Case No: 2302222/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mr Ricky Garrett**

Respondent: **The London Ambulance Service NHS Trust**

Heard at: **London South, Croydon** **On:** **15-18 August 2023**

Before: Employment Judge Atkins
Members: Ms M Foster-Norman
Mr J Hutchins

Representation
Claimant: In person
Respondent: Mr Lance Harris, Counsel

JUDGMENT having been sent to the parties on **15 September 2023** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. The Claimant was employed by the Respondent on 12 January 2015 and remains in the Respondent's employment. He is currently a Team Manager, stationed at Greenwich ambulance station.

2. Following the death of George Floyd on 25 May 2020, and the resulting protests and social movements, the Respondent issued a number of communications to its employees about the issue of race, and commissioned training on the subject of race for its employees.

3. Following reports of two incidents – one on 30 January 2020 and one on 7 June 2020 – where the Claimant was alleged to have behaved in a way that was not compliant with the Respondent's corporate values, the Respondent initiated disciplinary proceedings against the Claimant. Those disciplinary proceedings resulted in sanctions being levied on the Claimant, which were subsequently upheld on appeal.

4. It is against this background that the Claimant makes his claim, further details of which are given below.

5. We considered a bundle of witness statements containing 5 WS and running to 40 pages. We considered an evidence bundle of 436 pages which included an additional document handed up on the first morning of the hearing.

6. We took evidence between 14 and 17 August 2023. The Claimant gave evidence on his own account. The following people gave evidence for the Respondent:
   (a) Ms Mandy Dryden, the Respondent's Head of Internal Communications.
   (b) Mr John Chilvers, a Group Manager within the Respondent and the person who investigated the incidents.
   (c) Mr Darren Farmer, the Respondent's Director of Ambulance Operations and the person who conducted the disciplinary proceedings.
   (d) Ms Natasha Wills, the Respondent's Director of Resilience and Special Assets and the person who conducted the appeal proceedings.

7. Both parties made oral submissions after the evidence had been presented. On 18 August 2023 we gave an oral judgment on liability.

8. In reaching our decision we took account of all the pages in the bundle to which we were referred, the witness evidence, and the oral submissions from both parties.

9. The parties requested a copy of written reasons in September 2023. It has taken longer than anticipated to produce this. We apologise to the parties for the delay and are grateful for their patience.

Issues

10. The Claimant alleges:
   (a) That he was discriminated against because of his race, contrary to section 13 of the Equality Act 2010. He identifies as White British.
   (b) That he was discriminated against because of his belief, contrary to section 13 of the Equality Act 2010. The Claimant describes his belief as a philosophical belief that you should treat people how you would want to be treated, and that all people should be treated with respect. That we are all one race and while we may have different colours or cultures we should all be treated as one.

11. The Case Management Order of Judge Le Grys dated 17 March 2023 identified the issues as follows (so far as is relevant):

> "*1. Time limits*
> *…*
> *1.2. Were the discrimination 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 or omission 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 that period?
1.2.4 If not, were the claims made within a further period that the Tribunal thinks 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?

Direct race or belief discrimination (Equality Act 2010 section 13)
…
2.3 Is the Claimant's belief a belief within the meaning of s. 10 Equality Act:
2.3.1 Is the belief genuinely held by the Claimant?
2.3.2 Is it more that merely a viewpoint or opinion?
2.3.3 Is it a weighty and substantial aspect of human life and behaviour?
2.3.4 Is it something that has attained a sufficient level of cogency, seriousness, cohesion and importance?
2.3.5 Is it worthy of respect in a democratic society?

2.4 Did the Respondent do the following things?
2.4.1 Invite the Claimant to undertake black allyship training on 10 June 2020, which the Claimant says he wouldn't have been asked to do if he wasn't white;
2.4.2 Seek to obtain workplace views on racism during the period 16 July 2020 to 20 August 2020;
2.4.3 Initiate an investigation on or around 5 August 2020 following concerns raised about the Claimant's conduct on 30 January 2020 and 7 June 2020;
2.4.4. Suspend the Claimant on 11 August 2020 in respect of these allegations;
2.4.5 Fail to conduct an adequate investigation into these matters, for example by failing to interview the member of staff the Claimant had been speaking to;
2.4.6. John Chilvers suggesting that the Claimant had used a "black man's accent" during the investigation after being asked to explain the earlier conversation with a member of staff;
2.4.7 John Chilvers commenting at the conclusion of the hearing the he believed the [Respondent] to be systematically racist and that the Claimant's beliefs therefore didn't matter';
2.4.8 Suggesting that the Claimant had discussed his case online;
2.4.9 Failing to take the Claimant's evidence into account and being told he couldn't rely on articles as he wasn't an academic;
2.4.10 Failing to properly follow the Respondent's policies in respect of disciplinary matters by conducting a further investigation when there was no new information, with the Claimant being told by Darren Farmer that he could interpret the policies as he saw fit;
2.4.11 Concluding that the Claimant has used offensive language and imposed a disciplinary sanction.

2.5 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. 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 has not named anyone in particular who he says was treated better than he was and therefore relies on a hypothetical comparator.

2.6 If so, was it because of race or belief?

2.7 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to race or belief?"

12. The parties were in agreement that these were the issues.

Finding of Facts

Systemic racism

13. In order to help understand the claim it will be necessary to describe the theory of "systemic racism". It is this theory that the Claimant rejects.

14. We make it clear that we express no opinion on the merits or otherwise of this theory. That is not the Employment Tribunal's role.

15. The concept of systemic racism comes from the school of thought known as critical race theory. It is that the status quo in the society of the UK is that of privilege held by white people, and of oppression directed towards non white people, with the inevitable result that non white people are disadvantaged compared to white people. As well as active acts of racist discrimination or abuse, this also manifests the form of unconscious bias held and demonstrated by people and institutions.

