EMPLOYMENT TRIBUNALS

Claimant: Mr J Omolu Omolu

Respondent: Amazon UK Services Ltd

Heard at: Manchester

On: 12 - 15 March 2024,
and 17 May 2024 (deliberations)

Before: Judge Callan
Ms A. Ashworth
Ms J. Whistler

REPRESENTATION:

Claimant: In person
Respondent: Mr. P. Sangha, counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

Direct Race Discrimination

1. The claimant's claims that the respondent subjected him to direct discrimination because of his race/national origin (section 13 Equality Act 2010) are not well-founded and are dismissed.

Harassment

2. The claimant's claims that the respondent subjected him to harassment related to race in breach of section 26 of the Equality Act 2010 are not well-founded and are dismissed.

Victimisation

3. The claimant's claims that the respondent victimised him in breach of section 27 of the Equality Act 2010 are not well-founded and are dismissed.

REASONS

Introduction

1. The claimant represented himself and the respondent was represented by Mr. P. Sangha. The Tribunal took time on the first morning to read the documents referred to in the witness statements and in the reading list provided by the respondent.

2. The Tribunal heard evidence from:

   Jeffrey Omolu Omolu, the claimant;
   Dean Maryan, Area Manager
   Guy Clarkson, Inbound Operations Manager
   Meg McIlveen, Employee Relations Case Manager

3. The Tribunal was provided with a hearing bundle consisting of 2 volumes which were numbered to page 652 and a supplementary bundle numbered to page 106. The Tribunal considered the documents referred to by the parties.

4. Oral evidence was heard over the course of 3.5 days. There was insufficient time to hear submissions at the end of evidence and written submissions were provided by both the claimant and the respondent on 12 April 2024.

5. From the outset of the hearing, the claimant stated that his case was that there was structural and systemic racism on the respondent's part. This was also reflected in his submissions where he said that the respondent's witnesses and managers worked tirelessly to destroy him, a person who happens to be black.

6. Whereas the Tribunal understands the strength of the claimant's feelings, we were at pains to establish the facts underlying the claimant's complaints, which includes the respondent's explanations for the events, and to which we have applied the law.

The Issues

7. The issues the Tribunal were to decide were identified in the Case Management Orders dated 17 January 2023 and are set out in the attached Annex.

Findings of Fact

8. The claimant is a black man of Nigerian origin.

9. He previously worked as an agency worker at the Respondent's MAN1 Fulfilment Centre. He commenced employment with the Respondent directly on 19 July 2020 as a Fulfilment Centre (FC) Associate Tier 1 Operative. This was initially on a fixed term contract, and he subsequently was made a permanent worker with effect from 12 September 2021.

10. Initially, the claimant was line managed by Fran Meier. The claimant was interviewed on 12 September 2020 for the role of Proxy Team Leader (PTL). He was unsuccessful. His comparator, Julianna Colle was appointed. He raised a grievance on 30 September 2020 against Fran Meier in respect of the appointment of PTLs. It was accepted by the respondent that this was a protected act for the purposes of the claimant's victimisation claims.

11. The claimant met Gabriella Toniolo, Operations Manager (Temp) on 30 September and 1 October 2020 to discuss his concerns. The claimant agreed to the grievance being dealt with informally. The issues he raised were discussed and next steps were agreed. The issues included that three proxy lead roles had been advertised but only two candidates were selected. He alleged Julianna Colle was an inferior candidate and that he had been told by Fran Meier that it takes three or more years to become a TL at MAN1. The claimant said that an interview was invented to eliminate his candidacy. He said, consistent with his position before us, that the interview process consistently disadvantaged the black community. The claimant asked what were the criteria used to rate candidates. He challenged the appointment of Julianna Colle ahead of him as, although she was a graduate, he had two degrees, and thus she was his "inferior".

12 By about the beginning of October 2021, the claimant had over 400 hours of acting as a PTL whereas his colleagues, Abdullah, and Oskar (one of his comparators) had between 230 and 250 hours each. The claimant was asked by his line manager, Mr. Maryan, to step aside to allow them more time to act as PTLs. Mr. Maryan told the claimant that they needed to do so for the benefit of the shift. The Tribunal found that this was a non-discriminatory reason for the treatment of the claimant, that is, the respondent had a business need to ensure that it had sufficient staff trained up to act as PTLs.

13. For the purposes of the claimant's complaints relating to development, he relied upon Yael Crudo as a comparator who was brought into his department to assist with a project called "5S". Not much evidence was provided in respect of this associate. She was used as a PTL and was offered overtime. The

claimant's case was that he could have been used as a PTL instead of her but he was not trained in 5S whereas she was. It is for this reason that she was used. The claimant did not request to be trained in 5S. The Tribunal accepted the respondent's reason for the difference in treatment and found that it was not because of the claimant's race or national origin.

14. In her letter of 23 October 2020, Ms. Toniolo gave feedback in respect of the claimant's complaints. She also agreed actions to be taken. She stated that she thought the claimant showed great skills and depth of experience and she would be happy to offer him the role of either PTL or Covid Marshal for the new testing process. He accepted the role of PTL, She also stated that she would discuss with the claimant the Tier 3 step-up pool where permanent leads are recruited from and go through the application process for this with him. It was also suggested that the claimant would become the point of contact for all Tier 1 to Tier 3 black employees in the black employee network.

15. The claimant acted as a PTL from about October 2020. That role is one where the proxy will perform the duties of Team Leader (TL) when they are unavailable for a particular shift. The role of TL was a Tier 3 role. To obtain that role he needed to apply to be promoted. The respondent used a system whereby there was a step-up pool so that those who wished to be promoted to Tier 3 had to apply to be put in the step-up pool. This necessitated passing an interview. The step-up pool was generally open for a short time in or about January of each year. (Sometimes this occurred twice a year, dependent on business need). The claimant did not participate in any of the step-up pool interviews. In explaining why he did not apply to be put in the step-up pool, the claimant stated he never saw any advertisements on the board for the step-up role although he knew that such opportunities were advertised from time to time.

