We summarise only the main points of the respondent's written and oral submissions here. The respondent submitted that, in reality, the claimant considered that his role was a grade 8 or higher, and that this had affected the way the claimant had approached the whole case. He held, it was submitted, an overinflated view of his role. In relation to the unlawful deduction from wages claim it was submitted that there was no express term that the claimant's salary would be determined by the application of a group salary scale applicable to the second respondent's staff. The test for implying a term, it was submitted, was whether it was necessary to give business efficacy to the contract and/or the officious bystander test. The respondent submitted neither of these tests were satisfied. The first and second respondent were completely different legal entities and had never followed the same pay scales.

60 In relation to the constructive unfair dismissal claim we were reminded that it was the claimant's case that four different incidents had cumulatively breached the implied term. The first of these was that Mr Ayub had failed to evaluate the claimant's role in 2016 in accordance with the JES. It was submitted that Mr Ayub was not the person involved in formally grading the role, what Mr Ayub did was intervene to try to ensure that the claimant was remunerated at a higher grade than the evaluation panel had awarded. It was submitted that Mr Ayub was trying to preserve the employment relationship rather than undermine or destroy it. It was further submitted that in any event the claimant had actively accepted the pay rise, making the required adjustments himself on the pay system, and he had done so in March 2016. The claimant had, therefore, affirmed any breach of the implied term.

61 The next two complaints for the purposes of the constructive dismissal claim were that Mr Ayub in 2021 (it was accepted that should be 2020) had devalued the claimant's role by removing elements from the job description and had challenged the grading. It was submitted that as a line manager Mr Ayub had a right and a duty to ensure the job description was correct. Mr Ayub had reasonable and proper cause for acting as he did; the claimant had exaggerated his duties and Mr Ayub wanted the job assessed properly. It was submitted that at its highest all that had happened was that Mr Ayub had changed the claimant's job description without telling him, and that this was insufficient to amount to a breach of the implied term.

62 In relation to the Covid incident it was pointed out that in the agreed facts, prepared for this hearing the claimant had stated that he had already decided to leave the respondent when this incident happened. Moreover, taken at its highest, this was a complaint that when the claimant asked Mr Ayub if the incident would be investigated he said he did not know. At no point did he say that the respondents would not investigate. This was an entirely innocuous act which could not contribute in any way to a breach of the implied term.

63 It was submitted that in any event the claimant had affirmed any breach. The Covid incident aside, the very latest that the claimant knew of the other incidents which he asserted had breached the implied term was 6 May 2021, and yet he did not resign until 28 June 2021. In the meantime he had attended work, accepted payment of his wages, engaged in an informal and formal grievance process, and attended the Eid gathering. It was denied that the disclosure provided under the SAR had given the claimant any additional information about these incidents.

64 In relation to the constructive wrongful dismissal claim it was submitted that it would be for the claimant to prove that there had been a fundamental breach of his contract and that he resigned in response to this. However, even if he could prove this his contract showed that he was only entitled to 9 weeks notice, not the three months the claimant claimed.

65 In relation to the equal pay claim it was submitted that the correct approach is as set out in **Element v Tesco Stores Ltd [2022] EAT 165**. The language of section 80(5) should be applied, and all that is required is for there to be a study undertaken with a view to evaluating jobs in terms of the demands made on a worker under various headings, as per the wording of section 80(5). It is implicit in those words that the study be thorough and analytical, **Bromley**, but the second limb of the **Eaton** test, capable of impartial application, only became relevant if the respondent was seeking to rely on a JES to show that the work of the claimant and the comparator was unequal and section 131(6) was in issue.

66 It was submitted that the respondent's process was thorough in analysis and capable of impartial application. At the time the scheme was first implemented the process required the convening of a panel during which the job description was considered and assessed against the respondent's job evaluation factors. Job descriptions were all assessed in line with the same criteria which were objective and not open to manipulation. The panel had been drawn from different areas of both the first and second respondent and had been trained in how to carry out the evaluation process. Moreover, since 2018 the scheme had been further adapted to ensure fairness in that the evaluation from then on was a two-stage process.

67 In relation to the lack of a formal appeal process it was submitted that the important point was that employees had the right to challenge the job evaluation.

It was submitted that it was clear that there was this right to make this challenge because the claimant himself had challenged his own grading and managed to have it changed. There was also, it was submitted, a formal grievance process which could be utilised, which the claimant in this case had, of course, done. It was suggested that the claimant had not raised any example of a person who was not able to challenge their grading. It was submitted that a formal appeal process was not essential so long as the employee was able to challenge their score.

68 We would add, for the avoidance of doubt, that the respondent did not submit that, when considering whether the respondent has proved that it carried out a JES which met the requirements of Sections 65(4) and 80(5), we should follow the agreed approach which was set out in **Armstrong and ors v Glasgow City Council and ors; McDonald and ors v Glasgow City Council [2017] IRLR 993**, which was also discussed in **Element** see the discussion of paragraphs 114 – 117.

69 It was submitted that there was no evidence that the system under which the evaluations were carried out was discriminatory and nor was there any evidence that the system was otherwise unreliable. It was submitted that there was no evidence that Mr Ayub had manipulated the claimant's job description because, in essence, the claimant had not proved that the changes that Mr Ayub had made to the job description were in any way incorrect. It was the claimant's own updated job description which gave an unrealistic view of the claimant's duties and the demands of his role and all that Mr Ayub did was to amend the claimant's job description to more accurately reflect his responsibilities. It was acknowledged that the claimant's job description remained disputed but it was submitted that this would not make the job evaluation scheme in itself invalid. That would be a factor relevant to whether the claimant had proved that the scheme was otherwise unreliable the respondent suggested. It was submitted it was not something which could be said to make the scheme otherwise unreliable because, on the evidence, Mr Ayub's job description was consistent with what the role actually entailed and therefore an evaluation based on this job description was not unreliable.

70 In relation to the direct race discrimination claims it was submitted that the claimant had no evidence that the people involved in evaluating his role had any knowledge whatsoever of his ethnic background or that if they did it played any part in their assessment. It was submitted that it was inherently unlikely that there was race discrimination given that the first and second respondent comprise multiple staff from many different cultures and backgrounds. It was submitted that in any case the comparators identified by the claimant were not suitable comparators. The reason why they were paid differently to the claimant was that they all worked for a different employer, namely the second respondent, and the second respondent had different pay scales to the first respondent. Additionally,

they all performed very different roles and had their own valuation of these roles done under the job evaluation scheme.