16. As part of training to given to employees, a company employed by the Respondent has produced a delegate booklet. Under the heading "*Becoming an ally*" it identifies three states:
    (a) "*Racist*", defined as "*Takes action to maintain the status quo of privilege and oppression.*"
    (b) "*Non-racist*", defined as "*Reinforces the status quo*."
    (c) "*Anti-racist*", defined as "*Takes action to challenge the status quo.*"

17. We noted that Mr Farmer's report of 23 November 2020 says of the Claimant that "*It is clear to me that* [the Claimant] *holds views around particularly institutional racism that are at odds with the view of the* [Respondent] *and established evidence.*"

18. The Respondent's witnesses were asked if the Respondent was an anti-racist organization:
    (a) Mr Chilvers did not know. He felt that answering was beyond his qualifications and expertise. However, when asked whether he felt there was an institutional bias in society in favour of white people, he

agreed. He said that white people were statistically more likely to be successful, and that they were privileged within society.

(b) Mr Farmer said that the Respondent "*aspires to be*". He believed that systemic racism existed in society, but not he did not believe that systemic racism existed within the Respondent.

(c) Ms Wills also said that the Respondent was aspiring to be anti-racist, and that they wanted people to take action to stand up and call out when they perceived racism. Encouraging such action was their current focus.

19. It is clear from all of this evidence that the Respondent had adopted the concept of systemic racism and that they wished their employees to be anti-racist, namely to take action to challenge what they perceived to be the status quo of privilege held by white people and oppression directed towards people who were not white.

The Claimant's belief

20. The Claimant defines his belief as that:

(a) We are all one race and all colours and cultures should be treated as one.

(b) All people should be treated with respect and how you would want to be treated.

21. The Respondent says that this is not a controversial statement of belief. We agree. It was perhaps summed up most succinctly by Martin Luther King Jr, who said:

"*I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.*"

22. The question which we will turn to in due course is whether, and if so to what extent, the Claimant's rejection of systemic racism is a manifestation of that belief.

23. We note that the Claimant has, during the course of events set out above and in his evidence before us, set out that:

(a) He grew up in a multicultural area of London where he had a number of friends who were mixed race and black. At times he himself faced discrimination upon the basis of his own race.

(b) He learned about black culture and music and to speak a little Yoruba.

(c) His partner and their three children are all mixed race.

(d) Their two godfathers are respectively mixed race and black.

(e) His partner has another child, who is mixed race, and who he has taken in as his own.

(f) His circle of friends outside work consists mostly of black people. Some of them have given character references which have said that he is very comfortable with multiculturalism and does not discriminate on the basis of race.

30 January 2020

24. On 30 January 2020 the Claimant was paired with a colleague, Omar Joe. They were waiting in the ambulance for a call when Mr Joe decided to go to a shop to buy snacks. As he was at the shop, a call came in. Because Mr Joe was out of the ambulance buying snacks there was a delay in responding to the call. Mr Joe and the Claimant got into a heated argument.

25. It is not in dispute that the Claimant used the word 'roadman' during that argument. This is a slang term meaning a young man who can be found on the road, may be causing trouble, is rude or disrespectful, and may or may not be associated with the sale of drugs. The Claimant says that he was threatened by Mr Joe and told Mr Joe not to act like a roadman. Mr Joe says that the Claimant called him a roadman. A third colleague who was in the van, Allan Whaley, made a statement but did not overheard the conversation.

26. Although both the Claimant and Mr Joe made a complaint, these were not followed up and the matter was left to lie.

Death of George Floyd

27. On 4 June 2020 an email was sent on behalf of the Respondent's COO, Mr Khadir Meer, in relation to the recent death of George Floyd and the global wave of condemnation that followed it. Mr Meer said "*The sad fact is, this is not a new issue. The history of systemic racial prejudice spans centuries and continents and is not exclusive to the USA*".

28. Mr Meer invited Black Asian and Minority Ethnic employees to attend a virtual drop in session and invited all staff to attend an allyship workshop. Mr Meer set out the Respondent's zero tolerance of racism, acknowledged that there would be debates about racism and invited staff to conduct them respectfully.

7 June 2020

29. On 7 June 2020 the Respondent's CEO, Mr Garrett Emmerson, sent an email to all staff. Mr Emmerson said that:

> "*We must all challenge unacceptable behaviours – whether deliberately mal-intentioned or thoughtlessly said or done, and change this organization for the better once and for all. To do this we need to start by having open, honest and inevitably sometimes difficult conversations right across the organization. From mess rooms to board rooms, we need to listen, learn and redouble our efforts to challenge unacceptable behaviours and achieve genuine equality in the workplace.*"

30. On the same day the Claimant was in the mess room with other staff. He was discussing the recent actions of Black Lives Matter. He was engaged in this discussion when he was approached by a collague, Sonal Shah. The two had a brief conversation on the subject.

31. The conversation was overheard by another member of staff, Evangeline Chalwell. Ms Chalwell was not part of the conversation between the

Claimant and Ms Shah. Ms Chalwell submitted a complaint about what the Claimant had said that very same day.

32. The Claimant agrees that he said that he did not agree with the concept of systemic racism. He rejected that concept. He made reference to his friends, particularly his two best friends, who were not white but had achieved success in their lives. This is consistent with Ms Chalwell's complaint.

33. Ms Chalwell also alleged that the Claimant had said:
(a) That an person needs to accept that it is their own actions that lead them to a place of higher incarceration rates, lower levels of education, lack of opportunity and poverty.
(b) That black people should not "*hide behind their race*"[1].

34. The Claimant denies saying these things.

35. We find that it is more likely than not that the Claimant did say these things. We do so for the following reasons. First, because they were recorded in a contemporaneous note, an email sent within hours of the incident. Second, because Ms Chalwell had no obvious motive to exaggerate anything or make up things that the Claimant had not said. Third, because they are logically consistent with the Claimant's admitted rejection of systemic racism.

36. Ms Chalwell in her complaint also says that the Claimant had said that you cannot be racist and work for the Respondent. The Claimant says that he said that a racist would find it hard to work for the Respondent due to the multicultural make up of its staff. We find that the one is a paraphrase of the other and that neither could be properly considered to be offensive.

Events following 7 June 2020

37. On 8 July 2020 the Respondent's internal communication staff sent a message to all employes, inviting them to attend a dedicated session on race equality. That email also acknowledged that this would involve "*open, honest, and inevitably difficult conversations*".

38. On 29 July 2020 Mr Jones put in a further complaint about the incidents of January 2020. He said he had been inspired to do so by the Black Lives Matter movement and training on diversity that he had received.