16. The role of PTL was an informal role and involved no contractual changes or any pay increase. The PTL role was, by its nature, temporary as it was used to cover absences, vacancies, holidays, and matters of that sort. The claimant's work as a PTL was such that he would have experience he could use in a competency-based interview had he applied for a Tier 3 role. It was clearly an important step for him to take to support his progress.

17. The claimant, along with other associates, was subject to measures on a performance matrix system. This was a system whereby the average number of items stowed per hour was measured as against others. The claimant's understanding was that the only measure used was when someone fell below 5% of the group in which case the system automatically issued an ADAPT. The ADAPT system stands for "Associate Development and Performance Tracking". ADAPTs can record both negative and positive feedback. Operatives were given a rate at the beginning of the day upon which a target was set. A good performer on direct tasks would be asked to work as a proxy.

18. On 25 February 2021 Jess Burrows, Operations Manager, was alleged by the claimant to have spied upon him using a warehouse CCTV monitor. She had concerns about the claimant's performance as a PTL which she documented in

an email dated 28 February 2021. She logged that she and a member of HR had reviewed CCTV footage relating to events on 25 February 2021.

19. From 3 March 2021, Jess Burrows took the claimant off PTL duties. This was due to his failure to display the leadership and management skills required in the role. The management team on the Back End Nights (BEN) shift was due to change and would need a period to settle. Following this, managers would develop leadership areas the claimant was struggling with through further training and development. It was anticipated that after this, the claimant would have the opportunity to act as a PTL again. The claimant had informed Jess Burrows that he found the support and coaching offered by Fran Meier to be patronising.

20. On 11 March 2021, the claimant raised his first formal grievance which was wide ranging and at its core, alleged that he was being discriminated against in the way that matters affecting him had been magnified and that he had been treated differently and unfairly. This was in respect of day-to-day matters such as missing some items to be stowed and the CCTV issue. This is one of the two grievances the claimant alleged he was "forced" to raise and forms part of one of his victimisation claims.

21. In the grievance meeting on 18 March 2021 held by Bengali Bangura, Senior Operations Manager, the claimant asked on what ground managers can watch CCTV. The grievance meeting was adjourned on 18 March 2021 and recommenced on 8 April 2021. In this meeting, the claimant raised the issue of other people who had been with the respondent for a shorter time than him who had been made permanent. Mr Bangura stated that operatives are ranked on the system. It is not on a recommendation basis but rather on the positioning of the operative in respect of performance rates, productivity, quality, absence and how the individual performs against other associates who have joined around the same time. Mr Bangura informed the claimant that the respondent's selection process was based on performance in respect of the different criteria and not tenure as such. On 10 May 2021 Mr. Bangura issued his outcome letter in respect of the grievance. He partially upheld the claimant's complaint in relation to the inappropriate use of CCTV footage which he held was due to the relative inexperience of Ms. Burrows and her unfamiliarity with the respondent's practices in its usage. In respect of the claimant's complaint of systemic racism and discrimination against black employees, following investigation Mr. Bangura found there was no evidence to support those contentions and furthermore, the evidence did not support the claimant's assertion that black staff took longer to progress within the business compared to others.

22. Meanwhile, in April 2021 Dean Maryan took over management of the claimant from Fran Meier. Whilst Mr. Maryan managed the claimant, he was never in the bottom 5% and nor was he in the top 5% of performers.

23. On 3 April 2021 the claimant had been playing music from a bluetooth speaker on the Fulfilment Centre floor. This was in contravention of the rules applied by the respondent in respect of the playing of music or radios on the shop floor. Mr

Maryan issued an ADAPT. As mentioned, the ADAPT system was the means by which low level contraventions of policy and rules were logged and brought to the attention of operatives verbally. Written records of the conversations were not provided to associates. The claimant was informed of this by Mr. Maryan on 3 April 2021 and the record shows the claimant stated he was unaware of the phone and speaker policy. The Tribunal was provided with a copy of the record of the conversation.

24. An appeal hearing against Mr. Bangura's grievance outcome was held on 13 and 27 May 2021. The manager hearing the appeal was Sarah Dolden, Head of Employee Relations – Case Management. Also in attendance at the grievance appeal hearing was Meg McIlveen who gave evidence before us in this hearing and who was an Employee Relations Case Manager at the time of these events. On 27 May 2021 Sarah Dolden wrote to the claimant with the outcome of the appeal. She did not uphold any of the points of appeal. However, she did see a development opportunity for the claimant to gain a better understanding of each of the key performance indicators associated with proxy duties and she addressed this at the conclusion of her letter where she made the recommendation that additional support be provided to the claimant by the establishment of a regular 1-1 between the claimant and his line manager so as to proactively engage in gaining feedback to assist him. She also recommended that the claimant should have a meeting with Mr Bangura with a member of the MAN1 HR team to explain the various selection processes that are applied so that he could achieve career development with MAN1 and have a clear understanding of what is required to be considered for progression. She further recommended that he should have a "buddy" who could be useful as a sounding board to assist him to continue to learn and grow. She concluded her letter by saying that she was not recommending the actions outlined above because of any discrimination or unfair treatment, but to enable the claimant to have the best possible opportunity to fulfil his potential with the respondent.

25. Following the grievance which resulted in a recommendation that the claimant be given support, a number of steps were taken. On 30 June 2021 the claimant had a meeting with Ammaar Rahim (temporary Inbound Operations Manager) and an HR representative. The claimant agreed that the meeting was a constructive one but alleged that the manager changed his mind subsequently.

26. Guy Clarkson joined the claimant's team in the summer of 2021 and took over the line management of his team in September 2021. In a 1-1 meeting between the claimant and Dean Maryan on 2 July 2021, a PDP had been agreed. Subsequently, the claimant was critical of Mr. Maryan's PDP and queried it. Dean Maryan said that having reflected upon the PDP, he had concluded the best way forward was for the claimant to do some tasks on his PDP every week so that a review could take place regularly. The PDP was developed the so as to improve the claimant's knowledge in the stow department and inbound. It was suggested that 1-1s would take place on a fortnightly basis. The claimant was the only associate in stow who was receiving 1-1s. Tier 1 Associates were not routinely given 1-1s and nor were PDPs issued. Interactions between Tier 1 Associates and their managers generally were logged using computer-based

tools (ADAPT) and Engage. Relations between Mr. Maryan and the claimant became increasingly difficult.