71 The direct race discrimination claims were put against the second respondent on the basis that it had knowingly aided the discrimination of the first respondent. It was submitted that liability could only arise in such circumstances where the individual who is doing the aiding knows that the other party is discriminating, is about to discriminate or is contemplating discriminating. There was no evidence, it was submitted, that discrimination as a probable outcome was within the scope of knowledge of the second respondent.

72 The claimant told us that he wished he had never discovered the pay disparities and that he had never agreed to be treated unfairly. He said that central to all of claims was the respondent's job evaluation scheme. The claimant submitted that he had challenged his pay right from the start. Yet it was not until 2015/2016 that the role was evaluated. Mr Ayub told him verbally that it looked like a grade 5 and he challenged this and asked Mr Ayub to do a provisional scoring. It was not right, he submitted, that he was on the same pay as an HR Adviser employed by the second respondent. Then Mr Ayub told him the role was a grade 6 but gave him the impression that this was the maximum the role would be scored. He knew something was not right. In 2019 he asked for a copy of the evaluation scoring but the respondent refused to provide it. He re-opened the issue again in 2020. When he amended his job description in 2020 he looked at other job descriptions from the second respondent.

73 The role initially scored a grade 7 then but when he confronted Mr Ayub he was told that he (Mr Ayub) had removed elements from the job description such as strategy. The claimant did not know what the effects of this would be. Removing strategy was inappropriate because strategy was in other people's job descriptions. He knew the scoring was not right and that is why he had raised a grievance. It was hard to obtain information and this is why he had made a Data Subject Access request. It was then that he realised that there were no records of the scoring process for either 2012 or 2016. It was also evident from the documents provided under the Data Subject Access Request that feedback/comments/opinions from many people had been sought on the third version of his job description all of which amounted to attempts to devalue the position to a grade 6. It was when he got the information under the Data Subject Access Request that he knew he could no longer work for the first respondent. He was then going to resign on the spot but the grievance was still ongoing and he thought that he should give the respondent the benefit of the doubt to see what the outcome of the grievance would be.

74 He complained that Said Owais had become involved in his job evaluation process and had intervened in the evaluation of his role. He said that this was one of the reasons why he left the respondent's employment.

75 His job description, he submitted, should have been updated and agreed between himself and Mr Ayub. He had always thought the job evaluation scheme was incorrect. Job descriptions were used for evaluation purposes which were not agreed, were inconsistent and overinflated. It was not uncommon for over inflated job descriptions to be submitted in order to achieve a certain grade in the evaluation process. In his case the job evaluation scheme was flawed because the scoring failed to factor in his health and safety responsibilities. The claimant submitted that he was underpaid throughout the course of his employment.

76 The claimant submitted that case law made it clear that a job evaluation scheme needed to be objective, transparent, detailed and fair and the respondent's scheme was very far from this. The claimant submitted that two cases might be of assistance to us; **Brunhoffer v Bank der Osterreichischen Postsparkasse**, a case of the European Court of Justice, and **Calmac Ferries v Wallace**.

77 In relation to the constructive unfair dismissal claim the claimant reminded us that each case is based on its own circumstances and he gave us a list of the case law which he considered to be relevant namely; **Western Excavating v Sharp, Woods v WM Car Services, London Borough of Waltham Forest v Omilaju, Chindove v WM Supermarkets Ltd, Morrell v Safeway Stores and Bournemouth University v Buckland**.

78 In relation to the race discrimination claim the claimant asked us to consider **Hewage v Grampian Healthboard, Shamoon v Chief Constable of the Royal Ulster Constabulary** and **Anya v University of Oxford**. He reminded us that very little discrimination will be overt or even deliberate and that it was therefore necessary to consider background events with care.

79 In relation to the unlawful deduction from wages claim the claimant acknowledged that the second respondent had moved on to different pay scales in 2017 but he asserted that up until that point the two respondents had shared the same pay scales.

## **Conclusions**

### **Race Discrimination**

80 All of the direct race discrimination claims relate to aspects of decisions made under the job evaluation process. We should make it clear from the outset that our decisions as to the reason why the alleged discriminator acted as he or she did and as to whether the circumstances between the claimant and his comparators are the same or not materially different (which as per **Shamoon** in many ways involves a consideration of the same issue) are entirely separate issues from the substantive issues to be considered in the equal pay claim, which include; whether (i) the comparators chosen by the claimant are appropriate



comparators for the purposes of the equal pay claim and (ii) what an independent expert might conclude about whether the roles are of equal value. We have reached no decisions or conclusions about those matters.

Claim 5.2.1; the claimant was graded lower than Zaid Ahmed, Junaid Ahmed, Imran Sadiq and Morshed Alam in the JES because of his race.

81 The claimant's role has, at all material times, been either a grade 5 or a grade 6. It was evaluated as grade 5 in 2013, paragraph 16.52. We do not know who the decision maker was in respect of that evaluation. It was also evaluated at grade 5 by Mr Junaid Ahmed during a desktop evaluation in December 2020, paragraph 16.72. It was evaluated again by Ms Noor Isamil in December 2015, and given a grade 5 in a desktop evaluation, paragraph 16.80 above. The claimant then, of course, became an HR Manager at grade 6 in February 2016, paragraph 16.87. This role was evaluated at grade 6 by Mr Abdikayr Ali in September 2020, again by a desktop evaluation, paragraph 16.124. It was evaluated as a grade 7 role by a panel in October 2020 comprising Shoaib Ahmed, Aflak Suleman and Belinda Ashina, paragraphs 16.127, 16.128 and 16.129, although the results of this evaluation were never implemented nor provided to the claimant. There was a further desktop evaluation in December 2020 by Mr Ali when the role was graded as grade 6, paragraph 16.139, and a panel evaluation in January 2021, the panel comprising Mohamed Imran Sadiq, Mr Ali and Mr Faysul Maruf. The role was graded as grade 6, paragraph 16.144. Of course, we have also found that by the time of the panel evaluation in 2021 there were a significant number of other people involved in the grading decision (Mr Ayub, Mr Shoaib Ahmed, Mr Syed Owais Ahmed and Mr Haghamed), with the respondent intent on ensuring that the role was graded as grade 6, because that is what was thought to be right on a subjective, felt fair basis, paragraph 16.146.