39. On 3 August 2020 the Respondent's Chair, Heather Lawrence OBE, sent an email to all staff. It apologized to all people who had suffered racial abuse in the course of their employment with the Respondent. Ms Lawrence went on to say "*We now call on all white staff to stand with us in this apology, and I ask you call to walk in the shoes of your colleagues and reflect on how you can join us living our values so that everyone feels respected and valued*". Ms Lawrence closed by saying that the Respondent had approved a new programme of work to engage with all staff and enable the Respondent to become an inclusive organization.

[1] This is attributed as a direct quote from the Claimant in Ms Chalwell's complaint.

The disciplinary proceedings

40. On 5 August 2020 John Chilvers was asked to investigate the incidents of 30 January and 7 June 2020.

41. On 11 August 2020 the Claimant was suspended on full pay.

42. On 25 August 2020 there were posts on the Trust's Facebook page which mentioned the Claimant. We have not seen them as they were subsequently deleted. The Claimant says that he could not have made then as he does not use social media platforms. The Respondent does not suggest that the Claimant posted them or arranged for them to be posted. They accepted his explanation and let the matter lie there. It did not form part of the subsequent investigation or disciplinary proceedings.

43. Mr Chilvers interviewed a number of people and then the Claimant on 7 September 2020.

44. In the interview the Claimant is said to have changed his language and tone when describing what Mr Joe has said. Mr Chilvers at the disciplinary hearing described this as the Claimant using "*a black man's voice*". In his evidence Mr Chilvers said that it was a Jamaican accent. The Claimant says that he had been attempting to illustrate what Mr Joe had said and how he suddenly became aggressive. His language and tone changed because he was repeating the roadman slang he had heard from Mr Joe.

45. In the interview the Claimant also told Mr Chilvers that he had been in a conversation in the mess room on 7 June 2020 with Ms Shah. This was the first time that Mr Chilvers knew who the Claimant was speaking to.

46. Mr Chilvers decided not to interview Ms Shah. In his evidence he said that this was because he did not think she could provide any further information. In his evidence he also claimed to have been concerned about the financial impact of the suspension on the Claimant so he wanted to wrap up the investigation as quickly as possible.

47. We consider that the failure to interview Ms Shah at the time was unacceptable. It would have been obvious that as the person who was actually in conversation with the Claimant, she would be able to provide more information about it than somebody who overheard it in the same room or in the next room. To his credit, Mr Chilvers accepted that in hindsight he should have done so.

48. Mr Chilvers in his report, submitted in September 2020, made a number of assumptions:
    (a) That the term 'roadman' was a racial slur. In fairness to Mr Chilvers, he had been told during his investigation that it was a racial slur by Melissa Berry, who was described as a 'diversity consultant'.
    (b) That denial of systemic racism was one of a number of incidents of racially charged language spoken by the Claimant.

49. We were invited to look at the events in the context of the time they happened. It is correct that there was widespread disruption caused by the

pandemic, but there was also widespread pressure on employers and leaders to make statements against and tackle the issue of racism. Given that, and given the assumptions made by Mr Chilvers in his report, we find that the real reason Mr Chilvers did not interview Ms Shah is because he thought he had enough information to determine the complaint and wanted to move it forward to the next stage.

50. The report was passed to the chair of the disciplinary hearing, Darren Farmer. Mr Farmer in his evidence said that he read the report during the 2-3 days he took to decide to go forward with disciplinary action. He accepted that he would at that point have seen that Ms Shah was the person in conversation with the Claimant in June 2020, and that she had not been interviewed. He did not pick up on either of those points. He accepted that this was an oversight on his part. As a result Ms Shah was not interviewed. This was also unacceptable.

51. On 5 October Mr Farmer convened a disciplinary hearing. The Claimant and his representative presented their evidence. At this point, Mr Farmer realised the importance of the evidence of Ms Shah and adjourned the proceedings to obtain it.

52. The Claimant complains about this, pointing to paragraph 1.10 of Appendix 2 to the Respondent's disciplinary policy, which says that:
(a) Once papers are exchanged neither side shall re-investigate the disclosed findings
(b) All parties reserve the right to investigate new information before the completion of the hearing.

53. We consider that Mr Farmer acted appropriately. The information that could be provided by Ms Shah was new information and the policy permitted for it to be obtained before the hearing was concluded. Pausing to interview Ms Shah, given the importance of her evidence, was the least worst of all the options, and we are satisfied that it was appropriate for Mr Farmer to have taken it.

54. The Claimant has suggested that at this point the proceedings should have been stopped. We do not agree. Serious accusations had been made and investigated. It was the responsibility of the Respondent to do the best it could to determine the matters. We do not believe it would have been proportionate to have stopped the proceedings.

55. Also during the hearing Mr Farmer was told about the Claimant allegedly using a 'black man's voice'. He asked the Claimant to repeat what happened. He noted a change of voice and language, but did not himself give them any racial attribute.

56. We have considered the matter. The Claimant has given an explanation about why he used a different tone of voice and language. He was not challenged about it at the time. There is no reason why he would mock his colleague while participating in disciplinary meetings. We are satisfied that he mimicked Mr Joe in order to illustrate the events of the day.

57. Also at the hearing, the Claimant alleges that Mr Chilvers read from a handwritten note that he believed the Respondent was systemically racist and the Claimant's views didn't matter. Mr Chilvers denies saying this and says that there was no handwritten note – he is dyslexic and struggles with handwriting so he used a computer. Mr Farmer cannot recall Mr Chilvers saying this, and that he would have had a full and frank discussion with anyone who did. He did not have such a full and frank discussion with Mr Chilvers, and the natural implication is that Mr Chilvers did not make any such statement was not said. We are content that, on the balance of probabilities, this was not said and there was no handwritten note.

58. Ms Shah was finally interviewed on 9 October 2020, some 4 months after the incident. Unsurprisingly, she was not able to recall much about the conversation. She did recall the Claimant disagreeing with the concept of systemic racism. She did not recall the Claimant having made the statements that he disputes, despite being prompted by Mr Chilvers.