27. After October 2021, Mr. Maryan no longer managed the claimant's PDP. Guy Clarkson took over the implementation of the PDP from that time. Mr Clarkson suggested that the claimant undertake some e-learning modules. He also offered to arrange a one hour session with another department in the FC to improve the claimant's knowledge of FC operations. The claimant said he wanted a full shift every week to undertake that training. This was something which Mr Clarkson felt he could not accommodate but told the claimant he could take 1 hour every week to work on his development. This was to take place on Wednesdays.

28. Mr Maryan followed up with the claimant about setting up e-learning for him. A development session was implemented on 30 October 2021 when the claimant spent 1 hour learning about the Problem Solve department as he had expressed an interest in doing so. Mr Clarkson spent an hour on 11 November 2021 discussing the respondent's dock department. Following these conversations the claimant told Mr Clarkson that he was not happy with the PDP drafted by Mr Clarkson and he preferred the PDP that Mr Maryan had drafted. The claimant felt that the sessions arranged by Mr Clarkson were not helpful to him. Mr Clarkson therefore agreed not to arrange any further sessions of that type. The PDP was revised and the copy provided in the bundle is dated 11 November 2021. The priorities identified were for the claimant to prepare for Tier 3 interviews and to learn more about the FC. Various actions were identified as were other development projects such as learning about the Leadership Principles. The claimant appeared to wish to be a Permanent PTL. It was not possible for him to be offered such a role on a permanent basis.

29. Meanwhile, in August 2021 the claimant alleged that he was not given proper recognition for (i) emailing the Respondent on 6 August 2021 about a system bug and (ii) around that time recommending verbally a solution to the bug to the Operations Managers.

30. The claimant, in evidence, stated that he had noticed a system bug which was the absence of a manual option for an out of work (OOW) Andon. This was a means by which, when operatives had little or no work was available to them, a manual OOW Andon would be selected. This alerted associates who delivered items to the stow area to bring more items. The claimant mentioned the OOW Andon was broken at MAN1 to Ammaar Rahim. Mr Rahim asked the claimant to send him an email about the issue. The email did not suggest a fix for the broken OOWA Andon. Mr Rahim then gave the project to a member of the Day Shift Team who were able to work with the IT team to come up with a solution to the problem. The claimant believed that he had suggested that a manual OOW Andon button be created and insisted that he had written two business proposals, one of which had resulted in the OOW Andon being fixed. However, when asked by Guy Clarkson, his manager, if there was anything more than the email the claimant had sent to Mr Rahim on 6 August, he did not respond. The claimant was offered "swaggies" which are points which can be

used by employees on the Amazon website. Despite being asked to set out what he said was his contribution and not doing so, the claimant believed that he should have received formal recognition for that suggestion. He believed it was because the Operations Manager Guy Clarkson had prevented it. Guy Clarkson said that the claimant had been thanked and offered "swaggies" for bringing the matter to the attention of management and that was probably more than any other associate would have been offered for raising the same issue. The Tribunal found that the claimant's role was in alerting Mr Rahim to the issue. He did not come up with a solution to the problem.

31. Ms. Toniolo and Mr. Bangura had both seen the claimant's enthusiasm and wish to progress.

32. The respondent's HR team used performance metrics to confirm who is converted from a Fixed Term Associate to a permanent position. Typically, it is those associates who are consistently in the top 5% of performers who will be converted. However, the claimant was an average performer which meant that he was not offered a permanent contract on the basis of the respondent's criteria. At a calibration meeting with the HR team, consideration was given to whether there were any associates not identified as top performers but who should nevertheless be offered a permanent contract. Due to the claimant's willingness and enthusiasm to progress Mr Maryan believed the claimant had potential if he was given time to develop and improve. On that basis an offer was made to the claimant and he was converted to a permanent Tier 1 Associate on 12 September 2021 which was a little over a year after he had been hired as a Fixed Term Associate.

33. In or about mid-October 2021 the claimant was investigated for being late to his shift from a break. The allegation was that the claimant had taken a break which exceeded the time allowed. This was investigated by Mihai. The respondent's case was that the claimant had taken a 39-minute break whereas he was allowed 34 minutes. The claimant's case was that the break was for 38 minutes and therefore he was one minute late back to his post. The investigation resulted in the claimant not being issued with an ADAPT. The claimant's case was that it was an act of harassment to investigate his lateness at all.

34. In respect of ADAPT, one was issued in November 2021 to the claimant as a TL had asked him to cross-train to work temporarily in another department. The claimant refused and it was alleged had become rude and confrontational with the TL. An Area Manager, Bilal Jilani raised an ADAPT feedback as a result of that refusal. The ADAPT system is not a form of disciplinary procedure and is used by the respondent as a conversation log with associates. Mr. Jilani noted this in an entry on 4 November 2021 but referenced it as occurring on 30 Nov ember 2021. The claimant was not at work on 30 November. It appeared to the Tribunal that the date had been recorded in error as "30/11/2021" given that the note was made on 4 November 2021. It was more likely that the entry referred to an event on "30/10/2021" and was therefore a typographical error.