82 The comparators roles have been graded under the JES as follows; Zaid Ahmed, HR Manager and on site Therapist, grade 7, paragraph 16.181, Junaid Ahmed, HR and Corporate Services Lead, grade 7 and then Head of Corporate Services, grade 8, paragraph 16.182, Mohamed Imran Sadiq, HRBP Grade 6 and from 2019 Senior HRBP, grade 7, paragraph 16.184, and Morshed Alam Waqf Programme Manager grade 5 and then from January 2019 grade 6, paragraph 16.186. As to the race of these people; Zaid Ahmed describes himself as British Pakistani, Junaid Ahmed as Asian Bangladeshi, Mohamed Imran Sadiq as British Pakistani and we were told that Mr Alam is "Asian" (not a term that we would choose to use, but one that was adopted by the parties).

83 It follows from this that the claimant has proved that his role was graded lower than that of his comparators, aside that is from Mr Alam and, pre-2019, Mr Sadiq. But in order to be influenced by the claimant's race, consciously or subconsciously, the claimant would have needed to have proved that those people responsible for evaluating his role and/or responsible for deciding upon

his grading knew that the claimant was Amazigh, or Moroccan. We should make clear that, for these purposes, we considered that it would be sufficiently close to the pleaded issues for the claimant to have proved that the evaluators/decision makers knew he was Moroccan as opposed to Amazigh. Whilst the claimant identified himself as Amazigh when the judge asked him how he described himself at the case management hearing, we do not think it can sensibly be said that the claimant intended to restrict his race claim to this descriptor alone, before us he also used the terms Berber and Moroccan. In fairness to the respondents they did not seek to suggest that the claimant's claim was limited in this way.

84 In relation to those involved in the formal evaluation process, the job score sheets and job descriptions were sent through to the evaluators on an anonymous basis. However, the job title of the role and the division it sat in was included on the job score sheet, paragraph 16.10. Accordingly, in the claimant's case, his job score sheet identified the role as (in the beginning) HR and Health and Safety Officer and after that HR and Health and Safety Manager. The division was identified as TIC, paragraphs, 16.72, 16.80, 16.126 and 16.138. As the claimant was the only HR and Health and Safety Officer/Manager not just in the first respondent but, as we understand it, the second respondent also, we infer and find that more likely than not the evaluators knew that they were evaluating the claimant. However, put simply, there was no evidence whatsoever that any of the evaluators knew that the claimant was Amazigh (or Moroccan), and we have therefore found as a fact that they did not have the required knowledge, paragraph 16.189. It follows that any claim against these individuals must fail.

85 The other decision makers who became involved in the grading issue were Mr Ayub, Mr Shoaib Ahmed, Mr Syed Owais Ahmed and Mr Haghamed. We have not found that Mr Shoaib Ahmed, Mr Syed Owais Ahmad and Mr Haghamed had any knowledge of the fact that the claimant is Amazigh, or Moroccan, paragraphs 16.131 and 16.189. Mr Ayub, we have found, did not know that the claimant was Amazigh but he did know he was Moroccan, paragraph 16.189. We considered that to be sufficient knowledge for the purposes of this claim, as we have already set out.

86 It was Mr Ayub who, on our findings, was one of the principal decision makers in respect of the claimant's grading from December 2015 onwards. He lobbied for a grade 6 from late 2015 onwards, paragraph 16.85, and achieved this in February 2016, paragraph 16.87. By October 2020 he was re-drafting the claimant's job description, paragraph 16.133, escalating the grade 7 evaluation result to Mr Syed Owais Ahmed, paragraph 16.130, and obtaining his agreement that the claimant should be grade 6, paragraph 16.131. On our findings, this culminated in the job evaluation result being manipulated to achieve his desired outcome, paragraph 16.146.

87 We concluded that the claimant had not proved facts from which we could conclude that Mr Ayub viewed/lobbied for/decided that the claimant's role should be a grade 6 because of the claimant's race. Indeed, it was striking that when asked in cross-examination why he believed his grading was because of his race the claimant's response was that "he did not know what else it could be". He was not, in other words, able to point to anything specific.

88 The claimant has not, we concluded, proved that Junaid Ahmed, Zaid Ahmed and Mohamed Imran Sadiq were in the same material circumstances as him. In particular, Mr Ayub was not a grading decision maker in respect of any of these comparators.

89 In any event, the comparators were employed by a different employer and had different tasks and responsibilities to the claimant. Junaid Ahmed, on the face of it, clearly had a more senior role to that of the claimant, managing a total of 20 people, with budgetary responsibility for a budget of £1.2M and a remit that stretched across HR, IT, facilities, procurement and accounts, paragraph 16.183. Zaid Ahmed had line management responsibility for between 3 to 4 HR service coordinators and officers. He had responsibility for matters which stretched far outside the UK, such as global screening, had some budgetary responsibility, oversaw the job evaluation process and stood in for the Head of HR where necessary, paragraph 16.180. Mohamed Imran Sadiq had line management responsibility for two HR advisers, input into budget decisions, was required to provide expert HR advice including employment law advice and had a small HR unit to run, paragraph 16.185.

90 We have found that the respondents considered that matters such as line management responsibilities, budgetary responsibilities, strategic responsibilities, and the extent of any global remit were important considerations when it came to the grading of a role, paragraph 16.188. Whether the respondents were correct in that view from an equal value perspective is not to the point for the purposes of this analysis. Accepting as we do that, when it came to decisions on grading, these were important elements of the roles in the respondents view, this means that the claimant has not proved that the circumstances between the claimant and his comparators were the same or not materially different for the purposes of the race discrimination claim.

91 The comparator for the purposes of this claim would, we conclude, be someone who was not Moroccan who reported into Mr Ayub, who carried out a stand-alone role working for the first respondent as an HR Manager with sole responsibility for HR and health and safety matters and additional responsibilities for overseeing the administration of payroll and pensions. There were no facts from which we could conclude that the claimant was treated less favourably than this comparator because of race but even had the burden of proof moved across to the respondent we would have concluded that the respondent had proved that the reason why Mr Ayub decided the claimant's role was grade 6 was because

(rightly or wrongly from an equal pay perspective) he genuinely thought this was the correct grade for the role. All of the contemporaneous documentation supported and corroborated Mr Ayub's oral evidence on this issue. His oral evidence on this issue, moreover, was consistent and delivered in a compelling manner. Additionally, it requires to be remembered that in the early days Mr Ayub intervened, persistently, to *increase* the claimant's grading from grade 5 to grade 6, and he did so in the face of resistance from the evaluators who remained firm in their view the role was a grade 5, paragraphs 16.84, 16.85 and 16.86. Had the claimant's race been a motivating factor, consciously or subconsciously, in Mr Ayub's grading decisions, then surely he would not have done this. This (Mr Ayub's genuine belief that the correct grade for the role was grade 6), is a complete explanation that is in no sense whatsoever because of race. Accordingly, this claim fails.