59. By way of an outcome letter dated 23 November 2020 Mr Farmer upheld the complaints, giving as his reasons:
    (a) He found the use of 'roadman' was a term of abuse but not racial in nature.
    (b) The Claimant had made the comments that he denied making. He preferred the evidence of Ms Chalwell over the Claimant because Ms Chalwell would have no reason to have made up these comments. She did not know the Claimant and had no animosity towards him.
    (c) He found that the Claimant had inappropriately mimicked Mr Joe.
    (d) He found that all of these were offensive to colleagues, that the Claimant did not treat them with respect, and this was gross misconduct.

60. Mr Farmer was very clear in his evidence that he did not use the Claimant's denial of systemic racism as evidence of any misconduct. What was misconduct was the offensive manner in which he acted towards other colleagues. Mr Farmer accepted that it would not be gross misconduct to have a conversation about the Claimant's views on systemic racism as long as that conversation was conducted sensitively so as not to give offence.

61. Mr Farmer accordingly made three findings against the Claimant. In his evidence he agreed that all three findings stood or fell with the conclusions he had made about the conversation on June 2020.

62. Mr Farmer issued the Claimant with a final written warning, to remain on the Claimant's file for 18 months, and required him to complete unconscious bias training, a black allyship workshop, and a written reflective practice.

63. The latter was described by Mr Farmer as "*a reflective practice in writing … that explores your learning in relation to acceptable language for the workplace and systemic racism. This needs to be created through a robust academic process including formal referencing.*"

64. Mr Farmer was asked what the aim of this written reflective practice was. He said that the whole package was there to enable the Claimant to learn

from his experience, to learn when his language might be offensive to colleagues, to prevent the Claimant from being offensive in the future and to "*open up to the potential that you were wrong*". He described it as an "*excellent opportunity*" for the Claimant to "*make a balanced decision*" and see "*if the position changed*".

65. The Claimant appealed on 9 December 2020. His appeal was heard on 24 March 2021 by Natasha Wills. By way of a letter dated 24 March 2021 Ms Wills reduced the length of the final written warning from 18 months to 12 but upheld the other sanctions.

66. Following the appeal outcome, the Claimant said that he was no longer prepared to participate in the training, black allyship workshop and written reflective practice. He did not do them and there was no apparent consequence for his refusal to do them.

67. He contacted ACAS on 19 May 2021, and an ACAS certificate was issued on 24 May 2021. The claim to the Tribunal was made on 22 June 2021.

68. The claimant promoted to his current role in February 2022. He attended diversity training which formed a part of his training for that role. He said he enjoyed the exercise, as the facilitator was open to debate and did not press any particular narrative.

Law

Timing

69. The Tribunal has a power to extend time if it is just and equitable to do so: section 123(1)(b) Equality Act 2010 ('EA 2010').

70. The case of **London Borough of Lambeth v Apelogun-Gabriels** [2001] EWCA Civ 1853, states:
    (a) There is no general principle that one should always await the outcome of internal grievance procedures before embarking on litigation.
    (b) the pursuit of domestic grievance or appeal procedures will normally not constitute a sufficient ground for delaying the presentation of an appeal.

Belief

71. Section 10(2) of the EA 2010 includes the following definition of belief.

    "*Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.*"

72. When the Tribunal determines what constitutes a belief qualifying for protection, there is no material difference between the domestic approach under the EA 2010 and that under Article 9: **Harron v Chief Constable of Dorset Police** [2016] ILR 481.

73. It is the function of this Tribunal to enquire as to the genuineness of a belief as a matter of fact, but this enquiry is limited to ensuring the good faith of

the person who asserts a belief. It is not for us to inquire as to the validity of the belief or test it by objective standards: **R (Williamson) v Secretary of State for Education and Employment** [2005] UKHL 15.

74. The leading case the area of *philosophical belief*" is that of **Grainger plc and ors v Nicholson** [2010] ICR 360, EAT. In this case the Appeal Tribunal provided important guidance on the meaning and ambit of "*philosophical belief*". The EAT held that a belief can only qualify for protection if it:
(a) is genuinely held;
(b) is not simply an opinion or viewpoint based on the present state of information available;
(c) concerns a weighty and substantial aspect of human life and behaviour;
(d) attains a certain level of cogency, seriousness, cohesion and importance; and
(e) is worthy of respect in a democratic society, is not incompatible with human dignity and is not in conflict with the fundamental rights of others.

75. We refer to these as the five 'Grainger criteria'.

76. The five Grainger criteria have been replicated in the EHRC Employment Code as official guidance on what comprises a 'religious or philosophical' belief for the purposes of the protected characteristic of religion or belief. The definitions are designed to be broad and in line with Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

77. We also note the following general points of principle from the case law:
(a) In **Eweida v UK** [2013] 57 EHRR 8, that for an action to be a manifestation of that belief it must be intimately linked with that belief. Beliefs are not fixed or static and they may change over lifetime.
(b) In **Grainger** and **Campbell v UK** (1982) 4 EHRR 293 the belief need not be a fully-fledged philosophy of thought.
(c) In **Grainger** that the belief may be based upon an objectionable political philosophy.

78. In respect of the second Grainger criterion, we note that:
(a) To constitute a belief there must be a religious or philosophical viewpoint in which one actually believes. It is not enough to have an opinion based on some real or perceived logic or based on information or lack of information available: **McClintock v Department of Constitutional Affairs** [2008] IRLR 29.
(b) Difficulties can arise in seeking to define in general terms the precise distinction between a philosophical belief and an opinion or viewpoint based the present information available. As a minimum philosophical belief implies acceptance of the claim and it must be capable of being understood as a characteristic of the individual in question: **Mackereth v Department for Work and Pensions** [2022] IRLR 721.

79. In respect of the fifth Grainger criterion, we note that the bar for any belief being worthy of respect in a democratic society is low. It is only if the belief involves a very grave violation of the rights of others, tantamount to the

destruction of those rights, would the belief be one that was not worthy of respect in a democratic society. Beliefs that are offensive, shocking or even disturbing to others – event those which fall into the less grave forms of hate speech – would not be excluded from the protection. However, the manifestation of such beliefs may, depending on the circumstances, justifiably be restricted. At the preliminary stage of assessing whether the belief even qualifies for protection, manifestation can be no more than a part of the analysis: **Forstater v CGD Europe and ors (Index on Censorship and anor intervening)** [2022] ICR 1. But the question of restriction or otherwise may be relevant when determining whether restrictions were reasonable.