35. On 17 November 2021 Mr Jilani informed Mr Clarkson about the claimant's refusal to cross-train. Mr Clarkson had already planned to meet the claimant and used the time to enquire as to what had happened. The claimant became irate and told Mr Clarkson that he did not have to be cross trained as he did not think it would be of assistance to him in his development towards Stow TL. Mr Clarkson told the claimant that an ADAPT would be raised as it had been reasonable to request him to cross-train to another department that needed more associates. Mr Clarkson noted that the claimant had told him that he wanted to learn more about other departments. The claimant became rude and confrontational and told Mr Clarkson that he would appeal the ADAPT as he disagreed with it. He was concerned that it would impact upon his ability to apply for promotion. Mr Clarkson explained to the claimant that ADAPTs were not a barrier to applying for a Tier 3 role. He had a PDP that had been created to assist him to prepare for the application process. Mr Clarkson gave feedback to the claimant to highlight some behavioural issues, for example, he had been rude to a TL who had questioned his break time and had performed poorly on a recent shift as a PTL. The claimant became angry and complained the respondent was training other proxies over him. Mr Clarkson informed the claimant that he was unlikely to use the claimant as a PTL for a few weeks until he showed he was able to demonstrate the Leadership Principles. Mr Clarkson told the claimant he would have a further meeting on 1 December 2021 about his PDP even though he was disappointed with the claimant's attitude.

36. On 24 November 2021, the claimant raised an informal grievance against Mr Jilani which he sent to HR. The claimant's complaint was that Mr Jilani had failed to give him a written copy of the feedback. The respondent's ADAPT process did not include an obligation on a manager to provide ADAPT feedback to an employee. On 27 November 2021 Mr Clarkson spoke to the claimant about these matters. The claimant stated he was not challenging the reason behind the ADAPT feedback. He believed that the policy was unfair as it impacted upon his chances of promotion. Mr Clarkson again informed him that that was not the case.

37. On 1 December 2021 Mr Clarkson had a conversation with the claimant at his workstation to give feedback about the OOW Andon. The claimant asked Mr Clarkson when he would be used as a PTL once more. The claimant described this as a sanction. Mr Clarkson said that he had not applied it as a sanction, but he would use the claimant as a PTL once operational requirements meant that he would be needed. Mr Clarkson repeated what he had said to the claimant on 17 November 2021 which was that the claimant would not be selected as a PTL for a few weeks in order for him to show improvement in his behaviour. The claimant became rude and challenging, and stated Mr Clarkson had given him no support. Following this exchange Mr Clarkson proposed there should be a meeting between him, the claimant and Mr Maryan with an HR representative in attendance. It is the respondent's practice to have an HR representative attend when a manager may require additional support or expects the meeting to be difficult. On the advice of an HR Senior Business Partner an informal conversation took place first to give the claimant an opportunity to work on the feedback. It was hoped that this would avoid the

necessity for a more formal procedure being put in place. Mr Clarkson had this informal conversation with the claimant on 16 December 2021. Amongst other matters Mr Clarkson explained that other PTLs were required to be trained for operational reasons. The claimant's rude and confrontational manner was brought to his attention. Mr Clarkson set out clear expectations of the claimant, and if he improved, he would be used as a PTL again when required. Mr Clarkson also told the claimant that he was being removed from the Back End Nights Chime chat until he was next used as a PTL. The BEN chat group was a messaging group consisting of associates who were PTLs, TLs, Area Managers, or Operations Managers on the BEN shift. Mr Clarkson made it clear to the claimant that once he had shown improvements and was asked to proxy again, he would be added back onto the chat. The claimant did not react well to the meeting and challenged the points raised by Mr Clarkson.

38. On 18 December 2021, the claimant sent Mr Clarkson a chime message stating that Mr Clarkson had promised a copy of the notes of the meeting on 16 December 2021 and he had not yet been provided with them. Mr Clarkson informed the claimant that that was not what had been agreed and that he would speak to him. The claimant alleged Mr. Clarkson had become rude and had told Mr Clarkson that he required a copy of the notes of the meeting as he needed to challenge what had been said. Mr Clarkson denied being rude to the claimant and denied being aggressive towards him. He denied calling the claimant "a fucking idiot." Further, he denied saying "I am done talking about this.".

39. The respondent's practice was to hold conversations with associates at their workstation. The majority of conversations would take place at workstations. It would be for some reason, such as confidentiality, that such conversations would take place elsewhere. The Tribunal formed the view that Mr. Clarkson ought to have arranged the 18 December 2021 conversation to take place away from the claimant's work station but not doing so was not in any way related to the claimant's race.

40. On 5 January 2022, the claimant raised a second formal grievance and is the second grievance he relies upon in respect of the victimisation claim that he was "forced to write two more grievances". A grievance hearing took place on 21 January 2022. He was provided with a written outcome on 18 February 2022. The outcome letter provided by Rob McGeechan, ER Case Manager was extensive. He stated that he had throughout the course of his investigation found no evidence to support the claimant's claims that the recruitment process had been rushed through. The claimant's grievances were dismissed. However the following observations were made by Mr McGeechan which were that throughout the course of his investigation, other than Mr Clarkson talking to the claimant firmly, which the claimant had perceived to be intimidatory, he found no evidence to support any of his allegations in full. He stated that the evidence he had obtained showed that there were a number of occasions when the claimant's behaviours had fallen well short of those expected of an Amazon employee and despite numerous attempts by management to informally resolve those behaviours, he persisted with inappropriate behaviour. Mr McGeechan upheld part of the grievance relating to 18 December 2021 when Mr Clarkson had addressed the claimant with a voice which was "very high." However, the

comments “fucking idiot” and “I have done talking about this” whilst abruptly turning away from the claimant were not upheld. Mr McGeechan formed the opinion that Mr Clarkson could have spoken to the claimant in a more professional way and therefore upheld in part this element of the claimant’s grievance. In his statement for the hearing, the claimant alleged that the witness had said that Mr. Clarkson was violent and it was for this reason that the grievance relating to 18 December 2021 was partially upheld. This is not what Mr. McGeehan found and the use of the word “violent” by the claimant was an exaggeration.

41. Mr McGeechan in his recommendations noted that the claimant had a clear desire to progress into management. Mr McGeechan established that the claimant had a new Area Manager and Operations Manager as Mr Clarkson and Mr Maryan had moved to different shifts. Mr McGeechan recommended that the claimant use this as an opportunity to have a fresh start and to demonstrate that he could act in accordance with what is expected of him as an Amazon employee. Mr McGeechan recommended that management closely monitor the claimant’s situation and behaviours.