Claim 5.2: Mr Naser Haghamed devalued the claimant's role in the 2012/2013 JES.

92 Very little evidence was led by either party in relation to the evaluation of the claimant's role in 2013. The claimant, in fact, did not provide any evidence in relation to this complaint. He simply asserted (in his chronology) that his role had been devalued without explaining what it was exactly that Mr Haghamed was meant to have done. In the circumstances, we have accepted the evidence of Mr Haghamed and found as a fact that he had no involvement in the 2012/2013 job evaluation process, he simply confirmed the results to the claimant, as the claimant's line manager, once the evaluation had been done, paragraph 16.52 above. It follows from this that this complaint fails on the facts.

Claim 5.3: Mr A Ayub challenged the claimant's job evaluation in 2020 – 2021.

93 On our findings, this complaint is factually accurate. Mr Ayub was unhappy that the claimant's role was graded at grade 7 and he raised this with Syed Owais Ahmad, paragraph 16.130. He then re-wrote the job description and arranged for it to be evaluated again.

94 To the extent that Zaid Ahmed, Junaid Ahmed, Mohamed Imran Sadiq and Morshed Alam were relied upon by the claimant as statutory comparators for the purposes of this claim we concluded that they were not such comparators. All of these people were in materially different situations to the claimant. None of them were managed by Mr Ayub, and, so far as we know, none were ever in a situation where their line manager was of the view that the job evaluation process for their role had produced the "wrong" result. For the same reason, we did not consider that a comparison with how they were treated versus how the claimant was treated carried any significant evidential weight.

95 As we have already set out, Mr Ayub did not know, on our findings, that the claimant identified as Amazigh, but he did know that the claimant identified as

Moroccan, which we considered to be sufficient knowledge for the purposes of this claim. The comparator for the purposes of this claim would be someone who was not Moroccan, for whom Mr Ayub had line management responsibility, and in respect of whom Mr Ayub considered the job evaluation process had produced the wrong result. There were no facts from which we could conclude that the claimant was treated less favourably than this comparator because of race but even had the burden of proof moved across to the respondent we would have concluded that the respondent had proved that the reason why Mr Ayub challenged the 2020/2021 result is because he thought a grade 7 was too high for the role, and was based on a job description that the claimant had submitted for evaluation that was overinflated.

96 What was striking about this explanation was that there was a significant amount of internal contemporaneous documentation, which was written at a time when the respondent would have had no inkling that it might ever see the light of day, and more particularly be pored over by a tribunal, which supported that this was Mr Ayub's rationale for his intervention. For example, there was the email between Mr Zaid Ahmed and Mr Haghamed sent on 27 November in which it was written that the claimant's role had come back as grade 7 but Mr Ayub felt that was too high as it was a supportive role and not strategic, paragraph 16.135. And Ms Rafiq's email to Shoaib Ahmed on 16 December in which it was written that *the* line manager had clarified that the role was solely a supportive/operational one with no strategic involvement from the role holder only advice and implementation of HR and Health and Safety, paragraph 16.136. There were also emails from Mr Ayub himself, for example Mr Ayub to Ms Rafiq on 27 November saying that he had gone through the job description and made some changes, "can I add this is an operational/advisory role and definitely not a strategic", paragraph 16.134. We take into account also in reaching this conclusion that, on our findings, the job description written by the claimant did *not* accurately reflect the claimant's role because it included tasks/responsibilities which the claimant did not in fact have/do, paragraph 16.105. In such circumstances it is unsurprising that Mr Ayub challenged the result. Further support for Mr Ayub's explanation was also provided, in our view, by his intervention in late 2015/early 2016 in which he sought to increase the claimant's grade from a 5 to a 6, paragraphs 16.84, 16.85 and 16.86. What this demonstrated is that he intervened *both* when he thought the grading was too high and when he thought it was too low. That was consistent in our view with the reason for his intervention being his (rather fixed) view of the "right" grading for the role, as opposed to the reason being race. For these reasons we concluded that the respondent had proved a complete explanation that is in no sense whatsoever because of race.

Claim 5.4: The claimant was paid less than his comparators between 2012 – 2021.

97 This was not, as we understood it, a complaint about which salary step people were placed on *within* grades - that was a separate decision making process which was not the focus of this case at all.

98 There was very little evidence led by either the claimant or the respondents about rates of pay for particular individuals at particular points in time. We do not know what the claimant earned throughout the period in question; we simply know what he was earning at various points in time, and we certainly do not know what the comparators were earning, apart from Mr Alam in 2018.

99 Doing the best we can on the evidence that was put before us, the claimant, on grade 6, was earning £33,771 when he left the respondent. Mr Alam was grade 5 initially but became grade 6 in 2019. He was likely then on the second respondent's Funding and Marketing payscale, the bottom of which was £34,920. The other comparators were all at least grade 7 (from 2019 onwards in respect of Mohamed Imran Sadiq). The starting point for grade 7 was slightly variable across the different functional pay scales (which applied from 2018 onwards) but all were around £40,000 - £41,000 and grade 7 step 1 on the L and D pay scale was £40,955, paragraph 16.30. We have found that each of these comparators was paid in accordance with these pay scales from 2018, paragraphs 16.181, 16.182, 16.184 and 16.186 Accordingly, whilst we do not know the actual earnings figures, it can be seen from this that the claimant has proved that he was earning less than these individuals, at the very least from 2018 onwards, or 2019 onwards in respect of Mr Alam and Mr Sadiq.

100 Neither the claimant nor the respondent sought to identify a relevant decision maker for us. Again, doing the best that we can, it would appear that it was the claimant's line manager, Mr Ayub, who principally was involved in decisions around the claimant's pay. As we have set out above he knew that the claimant identified as Moroccan.

101 We concluded that Zaid Ahmed, Junaid Ahmed, Mohamed Imran Sadiq and Morshed Alam were not statutory comparators. These individuals were not in the same material circumstances as the claimant. They had a different employer, and consequently were remunerated on different pay scales, had different line managers, and in the respondent's view they carried out roles substantially different to that of the claimant, and consequently received higher grades (Mr Alam aside) under the job evaluation process. For the same reasons we did not consider them to be evidential comparators.