80. The EAT in **Higgs v Farmor's School** [2023] ICR 1072 gave guidance to Tribunals when assessing the proportionality of any interference with the expression of a protected belief:

(a) The freedom to express a belief is a right of a fundamental nature in a democratic society, even if the belief is not popular and its expression may offend.

(b) Interference with that right is however lawful to the extent that it is necessary to protect the rights and freedoms of others. Such action may be taken with regard not to the belief, but to it's objectionable nature.

(c) An assessment of whether it was so necessary to interfere with that right will always be context specific.

(d) The Tribunal should as first, whether the objective of interference is important enough to justify interference, second, whether the interference is rationally connected to that objective third, whether that objective could be achieved by a less intrusive manner, and fourth, whether the need for interference outweighs the right to express a belief.

(e) In asking that question, regard must be had to the content of the manifestation, the tone, the extent, the claimant's understanding of the likely audience, the nature and extent of the effect on the rights of others, whether the views expressed are personal or as the view of the employer, any potential power imbalance, the nature of the employer's business, and whether the interference is the least intrusive measure available to the employer.

Direct discrimination

81. Section 13 of EA 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.*"

82. Section 13 focuses on whether an individual has been treated "*less favourably*" because of a protected characteristic. We must ask ourselves: treated less favourably than whom? This could be an actual or a hypothetical comparator.

83. The comparator required for the purposes of the statutory definition of discrimination must be a comparator in the same position in all material respects of the victim other than that they are not a member of the

protected class. There must be "*no material difference between the circumstances relating to each case*" when determining whether the claimant has been treated less favourably than a comparator: **Shamoon v the Chief Constable of the Royal Ulster Constabulary** [2003] UKHL 11.

84. A complaint of direct discrimination will only succeed where the tribunal finds that the protected characteristic was the reason for the claimant's less favourable treatment.

85. Direct discrimination can arise in one of two ways: where a decision is taken on a ground that is inherently discriminatory, or where it is taken for a reason that is subjectively discriminatory: **R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS and ors** [2010] IRLR 136.

86. The 'but for' test will apply principally in cases where some kind of criterion has been applied that is inevitably linked to a protected characteristic, In that case it will be, prima facie, inherently discriminatory. However, in the majority of cases, the Tribunal will focus in factual terms on the reason why the employer acted as it did. This means that the Tribunal will need to consider the subjective motivations of the Respondent in order to determine whether the less favourable treatment was in fact influenced by the protected characteristic. This will mean that the Tribunal will need to consider, inferring that from the evidence where necessary, what is actually in the Respondent's mind: **Nagarajan v London Regional Transport** [1999] ICR 877.

Burden of proof

87. Section 136 of the EA 2010 sets out the burden of proof which applies to discrimination cases 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.*"

88. In **Igen Ltd v Wong** [2005] IRLR 258 the Court of Appeal approved the guidance given in **Barton v Investec Securities Ltd** [2003] IRLR 332. It is first for the Claimant to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent has committed an act of unlawful discrimination. If they cannot do so then the claim will fail. But where the Claimant has proved facts from which such conclusions could be drawn, then the burden of proof moves to the Respondent. It is then for the Respondent to prove that they did not commit the act, or that the treatment was not on the grounds of the protected characteristic.

Submissions

89. The Claimant said that the reason his claim was delayed was that he had looked on the GOV.UK website and seen advice there that he should exhaust his alternative remedies before brining a claim in the Employment Tribunal. That was what he had done – he had given the Respondent an opportunity to make things good by way of the appeal. It was only when the appeal failed that he had turned to the Employment Tribunal. In those circumstances, it would be just and equitable to extend time.

90. The Claimant said that his rejection of systemic racism was part of his overarching belief. He disagreed fundamentally with the proposition that people should be viewed by reference to their immutable characteristics. All of the acts complained of were inherently linked to his belief, and the Respondent's disagreement with it. In the alternative, they were because of his race. If he had not been White British he would not have been treated in the same way.

91. Mr Harris for the Respondent said that this case was not about systemic racism, or whether is exists, or whether the Respondent could have adopted a better procedure.

92. Mr Harris said that the acts were clearly out of time and it is only in exceptional circumstances that the Tribunal will extend time. He argued that the circumstances were not exceptional – the Claimant had the benefit of assistance from his trade union and so could and should have made his claim in time. He relied on **Apelogun-Gabriels v London Borough of Lambeth** [2002] IRLR 116 as authority for the proposition that awaiting the outcome of disciplinary proceedings was not a sufficient reason in itself to extend time. The delay had prejudiced the parties: the people who write relevant emails have moved on and the handwritten notes taken of the disciplinary proceedings were no longer available. He submitted that it was irrelevant that the Respondent was nevertheless able to defend the claim.

93. Mr Harris said that in any case the Claimant's rejection of systemic racism did not form part of his belief. It was simply an opinion that he had. He relied on the evidence given by the Claimant to the effect that:
    (a) He was open minded.
    (b) He based his opinions on evidence.
    (c) When asked what would change his mind about systemic racism, he said "*evidence of multiple claims, procedures and policies set out predominantly within a group, would agree if I saw it in a particular organisation*".

94. It is fair to record at this point that after giving this evidence, the Claimant subsequently said that he would not change his stance on systemic racism because it conflicted with the central themes of his belief.

95. Mr Harris finally submitted that none of the acts of claimed discrimination had anything to do with race. For each of them there was a credible reason for why they were done which was not based on race.

Conclusions

Timing

96. It is not disputed that all of the acts are out of time, either individually or if viewed as conduct extending over a period.

97. We considered whether any of the 11 acts were conduct extending over a period of time. We refer to the 11 acts by reference to the paragraph numbers setting them out in the Case Management Order of Judge Le Grys, quoted at paragraph 11 above.

98. We considered that 2.4.1 and 2.4.2 did not form part of conduct extending over time. They were individual incidents. The length of time for an extension required would be 8 and 7 months respectively.

99. We did not consider it was just and equitable to extend time in respect of either act. The period is extensive. There is prejudice to the Respondent as the authors of the relevant emails have left. They were not directed to and did not affect that Claimant directly. The Claimant has not put forward any particular reason to explain the delay.