Time Limits

42. The claimant entered into ACAS Early Conciliation on 6 March 2022 so that acts complained of arising on or before 7 December 2021 may be out of time. The claimant’s statement did not explicitly deal with the basis for an extension of time. His explanation was that he was awaiting the grievance appeal outcome and had been given advice from ACAS that he should do so.

Relevant Law

Direct Discrimination contrary to section 13 Equality Act 2010 (EqA 2010)

43. Section 13(1) EqA 2010 provides:

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 EqA 2010 states:

44. On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

45. To establish direct discrimination, the respondent must treat the claimant less favourably than it treats, o r would treat another (the comparator) who is in the same or not materially different circumstances. (s23 EqA). In **Parmar v Leicester City Council** [2024] IRLR 85, the EAT recently discussed the role of comparators. It is for the claimant to show that the comparator has or would have been treated more favourably. The claimant can use “evidential” comparators to construct a hypothetical comparator. The closer the circumstances of those individuals are to those of the claimant, the weightier will be the significance of their treatment.

46. The ultimate question for the Tribunal is the reason why any act or failure to act occurred. **Amnesty International v Ahmed** [2009] ICR 1450 at paragraph 37 is authority for the proposition that the test of whether an act or omission is because of the protected characteristic is not a but for test. The Court of Appeal decision in **Chief Constable of Greater Manchester v Bailey** [2017] EWCA Civ 425 emphasised that a "but for" causative link does not mean that the act complained of was "because of" the protected characteristic in the relevant sense.

47. Mr. Sangha in his submissions relied upon **Shamoon v Chief Constable of Ulster Constabulary** [2003] ICR 337 in respect of direct discrimination, where it was held that the first question the tribunal should consider is whether the claimant received less favourable treatment than the appropriate comparator (the less favourable treatment issue), and if so, whether it was on the relevant proscribed ground (the reason why issue). The less favourable treatment issue is treated as a threshold which the claimant must cross before the tribunal is called upon to decide why the claimant was afforded the treatment of which they are complaining. However, the House of Lords also stated that sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined.

48. The claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant does this, the burden of proof shifts to the respondent to disprove the allegations. In **Madarassy v Nomura International plc** [2007] ICR 867, the Court of Appeal held that it is insufficient for a claimant to show a difference in race (or other protected characteristic) and a difference in treatment but that "something more" was required before the respondent would be required to provide a non-discriminatory explanation.

49. A claimant cannot rely simply upon unreasonable treatment by the employer as giving rise to an inference of unlawful direct discrimination – **Glasgow City Council v Zafar** [1998] ICR 120. Unreasonable treatment of itself does not shift the burden of proof to the respondent as it may be that someone of a different race (or other protected characteristic) would have also been treated unreasonably.

50. Where multiple allegations are raised as evidence of discrimination, the correct approach is for the Tribunal to find the primary facts about the incidents in question and then to look at the totality of those facts (including the respondent's explanation) to determine whether the acts complained of were on racial grounds (**Rihal v Ealing LBC** [2004] IRLR 642.

51. In looking at the overall picture, it is also necessary to consider the inherent Probabilities of what a witness is saying and how well it fits with "objective" facts (those things which are undisputed or indisputable). In deciding where the truth lies the Tribunal should make some overall assessment of the witnesses which includes taking account of things such as any demonstrable lies or exagger-

ation (**Talbot v Costain Oil Ltd.** UKEAT/0283/16).

Harassment contrary to section 26 EqA 2010

52. Section 26 EqA 2010 provides:

> (1) A person (A) harasses another (B) if –
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
> (b) the conduct has the purpose or effect of –
>
> (i) violating B's dignity, or
>
> (ii) creating an intimidating, hostile, degrading, humiliating, or offensive environment for B.
>
> (2) –
>
> (3) –
>
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
>
> (a) the perception of B;
> (b) the other circumstances of the case;
> (c) whether it is reasonable for the conduct to have that effect.

53. The test is part objective and part subjective. The Tribunal must objectively evaluate the claimant's subjective perception to determine if it was reasonable for him to have considered his dignity to be violated or that it created an intimidating, hostile, degrading, humiliating, or offensive environment.

54. In the Court of Appeal case of **Grant v HM Land Registry** [2011] IRLR 748 it was held that:

> "Tribunals must not cheapen the significance of the words "intimidating, hostile, degrading, humiliating, or offensive environment." They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.

55. In the case of **Richmond Pharmacology v Dhaliwal** [2009] IRLR 336, the EAT held:

> "We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory,

particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

56. Mr. Sangha also relied on the case of **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam** [2020] IRLR 495 in respect of the relevant legal test. It was stated by HHJ Auerbach (having quoted from **Unite the Union v Nailard** [2019] ICR 28) that "the broad nature of the "related to" concept means that a finding about what is called the motivation of the individual concerned is not the necessary or only possible route to the conclusion that an individual's conduct was related to the characteristic in question". He went on to state "Nevertheless, there must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic as alleged."

Victimisation contrary to section 27 EqA 2010

57. Section 27 EqA 2010, provides:

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

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

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

(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act."

58. The first matter is to identify whether the claimant has performed a protected act, or whether the respondent believed that he had done or may do so. It is then for the Tribunal to decide whether the respondent subjected the claimant to a detriment. If so, the question is whether that detriment was because the

claimant had performed the protected act or the respondent believed that the claimant had done or may do so. In evaluating the latter question, the Tribunal must consider whether the protected act (or the relevant belief) had a material or significant influence on the detrimental treatment and in doing so, must apply the burden of proof. If the claimant proves facts from which the Tribunal could reasonably conclude that the protected act had a material influence on the detrimental treatment, the claimant would succeed unless the respondent can establish a non-discriminatory reason for that treatment. There is no need for a comparator.

59. In establishing the causative link between the protected act and the less favourable treatment, the Tribunal must understand why the employer acted in the way that is said to amount to victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as they did because of the protected act. It is enough if the unlawful motive was of sufficient weight in the decision-making process to be treated as a cause, not the sole cause, and it is not necessary to show that the discriminator was consciously prejudiced against the claimant because he had done a protected act (**O'Donoghue v Redcar & Cleveland Borough Council** [2001] IRLR 615).