102 The comparator would, in our view, be someone who was not Moroccan who was employed by R1, who reported into Mr Ayub, who carried out a role similar to that done by the claimant, whose role Mr Ayub genuinely believed was a grade 6, and whose role had received the same grading as the claimant under the job evaluation process.

103 There were no facts from which we could conclude that the claimant was treated less favourably than this comparator because of race but even had the burden of proof moved across to the respondent we would have concluded that the respondent had proved that the reason why the claimant was paid as he was was because he was paid at the rate of pay applicable to a grade 5 and then a grade 6 role under the first respondent's pay scales having been evaluated and/or placed on these grades because the respondent considered that to be the right grading for the role. This is a complete explanation that is in no sense whatsoever because of race, and accordingly this claim fails.

104 It follows that as all of the direct race discrimination claims have failed against R1 it cannot be said that R2 knowingly helped R1 to do something which contravenes Part 5 of the Equality Act, and accordingly the claims against the second respondent are also dismissed.

#### The Equal Pay claim

105 The first question for us to consider was whether the respondents had proved that they had carried out a study that valued the jobs of each worker covered by that study in terms of the demands made on the worker under various headings. Implicit within this, as set out above, is that the respondents must be able to show that the study was thorough in its analysis, i.e. analytical and rigorous.

106 Much of the initial scheme adopted by the respondents was compliant, in our view, with this definition. Job evaluation factors were identified, such as planning and managing resources and decision-making, paragraph 16.8. The factors adopted were clearly designed to assess the demands made on workers under various headings. Each factor was then subdivided into a minimum of five, or maximum of seven, levels and each level was given its own definition, paragraph 16.8. This type of structured factor plan enabled there to be, at least in theory, a rigorous assessment of a variety of different roles against the factor plan, and the factor level definitions sought to achieve consistency across evaluations. A marking process was adopted, paragraph 16.9, and a grade profile was developed, paragraph 16.11, to enable total marks to be mapped across to a grade. Job score sheets were produced, paragraph 16.10, which would have served both as an aid to an evaluator to ensure that they were applying the system properly and a record of the evaluation decisions made. A job evaluation panel was appointed, paragraph 16.15, drawn from a variety of roles across the two respondents. Evaluators were trained on how to evaluate roles, paragraph 16.34. Whilst some roles went through to a desktop assessment by a single person, paragraph 16.14, others did go through for assessment by a panel of between three and five people, at least initially, paragraph 16.16, which became a panel of between two and three people from 2018 onwards, paragraph

16.91. These are all elements of a study that does, indeed, value the jobs of workers on the basis of demands made on the worker under various headings.

107 However, we find and conclude that there were defects in the process adopted by the respondents. In broad terms these defects, in our view, fall into three different categories; the respondent's use of job descriptions, the failure to provide a right of appeal and management manipulation/intervention in relation to the job evaluation results.

### Job descriptions

108 A job evaluation system is only as good as the information that is fed into it. Here, what the respondents used to evaluate the roles were the job descriptions. The JES adopted by the respondents required that job descriptions provide a clear and comprehensive picture of the job and should be written by the line manager and the job holder and agreed and signed by both the job holder and the line manager, paragraph 16.32. Yet, on our findings, the job descriptions used often did not provide a clear and comprehensive picture of the job and neither were they agreed between the line manager and the role holder. To the contrary, the job descriptions at best were often inaccurate and at worst were disputed. There was never, for example, any attempt made by the first respondent to agree the claimant's job description with him, paragraph 16.33. His job description, of course, became a matter of significant contention between the claimant and his line manager, Mr Ayub. The claimant did not agree the job description written by Mr Ayub, and Mr Ayub did not agree the job description written by the claimant, paragraphs 16.132 and 16.149 – 16.151. There were no actual attempts made by the respondents to resolve this dispute; rather than seek to agree with the claimant a job description which was an accurate reflection of the role all that happened when the dispute arose was that Mr Ayub, without telling the claimant that he was doing this, re-drafted the job description and submitted his draft for evaluation, paragraphs 16.132 and 16.133.

109 This was not a situation that was peculiar to the claimant, moreover. Inaccurate job descriptions appeared to be something of a common issue, paragraph 16.177. We know that Mr Abdo's job description went forward to evaluation without an important part of his role, European responsibilities, having been added into the job description, paragraph 16.55. Mr Ayub chose to deal with that at the time by increasing Mr Abdo's salary by putting him up two steps within the grade, but this, nevertheless, was an important part of the role that had not been captured within the job description. Mr Shaibi's job description had to be re-drafted and re-submitted, paragraph 16.94. The same also happened to the job description for the role of Business Development Manager, paragraphs 16.176 and 16.177. On our findings, therefore, job descriptions were often (at best) inaccurate and, in the claimant's case, was actively disputed.



110 It is difficult to see how a job evaluation process can be considered to be thorough and rigorous when the evaluations are carried out on the basis of inaccurate, incomplete and on occasion disputed information which has not been agreed between the line manager and the role holder. This is all the more so given that the failure to agree job descriptions was in breach of the respondent's own process. Indeed, even the second respondent's grievance outcome provides support for this conclusion. In what was an admirably objective decision, Mr Chahtane concluded that an agreed job description should have been submitted to the evaluation panel and that as this had not happened a fair and inclusive process had not been followed. He concluded there was an urgent need for the first respondent to strengthen HR processes and procedures in relation to job evaluation and he concluded that a true representation of the claimant's work needed to be "mapped", paragraph 16.171.

### Lack of Appeal

111 This defect, however, is made worse in our view by the fact that there is, at least on our findings, no right of appeal for employees in relation to job evaluation results, paragraphs 16.19 and 16.20. At most employees might be able to ask for a re-evaluation, if their line manager agreed to this, paragraph 16.20. That is very far from an effective right of appeal which, as we set out above, in our view would entail (i) an employee having a right to choose if they wanted to appeal and (ii) an employee being given information as to how their role had been evaluated in order that they could challenge the decisions made. Here, of course, there was a policy of not disclosing any information to employees about how their role had been evaluated, paragraphs 16.18 and 16.97. And the only gateway through which an evaluation could be challenged was via the individual's line manager, paragraph 16.20.

112 It may have been that one or other of these defects on their own would not have been sufficient to lead to a conclusion that the respondents had not proved that the job evaluation study was thorough in its analysis, and thus met the definition set out in Sections 65(4) and 80(5) of the Equality Act. But taken together both the beginning and the end of the process are flawed, and each flaw aggravates the seriousness of the other. What we mean by this is that if, as was the case here, there was a significant risk that the information fed into the evaluators was wrong/incomplete/disputed it can readily be seen that it might be more important, in order to make a job evaluation process thorough, that employees have an effective right of appeal against decisions made. Conversely, if the information fed into the evaluation process was accurate and agreed between the role holder and line manager this might make it less important that there is an effective right of appeal.