100. We considered that 2.4.3 to 2.4.11 did form part of conduct extending over time. Per section 123(3)(a) of the EA 2010 they are treated as being done at the last date in that period, 23 November 2020. The amount of time required for an extension period would be 3 months.

101. The case law indicates that an extension of time to follow appeal procedures will be an exceptional case. But we do retain the ability to do so. We then considered all of the circumstances of the case.

102. We note that the Claimant is a litigant in person and as such can expect more latitude than a party who has legal representatives to advise them as to time limits. The Claimant has the support of his union but that does not provide the same level of support as being legally represented. He told us that he did not discuss a claim with his union until after the appeal, although we bear in mind that he could have done so.

103. We also note that the Claimant had done some research on GOV.UK, which indicated that he needed to try and exhaust alternative remedies before making a claim. He followed that advice in good faith. We note that he acted relatively swiftly to make the claim after exhausting what he saw to be his alternative remedy.

104. We also note that the Respondent has identified no prejudice other than the absence of the handwritten notes of the HR consultant. But this would have been the case even if the claim had been brought within time. Mr Chilvers in his evidence has said that she left the Respondent's employment and never gave her notes to him. In any event we do not think they would have added anything of substance. The events are set out in considerable detail in the papers in front of us. We do not consider that this amounted to any prejudice to the Respondent.

105. The Claimant has given a reason for the delay, which is that he was engaged in the appeal. This was not a separate internal procedure but

rather one that follows on from and is connected to the conduct which extends over time.

106. We bore the case of **Apelogun-Gabriels** in mind. However, this is not a case where a Claimant has simply waited for the end of a disciplinary process to file a claim. The Claimant took active steps to try and ensure that he was in time and he relied on good faith on information he received from a source that he was entitled to consider to be good authority.

107. Bearing all of these in mind, and weighing them up as a whole, we are satisfied that it would be just and equitable to grant the 3 month extension to acts 2.4.3 to 2.4.11 and so we do so.

Whether the Claimant's belief was a protected characteristic

108. We must first decide whether or not the Claimant's belief was a protected characteristic within the meaning of section 10 EA 2010.

109. We address the five Grainger criteria in turn.

110. In respect of the first Grainger criterion, we consider that the Claimant's beliefs, as he has described them, are genuinely held. This was not contested by the Respondent, and indeed Mr Chilvers, Mr Farmer and Ms Wills all agreed that it was a genuinely held belief.

111. In respect of the second Grainger criterion, we have borne in mind the guidance from **McClintock** and **Mackereth**. We had to decide whether the Claimant's rejection of systemic racism was a manifestation of his belief, or whether it was simply an opinion based on the evidence in front of him. We reminded ourself that if it was simply an opinion based on evidence, without a link to his philosophical belief, it would not meet the test.

112. We have considered the philosophical belief as set out by the Claimant. It is clear to us that this is a philosophical belief: that all humans are one race and should be treated equally with respect. The Respondent acknowledges that this is not a controversial belief. We will however return to these principles when we consider the question of whether the Claimant's rejection of systemic racism is a manifestation of his belief.

113. The Claimant's rejection of systemic racism is wholly consistent with his belief in equal treatment for all races regardless of colour. There is an undeniable link between the two – it flows logically from a belief in equal treatment for all races that a person who holds that belief would reject a theory which attributes specific characteristics to people solely because of their race. Both are consistent in internal logic and structure.

114. We carefully considered whether the Claimant's evidence demonstrated that his rejection of systemic racism was an opinion. Made out from facts before him, which he might change if new evidence presented itself. We were ultimately not satisfied that the Claimant had indicated that this belief was founded on evidence and capable of being changed by further evidence. This is because:

(a) The Claimant accepts that racism exists on a personal level but this is not the same as accepting that it exists as the status quo in society.
(b) The Claimant also accepts that racism can exist within an institution but this is not the same as accepting that it exists as the status quo in society.
(c) The evidence relied upon by the Respondent shows that the Claimant would be prepared to accept racism exists within an institution, but does not go so far as to say that the Claimant would accept it exists as the status quo in society.
(d) The Claimant has never accepted that evidence would change his belief that systemic racism is the status quo in society and denies it.

115. We were therefore satisfied that the Claimant's rejection of systemic racism was a manifestation of his belief, and not simply an opinion he had formed from the evidence and might change.

116. In respect of the third Grainger criterion, we consider that beliefs which touch on the concept of racial equality are beliefs as to a weighty and substantial aspect of human life and behaviour. We should note in fairness that the Respondent does not suggest otherwise.

117. In respect of the fourth Grainger criterion, we considered that the belief does attain a certain level of cogency, seriousness, cohesion and importance. It is clearly set out, consistent, and understandable. Again, in fairness, the Respondent does not suggest otherwise.

118. In respect of the fifth Grainger criterion, we considered that the belief was worthy of respect in a democratic society, was not incompatible with human dignity and did not conflict with the fundamental rights of others. We noted that there are only modest threshold requirements for this test to be met. The Court in **R (Williamson)** said that those requirements "*should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention*" and in **Forstater** the EAT said that it would only be "*in extremely limited circumstances in which a belief would be considered so beyond the pale*". The Respondent does not argue that it is not worthy of respect in a democratic society.

119. The majority of the panel therefore concluded that the Respondent's rejection of systemic racism is a manifestation of his wider belief, that this belief came within the definition of section 10 of the EA 2010, and as such it was a protected characteristic.

Whether the interference was proportionate

120. Applying the approach in **Higgs v Farmor's School**:
(a) The Claimant expressed his views in an atmosphere where the Respondent had invited its employees to have "*difficult conversations*" on the subject of race. He could legitimately have expected the Respondent to approve of such a difficult conversation taking place.
(b) The tone was insensitive at best and offensive at worst.

(c) The Claimant understood that his audience would also be prepared, if not wholly willing, to enter into a difficult conversation on the subject of race.
(d) The Respondent has not claimed that the fundamental rights of other people have been breached. The Respondent has put its case on the basis that disciplinary action was necessary to address offensive behaviour to colleagues.
(e) The Claimant was clearly expressing a personal view.
(f) There is a power imbalance: the Respondent was in a position to impose sanctions the Claimant up to and including the loss of his employment.
(g) There were less intrusive measures available to the Respondent.