60. The claimant relied upon his grievance of September 2020 as the protected act and the respondent accepted that the grievance was a protected act.

Burden of proof

61. Section 136 EqA 2010 in respect of the burden of proof provides as follows:

> "(1) This section applies to any proceedings relating to a contravention of this Act.
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision."

62. Guidance on operation of the burden of proof has been provided by the Court of Appeal in **Igen v Wong** [2005] IRLR 258 and in **Madarassy v Nomura International plc** [2007] IRLR 246. In short, the claimant must prove facts from which a Tribunal could, on the balance of probabilities and in the absence of an adequate explanation, conclude that the respondent had discriminated against him. If the claimant establishes such facts, then the respondent must prove that they did not commit the act because of a relevant protected characteristic. The Tribunal will need to consider the subjective reasons which caused the alleged discriminator to act as they did. If the claimant establishes the initial case, the respondent will have to show a non-discriminatory reason for the difference in treatment. The bare fact of a difference in status and a difference in treatment is insufficient, without more, to establish that the respondent had committed unlawful discrimination.

63. In the case of **Hewage v Grampian Health Board** [2012] UKSC 37, the Supreme Court held that it is important not to make too much of the role of the burden of proof provisions. They have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

Time limits – course of conduct

64. Section 123 EqA 2010 provides that the proceedings must be brought within three months of the act to which the complaint relates (subject to extensions of time for the ACAS Early Conciliation period to take place) or such other period as the Tribunal considers is just and equitable.

65. Conduct extending over a period is treated as done at the end of the period. A failure to do something is to be treated as occurring when the person in question decided on it.

66. In the case of **Hendricks v Metropolitan Police Comr** [2003] IRLR 96, EWCA, the Court of Appeal held that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for a claimant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather what has to be proven by the claimant in order to establish 'an act extending over a period' is that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing discriminatory state of affairs.' The focus of the enquiry should be on whether there was an 'ongoing situation or continuing state of affairs' as opposed to 'a succession of unconnected or isolated specific acts.' It will be a relevant, but not a conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs which involved a number of different individuals.

67. The case of **Greco v General Physics Ltd.** UKEAT/0114/16 (which in turn cited **Hendricks**) supports the proposition that the relevant factors in determining whether there is a *prima facie* course of conduct extending over a period includes whether the same individuals are involved, whether the allegations concern the same subject matter, whether there is any connection alleged between the acts/omissions. Further, even if the acts are carried out by the same individual, that is not determinative of the issue as to whether they amount to a single course of conduct extending over a period.

68. A Tribunal has a discretion to extend time if it is just and equitable to do so, the onus being on the claimant to provide evidence that supports the Tribunal doing so, and 'the exercise of discretion is the exception rather than the rule' (**Robertson v Bexley Community Centre** [2003] IRLR 434, EWCA). In exercising its discretion, the Tribunal has to balance the prejudice to the claimant in being unable to pursue his claims, and the prejudice to the respondent in having to defend claims brought outside the time limit. Relevant factors include the length and reason for the delay, and this often involves

considering the effect of delay on the cogency of the evidence. Other considerations will include promptness of the claimant acting once he knew of the facts giving rise to her claim, and whether he took steps taken to obtain advice.

Discussion and Conclusions

69. The Tribunal has carefully considered the facts set out above. The following conclusions were reached on the balance of probabilities having considered the evidence before us and taking into account submissions made by both the claimant on his own behalf and Mr. Sangha on behalf of the respondent.

Allegations of direct race discrimination

Hampering the claimant's career by failing to support him or give him opportunity to progress (allegation 2.2 a)

70. The Tribunal refers to its findings of fact above. The claimant was given 1-1s with managers following his grievance appeal heard by Ms. Dolden. The claimant undertook the role of PTL which was by definition a temporary role for which he received training, and which gave him the opportunity to experience situations which he could use in the respondent's selection processes. He did not progress because he did not apply for the step-up pool which was the pool of employees from which the respondent appointed to Tier 3 posts. Two of claimant's comparators (Juliana Colle and Yael Crudo) had applied for Tier 3 roles, and this was the non-discriminatory reason for the difference in treatment. The third comparator, Oskar Rybacki, was not promoted as he had not succeeded in his application to join the step-up pool and remained a Tier 1 operative as did the claimant which underscores the non-discriminatory reason for the treatment of the claimant.

Not offering the claimant a permanent contract between January and September 2021 (allegation 2.2 b)

71. The Tribunal accepts that the claimant was not offered a permanent contract prior to September 2021 because he did not fulfil the criteria for such an offer to be made. The evidence as to whether his comparators were apt to test this allegation was not clear. No dates as to when Juliana Colle joined the respondent and the date, she was subsequently offered a permanent contract were given. The same is true of Yael Crudo and Oskar Rybacki. The evidential value of these comparators is therefore limited. However, we are satisfied that the respondent has provided a non-discriminatory explanation for the difference in treatment which was that they fulfilled the criteria for appointment to a permanent role on the basis of their performance whereas the claimant did not.

Not giving the claimant proper recognition for (a) emailing the respondent on 6 August 2021 about a system bug, and (b) around the that time recommending (verbally) a

solution to the bug, to operations managers Guy Clarkson and Amar (allegation 2.2 c).

72. The claimant was thanked for bringing the matter to the attention of management and was offered "swaggies." The Tribunal found that this was appropriate recognition for his part in dealing with the system bug. The claimant's contention that he had recommended a solution whether verbally or otherwise was not supported by the evidence. The Tribunal accepted the respondent's explanation for the treatment which was not connected with his race.

Refusing to offer the claimant a Personal Development Plan ("PDP") (allegation 2.2 d)

73. The evidence was that Tier 1 associates were not routinely given PDPs. In any event, the claimant was offered at least two PDPs each of which he was unhappy with but nevertheless were discussed with him by both Mr. Maryan and Mr. Clarkson. In this respect, the claimant was treated more favourably than a hypothetical comparator (there being no evidence in respect of the treatment of the actual comparators cited by the claimant) in that he was given PDPs. This allegation fails on the facts.