113 Then there is the fact that, on our findings, there has been regular management intervention in the job evaluation results, see for example paragraphs 16.76, 16.85, 16.94, 16.130, 16.131 and 16.135.

114 Moreover, certainly by 2018, the amount of management intervention in the process was extensive. This was the point at which the respondents made changes to the original scheme, without taking advice from a job evaluation expert, paragraph 16.91. By this point (if not earlier) the job evaluation panel had the option of calling the line manager to finalise scoring, results were not to be communicated to the role holder until the result had been approved by a director and where the panel and the line manager did not agree the matter was to be escalated to the CEO to make a decision based on business need, paragraph 16.93.

115 We should make it clear that we did not consider that management intervention by and of itself would necessarily mean that a job evaluation scheme is not thorough in its analysis. Indeed, given that job evaluation is necessarily something of a blunt tool, a defined process for managers to intervene when they consider an anomaly has occurred might be part of a “valid” job evaluation scheme.

116 But here there was no defined process for management intervention, whether that be intervention by line managers or directors. There were no parameters set for when managers/ directors could intervene or how they could intervene. There was no process to be followed when they did intervene, paragraph 16.93. There was no transparency over management intervention; certainly in the claimant’s case he was, initially at least, completely unaware that Mr Ayub was involved in his job evaluation and he was totally unaware that Mr Syed Owais Ahmed and Mr Haghamed were also involved, paragraph 16.147. There was no auditing or record keeping of management decisions made, paragraph 16.93. Additionally, the amount of intervention in results was clearly extensive; by 2018 *every single* job evaluation result required director approval, paragraph 16.93.

117 Additionally, when there was a dispute between the line manager and the job evaluation panel a decision would be taken by the CEO based on business need, paragraph 16.93. What we have inferred was meant by business need was that a decision would be made about the grade for a role on the basis of factors such as what it was felt could be afforded or how key the individual in role was considered to be to the business, paragraph 16.93. Either way, this introduced opaque decision-making which was not based on rigorous factors but on the subjective opinion of the CEO taking into account factors which were extraneous to the job evaluation scheme. Indeed, it might be said that this type of decision making is precisely what a job evaluation study seeks to avoid.

118 For these reasons, we conclude, the respondents approach introduced a significant degree of subjectivity into the process and, it follows from this, the process lacked rigour. That is another factor which leads us to the conclusion that the respondent has not proved that the job evaluation study met the

definition set out in Sections 65(4) and 80(5) of the Equality Act. We deal with the issue of the manipulation of the job evaluation process to ensure it produces a certain result below, when we consider if the claimant has proved the JES was otherwise unreliable.

Reasonable grounds for suspecting that the evaluation contained in the study is otherwise unreliable.

119 It was not the claimant's case that the evaluation was based on a system that discriminates because of sex; it was his case that there were reasonable grounds for suspecting that the evaluation contained in the study was otherwise unreliable because (i) it was tainted by race discrimination and (ii) the results of evaluations were both based on unreliable job descriptions and manipulated by managers.

120 As we have set out above, the claimant's claims of race discrimination have failed and it is these that formed the basis of the claimant's assertion that the study was tainted by race discrimination. Accordingly, we conclude the claimant has not proved that there were reasonable grounds for suspecting that the evaluation contained in the study was otherwise unreliable because it was tainted by race discrimination.

121 However, as we have already set out above, he has proved that the job descriptions which were used for job evaluation purposes were often incomplete, inaccurate and, in his case, contested. Given that, so far as we know, job descriptions were the only source of information for evaluators about roles up until 2018, and remained one of the primary sources of information after this date, we concluded that by and of itself that finding alone was sufficient for the claimant to have proved reasonable grounds for suspecting the evaluation was otherwise unreliable.

122 But our analysis does not stop there. As we have already highlighted, by 2018 every single job evaluation result required director approval, paragraph 16.93. It follows from the fact that director approval was required that directors could override the results of the job evaluation study, if they wished to do so and thus change the result of each evaluation (i.e. manipulate the result), paragraph 16.93.

123 Likewise the CEO could also override the results of the job evaluation study, paragraph 16.93. This introduced a further layer of decision making whereby the grade for the job could be changed (manipulated) from the original job evaluation result

124 Matters do not stop there, however. On our findings the respondent was not just operating a process whereby managers/directors/the CEO might intervene reactively once a job evaluation result was known. On occasion the job

evaluation study was completely bypassed. This happened to the claimant in early 2016. He was given a grade 6 and a new role of HR Manager without that role ever having been evaluated. Moreover, and significantly, we have found as a fact that the respondents controlled the claimant's second job evaluation process in 2020 in order to make sure that the outcome of that process was a grade that, subjectively, the respondents thought felt fair for the role, paragraph 16.146. This was not just, therefore, a managerial reaction to a decision made by the job evaluation panel, it was manipulation of the entire process in order to produce a particular felt fair outcome.

125 Closely linked to this there were significant anomalies in the respondent's various 2020 evaluations of the claimant's role. In the September 2020 desktop evaluation key responsibilities of the role (at least as set out in the job description) did not appear to have been taken into account in the evaluation, paragraph 16.126. In the December 2020 desktop evaluation key responsibilities of the role which had been removed from the job description remained in the job score evaluation sheets, paragraph 16.142 and the same happened in relation to the panel evaluation, paragraph 16.144. The respondent was unable to explain any of this, as we have already set out. Most strikingly the first desktop evaluation based on the claimant's (overinflated) job description awarded a total mark of 230 to the role, paragraph 16.124, whereas the second desktop evaluation based on My Ayub's version of the job description gave the role a *higher* score of 250, paragraph 16.139. Of course, as we have already commented, this most likely was all symptomatic of the respondent manipulating (on our findings) the process to achieve a felt fair outcome, but these anomalies alone would likely have been sufficient, in our view, for the claimant to have proved reasonable grounds for suspecting that the evaluation contained in the study was otherwise unreliable.

126 The respondent submitted that there was no manipulation of the process because all that the respondent was seeking to do, when Mr Ayub changed the job description and re-submitted it, was to ensure that an accurate job description for the claimant's role went forward to evaluation. The respondent submitted that if we were to find that the elements taken away by Mr Ayub were correctly removed then, given that what was left was drafted by the claimant, the job description must have been a clear, accurate and comprehensive description of the tasks and responsibilities of the role.