121. We accordingly conclude that, to the extent that any action of the Respondent was directly discriminatory, the interference with the Claimant's protected belief was not proportionate.

Discrimination of the basis of a protected belief

122. In order to make out the claim of discrimination on the basis of belief we must be satisfied that:
(a) The Claimant was treated less favourably than other employees
(b) The reason for the less favourable treatment was because of his belief, namely because he rejected the concept of systemic racism as a manifestation of his belief in one human race and equal and respectful treatment.

123. We look at the acts in turn.

124. In respect of 2.4.3 (beginning an investigation) we do not consider that there was any less favourable treatment. The Claimant was treated the same as a person without a protected belief would have been when a complaint of potential gross misconduct was made. It was fair and reasonable to investigate the complaint. We also considered that the decision to investigate was made because of the complaint and not because of the Claimant's belief.

125. In respect of 2.4.4 (suspending the Claimant), we do not consider that there was any less favourable treatment. The Claimant was treated the same as a person without a protected belief against whom there was a complaint of potential gross misconduct. The Respondent's policy allowed for a suspension to be made. We also considered that the decision to investigate was made because of the potential for gross misconduct and not because of the Claimant's belief.

126. In respect of 2.4.5 (failing to conduct an adequate investigation), we considered that there was less favourable treatment. We have found that Mr Childers concluded his investigation because he considered that he had enough evidence to move it on and wanted to move it on to the next stage. He did not interview Ms Shah. This was less favourable treatment. We have also found that part of this evidence was his assertion that the Claimant's rejection of systemic racism was one of a number of racially

charged statements. In other words, there was a direct connection to a manifestation of the Claimant's protected belief. The investigation moved on without interviewing Ms Shah – the less favourable treatment – at least in part because the manifestation of a protected belief. The Respondent does not offer a non-discriminatory reason for this treatment.

127. In respect of 2.4.6 (using a "black man's accent") we consider that there was no less favourable treatment. The evidence of Mr Farmer was clear that first, his concern was over one colleague mimicking another rather than any racial characterisation of that mimickry, and secondly that he did not in the end place any reliance on it.

128. In respect of 2.4.7 (Mr Chilvers' comments), we did not consider that there was any less favourable treatment or connection to the Claimant's belief. This is because we have found above that Mr Chilvers did not make those comments, and so there was no treatment to be less favourable or connected to belief.

129. In respect of 2.4.8 (online discussion), we did not consider that there was any less favourable treatment. That is because the Respondent did not rely on the alleged online discussions or take the matter any further once the Claimant had provided his explanation. We do not think it was unreasonable or less favourable treatment to make the inquiry. There was no other action. Accordingly, there was no treatment to be less favourable or connected to belief.

130. In respect of 2.4.9 (failing to take the Claimant's evidence into account), we did consider that there was less favourable treatment. The Claimant brought forward evidence to show that his view (which was a manifestation of his belief) was shared by other people and so may be thought acceptable. The decision letter does not attempt to engage with the evidence but simply says that it is not credible and dismisses it accordingly. We have considered whether this was because of the Claimant's belief. We note that the letter goes on to say that "*It is clear to me that* [the Claimant] *holds views that are at odds with the views of the* [Respondent] *and established evidence*." This indicates to us that this evidence was dismissed because of its content, which the Trust considered to be at odds with its views and therefore unacceptable. The Respondent does not offer a non-discriminatory reason for this treatment.

131. In respect of 2.4.10 (new information investigation), we do not consider that there was less favourable treatment in attempting to rectify the earlier mistake of not interviewing Ms Shah. The policy allows for it, the information she was able to provide was new, it was reasonable to seek it and take it into account and the Claimant had an opportunity to respond to it. The reason for taking such action was to remedy a defect that had arisen. It was nothing to do with the Claimant's belief.

132. In respect of 2.4.11 (offensive language and disciplinary sanctions), in line with our findings above we consider that Mr Farmer was entitled to prefer the evidence of Ms Chalwell to that of the Claimant, and reach the conclusion that he did: namely that the Claimant had made offensive remarks and so had committed the gross misconduct. We did not think that

the sanction of a final written warning for 18 months (which we note was reduced to 12 on appeal) was less favourable treatment. It may seem harsh but it was an option open to the Respondent upon making a finding of gross misconduct. We did not see any evidence that it was aggravated by the Claimant's beliefs.

133. We also considered that the direction to attend a black allyship workshop and unconscious bias training were not less favourable treatment. We felt that a person without the Claimant's beliefs, having made offensive comments to colleagues about matters concerning race, would have been directed to do the same training.

134. We did consider that the direction to carry out a written reflective practice was less favourable treatment. It is directed specifically against the Claimant's rejection of systemic racism, a manifestation of his belief, and would not have been directed against a colleague in the same situation who did not have that belief. Its explicit aim was to try to change the Claimant's belief. It was clearly because of his belief. The Respondent does not offer a non-discriminatory reason for this treatment.

Discrimination upon the ground of race

135. In order to make out the claim of discrimination on the basis of race we must be satisfied that:
(1) The Claimant was treated less favourably than other employees
(2) Thie reason for the less favourable treatment was because of his race, namely because he was a white man.

136. We look at the acts in turn.

137. In respect of 2.4.3 (beginning an investigation) we do not consider that there was any less favourable treatment. The Claimant was treated the same as a non white person would have been when a complaint of potential gross misconduct was made. It was fair and reasonable to investigate the complaint. We also considered that the decision to investigate was made because of the complaint and not because of the Claimant's race.

138. In respect of 2.4.4 (suspending the Claimant), we do not consider that there was any less favourable treatment. The Claimant was treated the same as a non white person against whom there was a complaint of potential gross misconduct. The Respondent's policy allowed for a suspension to be made. We also considered that the decision to suspend was made because of the investigation and potential for a finding of gross misconduct and not because of the Claimant's race.