Giving the claimant two negative ADAPTs (Associate Development and Performance Tracker) (allegation 2.2 e)

74. This complaint relates to ADAPTs discussed above given in respect of playing music on the shopfloor from his phone through a Bluetooth speaker and the ADAPT given for refusing to cross-train to another department. The first was given by Mr. Maryan and the second by Mr. Jilani.

75. The Tribunal accepted the explanations given by the respondent that it was the respondent's rule that music should not be played in the workplace and the Tribunal found that it was a rule for good reason and had nothing to do with the claimant's race. The second ADAPT was also given for sound business reasons totally unrelated to the claimant's race.

76. In the Tribunal's judgment, this allegation fails on the facts.

Failing to tell the claimant contemporaneously about the first ADAPT, and (ii) in the case of the second ADAPT, refusing to provide him with details with the effect that he could not challenge it. (allegation 2.2 f)

77. The Tribunal found that in respect of the first ADAPT, he was informed of it at the time. The issuing of the ADAPT was not in any way related to his race and nor was it a disciplinary step. Again, this allegation fails on the facts.

78. In respect of the second ADAPT which was in given following the claimant's refusal to cross-train, the claimant was not treated differently to other Tier One associates in that the evidence was that written details were not issued due to the process not being a disciplinary, but a low level informal advisory step. Had the matter progressed to a disciplinary, then the associates would be able to

challenge it. The respondent's processes were such that what was required was a conversation with the staff member about the conduct. The claimant agreed that the conversation had taken place. He was not treated differently than a hypothetical comparator in the application of the ADAPT and his claim in this respect fails.

Allegations of harassment related to race

In December 2021 Operations Manager Guy Clarkson constantly visited the claimant's workstation (allegation 3.1.1)

79. Applying the guidance in the case law, the Tribunal looked at the allegations about the conduct complained of by the claimant to determine whether it was related to the claimant's race or ethnic origin. It was the case that there were a number of chime messages which Mr. Clarkson dealt with by approaching associates at their workstations. The Tribunal found that it was for this reason that Mr. Clarkson was approaching the claimant. Many of the issues were documented by Mr. Clarkson and the Tribunal found that the approaches made by him were for operational and managerial reasons. We did not find that the conduct was in any way connected to the claimant's race. The number of visits by Mr. Clarkson was due to the issues the claimant was raising and because of matters Mr. Clarkson needed to discuss with him. For these reasons, this allegation was not substantiated.

On 16 December 2021 removing the clamant from the Back End Network (BEN) chat as a result of agreed actions of Guy Clarkson and Dean Maryan (allegation 3.1.2)

80. Because of issues with the claimant's behaviour and his failure to demonstrate compliance with the respondent's Leadership Principles, he was not undertaking PTL duties from around 17 November 2021. He did not therefore require access to the BEN chime group. His removal from the Chime group was not in any way related to his race or ethnic origin but because there was no operational reason for him to have access to the group.

On 18 December 2021 the operations manager Guy Clarkson abused the claimant verbally including calling the claimant a "fucking idiot" and yelling "I am done talking about this. I am done talking about this," whilst abruptly walking away from the claimant (allegation 3.1.3)

81. The evidence did not support that the alleged verbal abuse occurred or that it was race-related. The use of a high voice did not satisfy the Tribunal that it was race-related when looked at in context. Furthermore, the claimant exaggerated the issue by stating that his witness verified that Mr. Clarkson had been violent.

On 25 February 2021, Jessica Burrows, spying on the claimant using warehouse CCTV (allegation 3.1.4)

82. Ms. Burrows had acted outside of the respondent's practice in viewing CCTV footage. She had, however, not been fully aware of the purposes for which CCTV footage could be viewed. She had concerns about his performance as

a PTL but the evidence did not support that it was related to his race. Despite the claimant being asked by the Tribunal at various points to focus his questions on the issues we were to deal with, he did not allege to the witnesses that the conduct which he relies upon as amounting to harassment was related to his race.

In October 2021, investigating the clamant for being late to shift from his break (allegation 3.1.5)

83. This allegation fails on the facts. The respondent relies on its processes being conducted in a timely fashion which entails operatives returning their work stations on time. There was no suggestion that being investigated for being late was in any way related to the claimant's race. In respect of the matter being recorded on 4 November 2021 as detailing a conversation which was dated as 30/11/21 was clearly, as noted above, a typographical error.

In November 2021, Billal falsely made a record of the claimant being rude, aggressive and confrontational on an early date in mid-October 2021. The clamant will say that the report made was for a date the claimant was not scheduled to work (allegation 3.1.6)

84. As stated above, the Tribunal accepts that the entry on 4 November 2021 included a typographical error. The evidence was clear that at this time there were difficulties being experienced by a number of TLs and other managers in that the claimant was, at times, rude, aggressive and confrontational. The making of the records were unrelated to the claimant's race but rather for proper managerial reasons.

Allegations of victimisation

Did the claimant do a protected act in raising a grievance against his manager (Fran Meier) in September 2020

85. It was accepted that the grievance against Fran Meier was a protected act.

Did he respondent hamper the claimant's career by failing to support him or give him the opportunity to develop (allegation 4.2 a)

86. This allegation fails on the facts as the evidence shows much was done to support the claimant in his development and which was over and above that given to other T1 associates. There was no detriment and no link to the protected act.

Did the respondent not offer the claimant a permanent contract between January to September 2021 (allegation 4.2 b)

87. The reason the claimant was not offered a permanent contract until September 2021 was because he was an average performer. The evidence was that it was those above average who were converted to a permanent contract. He was converted to a permanent contract following a "calibration" meeting at which Mr.

Maryan recommended he was made permanent in recognition of his enthusiasm which had also been noted by Ms. Toniolo and Ms. Dolden. There was no link between the raising of the grievance in September 2020 and his not being offered a permanent contract until 12 September 2021.