127 There are a number of points to be made about these submissions. Firstly, whilst we have found that the elements that Mr Ayub removed from the job description were correctly removed, paragraph 16.133, we have not found as a fact that an accurate job description then went forward for evaluation. There was a great deal of emphasis during this hearing, because of the nature of the preliminary issue that we were determining for equal pay purposes, on what the claimant did *not* do but only very limited evidence about what he *did do*. That is

why we say at paragraph 16.133 that we simply do not know whether the job description was accurate or not.

128 In any event, even if we were to assume that the job description was accurate, we did not agree with the respondent's submission that it would follow from this that there was no manipulation of the job evaluation process. That would depend on whether the job evaluation process was then properly applied to the job description by using the factor plan to assess the demands of the role and reach independent decisions about this. In this case, on our findings, this did not happen. On our findings the decision had been made before the evaluation that this would be a grade 6 role and the process was set up to achieve that, paragraph 16.146.

129 For all of these reasons we concluded that the claimant had proved that there are reasonable grounds to suspect that the JES was otherwise unreliable.

### Constructive dismissal

#### In 2016 Azher Ayub failed to evaluate the claimant's role in accordance with the JES (which the claimant found out about in June 2021)

130 This complaint was about Mr Ayub's intervention in 2016. It is factually correct, on our findings, that Mr Ayub failed to evaluate the claimant's role in accordance with the respondent's job evaluation scheme. What he did, on our findings, was carry out an informal "felt fair" type of assessment, paragraph 16.77. We concluded that this was not conduct which, judged objectively, could be said to be calculated or likely to destroy or seriously damage the relationship of trust and confidence because, on our findings, (i) Mr Ayub was not one of those involved in the formal job evaluation which was taking place at around that time, nor should he have been as the claimant's line manager. As we have set out above it would have been a breach of the respondent's job evaluation process for a line manager to formally evaluate a direct report's role, paragraph 16.15. And (ii), importantly, it was the claimant who asked Mr Ayub to carry out a provisional exercise to score the role himself, paragraph 16.74. Carrying out an informal evaluation of the role *at the claimant's request* cannot possibly be said, in our view, to be conduct which is calculated or likely to destroy or seriously damage the relationship of trust and confidence.

131 We would add, that what we think, in reality, the claimant wished to complain about here was, in fact, that when Mr Ayub carried out his rough and ready assessment he assessed the claimant's role as being a grade 6, whereas the claimant considered his assessment should have been higher. But that was significantly different from the complaint that was set out on the list of issues; it required analysis of a completely different issue; whether Mr Ayub carried out an informal assessment, why he did so and whether that breached the implied term, versus why he reached the result that he did, and whether the result of the

assessment breached the implied term. Accordingly, that complaint cannot be said to fall within the agreed list of issues.

132 Nor was such a complaint contained within the claimant's claim form. What the claimant said about this in his claim form was that having initially, as the claimant put it, declined the offer of a grade 6 from Mr Ayub he was then given the impression by Mr Ayub that he would never achieve above a grade 6 and so he felt he had no option but to accept and he clearly remembered being relieved to at least no longer be on the same grade as the administrative officer, factory supervisor and a factory worker, paragraph 32 of the particulars of claim. For these reasons, to the extent that the claimant in fact wished to complain about the result of Mr Ayub's evaluation/assessment, we did not consider that this was an issue that fell within the parameters of what we were required to determine.

In 2021 Azher Ayub devalued the claimant's job role by removing elements from the job description before submitting it for job evaluation.

133 This complaint is, essentially, factually correct. Mr Ayub did remove elements from the job description before submitting it for evaluation, paragraph 16.132, and removing these elements had the effect of devaluing the claimant's role, in the sense that some of the important tasks and responsibilities were taken out.

134 Shorn of any context we would readily accept that removing important elements from a direct report's job description before it is submitted for job evaluation could be conducted, judged objectively, which is calculated or likely to destroy or seriously damage the relationship of trust and confidence. But these words are qualified, as set out above, by the words "reasonable and proper cause". If an act is likely on the face of it to breach trust and confidence it is necessary to consider whether the respondent had reasonable and proper cause for acting as it did. The claimant's complaint here is about the *removal* of elements from the third version of the job description, it is not about anything else. We have found that this version of the job description, drafted by the claimant, was not an accurate reflection of the claimant's role because it included tasks/responsibilities which the claimant did not in fact have/do, paragraph 16.105. We have found that the elements that were removed from the job description by Mr Ayub were correctly removed, in the sense that he removed descriptions of tasks and responsibilities that the claimant did not in fact have, paragraph 16.133. It is clearly, in our view, reasonable to remove elements from a job description so that it does not go forward to an evaluation containing inaccuracies, and for these reasons we conclude that, judged objectively, the respondent had reasonable and proper cause for acting as it did in making those changes.

In 2021 Azher Ayub challenged the grading of the claimant's role under the JES.

135 This complaint is factually correct. Mr Ayub challenged the grade 7 evaluation result, which was, of course, based on the claimant's inaccurate job description, paragraphs 16.130 and 16.132. He raised the grading with Syed Owais Ahmad, paragraph 16.130, rewrote the claimant's job description removing elements he thought overinflated the role, paragraph 16.132, and arranged for the role to be evaluated again, paragraph 16.134. There is, of course, very significant overlap between this complaint and the complaint set out above.

136 Once again, shorn of any context, we would readily accept that challenging the results of a job evaluation in this way could be conduct, judged objectively, which is calculated or likely to destroy or seriously damage the relationship of trust and confidence. However, the job evaluation result that Mr Ayub challenged was based on the inaccurate job description that had been drafted by the claimant. For the reasons set out at paragraph 132 above, we concluded that, judged objectively, the respondent had reasonable and proper cause for acting as it did in this regard.

137 Of course, on our findings, this having happened the respondent then manipulated the second evaluation process that took place in order to make sure it achieved the result the respondent, and Mr Ayub and Mr Owais in particular, thought, on a subjective "felt fair" basis, was correct for the role (i.e. grade 6). But whilst manipulation of the job evaluation results was an issue raised by the claimant in the context of his equal pay claim, it was not raised as an issue on the list of issues in the context of the constructive unfair dismissal claim.