139. In respect of 2.4.5 (failing to conduct an adequate investigation), we do consider that the Claimant was treated less favourably. The failure to interview Ms Shah at the first available point meant that he was deprived of a potentially helpful witness. We also consider that the failure to challenge him about his change of voice and language when describing what Mr Joe said deprived him of an opportunity to provide a relevant expectation. Although the use of the word roadman and the denial of

systemic racism were not in the end held against him as being terms of racial abuse, they framed the investigation and will have influenced the final choice. All of these were examples of less favourable treatment.

140. We did not, however, think that this less favourable treatment was as a result of his race. The failure to interview Ms Shah or challenge him in the disciplinary hearing were due to incompetence, oversight, or the rush to move the process forward. The racial connotations in his use of the word roadman and his denial of systemic racism were ascribed to his beliefs, they were not connected to his race.

141. In respect of 2.4.6 (using a "black man's accent") we did not consider that there was less favourable treatment. The evidence of Mr Farmer was clear that first, his concern was over one colleague mimicking another rather than any racial characterisation of that mimickry, and secondly that he did not in the end place any reliance on it.

142. In respect of 2.4.7 (Mr Chilvers' comments), we did not consider that there was any less favourable treatment or connection to the Claimant's race. This is because we have found above that Mr Chilvers did not make those comments, and so there was no treatment to be less favourable or connected to race.

143. In respect of 2.4.8 (online discussion), we did not consider that there was any less favourable treatment. That is because the Respondent did not rely on the alleged online discussions or take the matter any further once the Claimant had provided his explanation. We do not think it was unreasonable or less favourable treatment to make the initial inquiry. There was no other action. Accordingly, there was no treatment to be less favourable or connected to race.

144. In respect of 2.4.9 (failing to take the Claimant's evidence into account), we did consider that there was less favourable treatment. The Claimant brought forward evidence to show that his view was shared by other people who were not white. The decision letter does not attempt to engage with the evidence but simply says that it is not credible and dismisses it. This is in contrast to the approach taken to the views of the diversity consultant about the term 'roadman', which did engage with the origin and weight of those views. We do not think it is controversial to say that when evidence is presented to an investigation it should be engaged with, even if that engagement does not need to be particularly complex. We have considered whether this was because of the Claimant's race. We conclude that it was. We do not believe that similar evidence brought forward by a non white employee would have been dismissed without at least some engagement with it. We are supported in that view by the evidence we have seen of the Respondent's senior management, who have written to all staff to affirm that they wish to listen to the voices and experiences of BME colleagues. The Respondent does not offer a non-discriminatory reason for this treatment.

145. In respect of 2.4.10 (new information investigation), we do not consider that there was less favourable treatment in attempting to rectify the earlier mistake of not interviewing Ms Shah. The policy allows for it, the

information she was able to provide was new, it was reasonable to seek it and take it into account and the Claimant had an opportunity to respond to it. The reason for taking such action was to remedy a defect that had arisen. It was nothing to do with the Claimant's race.

146. In respect of 2.4.11 (offensive language and disciplinary sanction), we do not consider that there was less favourable treatment. This is because we are satisfied that Mr Farmer acted reasonably in preferring the evidence of Ms Caldwell. By doing so he was entitled to make the finding that the Claimant behaved offensively and that this was gross misconduct. We also consider that the treatment was not relevant to race. The sanctions imposed were in relation to the Claimant's behaviour and beliefs, not to his race.

Conclusions

147. We summarise our conclusions as follows.

148. It is the unanimous decision of the panel that the acts listed at 2.4.1 and 2.4.2 of the case management order of 17 March 2023 are out of time and no extension of time is granted.

149. It is the unanimous decision of the panel that acts listed at 2.4.3 to 2.4.11 of the case management order of 17 March 2023 are out of time and an extension of time in respect of them is granted.

150. It is the majority decision of the panel that the claim of direct discrimination on the grounds of race in respect of act 2.4.9 of the case management order of 17 March 2023 is well founded and succeeds.

151. It is the majority decision of the panel that the claim of direct discrimination on the grounds of belief in respect of acts 2.4.5, 2.4.9 and 2.4.11 of the case management order of 17 March 2023 are well founded and succeeds.

152. It is the unanimous decision of the panel that all other claims of direct discrimination, whether on the ground of race or the ground of belief, are not well founded and fail.

Remedy

153. We were addressed by the parties on remedy.

154. The Claimant pointed to the fact that the Respondent still expected its colleagues to act in an "*anti-racist*" manner, and as a result there was still the potential for action to be taken against him on the basis of his belief. He said that the correct award would be the minimum of the middle **Vento** band.

155. Mr Harris for the Respondent pointed to the limited extent of the findings made against the Respondent. He said that the Claimant had suffered no financial loss. He said that the Claimant had not been dismissed nor had his career suffered as a result, he had successfully applied for promotion.

He said that the correct award would be the minimum of the lower **Vento** band.

156. We agreed with Mr Harris that the extent of the breaches we found were not significant. In particular:
(a) In respect of the failure to interview Ms Shah, that was remedied as far as was possible. We recognise that the Respondent by doing so could not have obtained in evidence the things she forgotten during the four month delay.
(b) In respect of failure to consider evidence, we reminded ourself that much of the evidence put forward by the Claimant was considered
(c) In respect of disciplinary sanctions, we have found that only one (the reflective practice) amounted to a breach, and we remind ourselves that the Claimant did not in fact undertake it, and suffered no consequence as a result.

157. We also accept that that the adverse disciplinary findings have not disadvantaged the Claimant's career so far, nor has he suffered any financial loss. In terms of the future, we note that both Mr Farmer and Ms Wills said in evidence that the Claimant was free to express his views, albeit in a sensitive manner, and the Claimant will have the protection of the EA 2010 going forward.

158. We also accepted that the breaches were not a one off incident. The same thing happened to the Claimant three times, over the course of some months. It must also have been distressing to the Claimant during that time because he was accused of gross misconduct and as a result may have lost his job.

159. Given the limits of our findings, we thought that the lower **Vento** band was clearly appropriate. We did not however think that the bare minimum properly reflected the repeated nature of the breach and the distress it must have caused. We accordingly awarded £1250 in respect of each breach, resulting in a total award of £3,750.

Employment Judge **Atkins**
15 December 2023

REASONS SENT TO THE PARTIES ON
23rd August 2024

FOR THE TRIBUNAL OFFICE