*Did the respondent convert the grievance of September 2020 to an **informal** grievance when it was manifestly not that (allegation 4.2 c)*

88. The Tribunal found that the claimant had agreed to the grievance being dealt with informally and the claimant did not challenge this at the time. There was no detriment as the option to convert it to a formal grievance had also been agreed by the claimant. The Tribunal found that the handling of the grievance informally was in keeping with good employment practice.

Did the respondent force the claimant to write two more grievances (allegation 4.2 d)

89. The link to the protected act is tenuous at best. The two grievances which form this allegation were raised on 11 March 2021 and on 5 January 2022. They were raised by the claimant and were thoroughly investigated and dealt with. The detriment the claimant alleges is not made out on the facts. He did not address this as an act of victimisation in his submissions.

Time limits and extension of time

90. There was little evidence to explain why the claimant was unable to enter into Early Conciliation prior to 6 March 2022 or to support an extension of time for any acts prior to 7 December 2021. The Tribunal does not accept that awaiting the outcome of his grievance appeal adequately explains why he did not enter into Early Conciliation in respect of allegations which date back as far as September 2020.

91. As to the contention that there was a continuing course of conduct/state of affairs, the claimant cited in his closing submissions that there were some 14 “protagonists” involved in what he had characterised throughout as “systemic racism” which was “working against his career development.” Some were HR staff, and some Operations Managers, Line Managers and TLs, including a step-up TL. Given our findings above in respect of the support the claimant received, we reject the claimant’s contention that there was systemic racism in place so as to work against his career development. Further, we do not find that the acts complained of prior to 7 December 2021 are linked other than by the claimant’s allegations of conspiracy and collusion. There was not a continuing course of conduct in the relevant sense.

92. The Tribunal has concluded that none of the alleged acts of discrimination succeeds and in any event, it would not have been just and equitable to extend time.

93. For these reasons, the Tribunal dismisses the claims in their entirety.

_____

Judge Callan
Date: 26 July 2024

JUDGMENT SENT TO THE PARTIES ON
29 July 2024

FOR THE TRIBUNAL OFFICE

ANNEX – LIST OF ISSUES

The issues the Tribunal will decide are set out below.

1. Time Limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 7 December 2021 may not have been brought in time.

1.2 Were the discrimination, harassment and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

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

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

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

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

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

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

2. Direct Discrimination on ground of race (Equality Act 2010 section 13)

2.1 The claimant identifies his race as a black man of Nigerian origin.

2.2 Has the respondent subjected the claimant to the following treatment:

a. Hampering the claimant's career by failing to support him or give him an opportunity to progress. The claimant will say the respondent's failure is ongoing to this day.

b. Not offering the claimant a permanent contract between January and September 2021.

c. Not giving the claimant proper recognition for (a) emailing the respondent on 6 August 2021 about a system bug and (b) around that time recommending (verbally) a solution to the bug, to Operations Managers Guy Clarkson and Amar.

d. Refusing to offer the claimant a Personal Development Plan ("PDP").

e. Giving the claimant two negative ADAPTs (Associate Development and Performance Tracker).

f. (i) Failing to tell the claimant contemporaneously about the first ADAPT and (ii) in the case of the second ADAPT refusing to provide him with details with the effect that he could not challenge it.

2.3 Was that less favourable?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.

The claimant compares his treatment with that of a white person employed in his initial role, and then later wit the addition of the Proxy Team Leader Role. Actual comparators relied upon by the Claimant are these three:

Julianna Colle – who was Proxy Team Leader at the time as the claimant and later promoted to a role in human resources.

Yael Crudo – who was a Proxy Team Leader at the same time as the Claimant and also promoted to an HR role.

Oskar Rybackeai – who (somewhat later than the Claimant) joined as a Proxy Team Leader but has been appointed as a Process Guide.

2.4 If so, was there less favourable treatment because the claimant is black or of Nigerian National origin?

2.5 Did the respondent's treatment amount to a detriment?

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

3.1 Did the respondent do the following things:

3.1.1 In December 2021 Operations Manager Guy Clarkson constantly visiting the claimant's workstation.

3.1.2 On 16 December 2021 being removed from the Back End Network (BEN) chat as a result of agreed actions of Guy Clarkson and Dean Maryan.

3.1.3 On 18 December 2021 the Operations Manager Guy Clarkson abusing the claimant verbally, including calling the claimant a *"fucking idiot"* and yelling "*I'm done talking about this. I am done talking about this,"* whilst abruptly walking away from the claimant.

3.1.4 On 25 February 2021, Jessica Burrows, Operations Manager, spying on the claimant using warehouse CCTV.

3.1.5 In October 2021, investigating the claimant for being late to shift from his break.

3.1.6 In November 2021 Bilal falsely made a record of the claimant being rude, aggressive, and confrontational on an early date in mid-October 2021. The claimant will say that the report made was for a date the claimant was not scheduled to work.

3.2 If so, was that unwanted conduct?

3.3 Did it relate to race?

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

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

4.Victimisation (Equality Act 2010 section 27)

4.1 Did the claimant do a protected act as follows:

Raising a grievance against his manager (Fran Meler) in September 2020?

4.2 Did the Respondent do the following things:

a. Hamper the claimant's career by failing to support him or give him the opportunity to develop.

b. Not offer the claimant a permanent contract between January – September 2021.

c. Converting his grievance of September 2020 to an informal grievance when it was manifestly not that.

d. Forcing the claimant to write two more grievances.

e.

4.3 By doing so, did it subject the claimant to detriment?

4.4 If so, was it because the claimant did a protected act?

4.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

5. Remedy for discrimination or victimisation

5.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

5.2 What financial losses has the discrimination caused the claimant?

5.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

5.4 If not, for what period of loss should the claimant be compensated?

5.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

5.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

5.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.8 Did the respondent or the claimant unreasonably fail to comply with it?

5.9 If so, is it just and equitable to increase or decrease any award payable to the claimant?

5.10 By what proportion, up to 25%.

5.11 Should interest be awarded? How much?