138 Moreover, the complaint as set out in the list of issues was consistent with what the claimant had written in his claim form about his constructive dismissal claim. What the claimant said about Mr Ayub's conduct in his particulars of claim in the section dealing with constructive dismissal was that he had bypassed the evaluation system (a reference to what happened in 2016 as we understood it), made false and subjective comments ( a reference to Mr Ayub describing the role as operational and advisory, as we understood it), he had removed strategic words from his job description without his knowledge and returned the JD for evaluation because it had come back too high in Mr Ayub's opinion, page 27. For these reasons, for the purposes of this complaint, we considered it right to confine ourselves to considering Mr Ayub's challenge to the (grade 7) grading of the claimant's role, as set out in the list of issues.

Failed to investigate/ indicated that it was not going to investigate the social gathering of 20 May 2021.

139 The second part of this complaint, on our findings, is factually inaccurate. Mr Ayub did not tell the claimant the respondents were not going to investigate

the social gathering; when he was asked whether there was going to be an investigation he responded that he did not know, paragraph 16.167 above.

140 The first part of this complaint is factually accurate; on our findings there was a failure to carry out an investigation, paragraph 16.168 above. We concluded that, judged objectively, this was not conduct that could be said to be calculated or likely to destroy or seriously damage the relationship of trust and confidence. The claimant (the first respondent's health and safety officer) had not suggested that there should be an investigation, nor had anyone else. The respondents had, in any event, already publicly admitted that they had got things wrong and failed to follow the social distancing requirements, an apology had been provided and assurances were given about staff safety, paragraph 16.166. It might be said that in an ideal world there should have been an investigation to identify how such a large-scale gathering could have been organised whilst restrictions still applied and to consider whether disciplinary action should have been taken in respect of those who made the decision to have the gathering. That said, on the facts of this case, the failure to investigate is conduct which, in our view, judged objectively, falls short of conduct that could be said to breach the implied term. It might be considered to be unreasonable or blasé conduct, but it is not serious enough, judged objectively, by and of itself to breach the implied term.

#### Constructive wrongful dismissal (unpaid notice pay)

141 For the purposes of this claim the claimant needs to prove (i) that the first respondent was in fundamental breach of contract and (ii) that he accepted the breach and resigned, with immediate effect, in response. As we have set out at paragraphs 130 - 140 above, the claimant has not proved that the respondent was in fundamental breach of contract, and accordingly this claim fails.

#### Unlawful deduction from wages

142 It was a little difficult to understand the basis on which the claimant was pursuing this claim. As we understood it, the claimant asserted that he should have received an increase in his salary in 2017/2018 when the second respondent's employees received pay rises as a result of the second respondent making changes to its pay scales. It is factually correct that in 2017 the second respondent reviewed its pay scales and then in 2018 updated them, leading to most members of staff receiving a pay increase, paragraphs 16.29 and 16.30.

143 The claimant accepted that changes were not made to the first respondent pay scales at this time. His argument appeared to be that changes should have been made to the first respondent's pay scales because, up until that point, the first respondent and second respondent had used the same pay scale, or at least ones that were broadly similar. That said, as the hearing progressed, his complaint became that as the first respondent had initially been on the same pay



scales as the second respondent then when the second respondent introduced new pay scales the first respondent should have been consulted about this.

144 In the language of the statute the question to be asked is what amount of wages paid on any occasion by the employer to the claimant were properly payable to the claimant. We did not understand it to be disputed that in order for the second respondent's (more generous) 2018 (and onwards) pay scales to be applied to the claimant he would have had to have shown either that there was an express term (verbal or written) of his contract that his pay would be determined by way of the second respondent's pay scales or that such a term could be implied.

145 We have found as a fact that it was not an express term of the claimant's contract that his salary would match or follow the pay scales of the second respondent, paragraph 16.41. Indeed, the claimant accepted in cross examination that there was no express term of his contract to this effect; he accepted it had never been said or written that his pay would be determined under the second respondent's pay scales.

146 Accordingly, the dispute between the parties centred on whether such a term could be implied. As we have set out above, what in broad terms we understood the claimant to be saying is that because the first and second respondent had, up until 2017/2018, operated the same pay scale there was an implied term that this would continue to be the case after the second respondent made changes to its pay scales in 2018.

147 However, on our findings of fact, the first and second respondent have never operated the same pay scales. The structure of the pay scales was fundamentally different; the second respondent operated an 11 grade 6 step process, paragraph 16.22, whereas the first respondent operated a 10 grade 11 step process, paragraph 16.24.

148 Additionally, whilst there was undoubtedly a great deal of similarity between some of *the figures* on the first and second respondents pay scales pre-2018, there were many examples of differences. For example, as we set out at paragraphs 16.24 and 16.25, for the first respondent in 2013 the scales for Grade 5 were; £27,258 for step one, £28,715 for step two, £29,339 for step three, £29,964 for step four, £30,588 for step five, £31,212 for step six, £31,836 for step seven, £32,460 for step eight, £33,085 for step nine, £33,709 for step 10 and £34,333 step 11. The second respondent's salary scale for grade 5 for that year was: £27,540 for step one, £28,764 for step two, £29,988 for step three, £31,212 for step four, £32,436 for step five, and £33,660 for step six and £34,884 for step star. This was a pattern that was repeated in respect of the other grades.

149 The difference in figures is small, but none of these figures are the same as between the two pay scales. Accordingly, we find and conclude that there was

no practice between the two respondents of applying the same pay scale, which would be the starting point for implying a term on the basis of conduct/custom and practice.

150 Can it be said that it was so obvious that it went without saying that the claimant's pay would match the second respondent's pay scales or that it was necessary to imply such a term in order to make the contract workable? We concluded that the answer to both of those questions was no. There was nothing obvious at all about such a term; the second respondent was a completely different legal entity to the claimant's employer, the first respondent, and far from it being obvious, it would have been unusual for there to be a term that the pay of an employee of R1 would match another employer's pay scale. Likewise, such a term is not, on any objective assessment, necessary in order to make the contract workable. The contract does not in any way lack coherence without such a term, to the contrary it already sets out all the required information; in particular it sets out the rate of remuneration and the intervals at which the claimant will be paid. How that pay might increase in the future, or be determined in the future, is not something that is necessary to make the contract workable, it is perfectly workable without that.

151 For these reasons we concluded that the claimant has not proved that a term should be implied that he would be paid in accordance with the second respondent's pay scales. The amount that was properly payable to him was not as set out in the second respondent's pay scales post 2017. This claim therefore fails. The first respondent has not made an unlawful deduction from the claimant's wages.

Employment Judge Harding  
Dated: 13 June 2024