



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr O Dufeal

**Respondent:** LSDM Limited

## RECORD OF A HEARING

**Heard at:** London Central                      **On:** 13, 14, 15, 18 and 19 November 2024

**Before:** Employment Judge Joffe  
Mr R Baber  
Mr S Pearlman

### **Appearances**

For the claimant: Represented himself

For the respondent: Mr N Smith, counsel

## JUDGMENT

1. The complaints of direct race discrimination are not well-founded and are dismissed.
2. The complaints of harassment related to race are not well-founded and are dismissed.

# REASONS

## Claims and issues

1, We had an agreed list of issues . There were no alterations to the list.

### 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 20 March 2024 may not have been brought in time.

1.2 Were the discrimination and harassment 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 race discrimination (Equality Act 2010 section 13)

2.1 The claimant's describes his race as Black British and they compare their treatment with people who are described as White British.

2.2 Did the respondent do the following things:

2.2.1 The Respondent allegedly failed to pay the Claimant equal pay from June 2022 in comparison to other drivers (hypothetical comparator) ;

2.2.2 The Respondent caused the Claimant to work in an unsafe working environment and / or be treated without consideration and / or dismiss or fail to take prompt action in relation to his concerns and / or disregard his legal rights in relation to health and safety law on 05 August 2022 (Ricky Jenkins – White British);

2.2.3 The Respondent allegedly overlooked the Claimant for promotion in September 2022 in favour of Ricky Jenkins to the position of deputy manager designate (Ricky Jenkins – White British);

2.2.4 The Respondent's Dean Sharp pressured the Claimant to conduct driving duties that resulted in a significantly increased workload (hypothetical comparator);

2.2.5 The Respondent's Dean Sharp allegedly made comments to the Claimant about the ability to easily dismiss an employee with less than two years' service (hypothetical comparator);

2.2.6 The Respondent's Dean Sharp allegedly denied the Claimant the opportunity of training from 6 February 2023 (Ricky Jenkins – White British);

2.2.7 The Respondent alleged failed to promote the Claimant to the role of Deputy Manager in June 2023 (Ricky Jenkins – White British);

2.2.8 The Respondent's Dean Sharp informed the Claimant that he was required to step down from his role as a supervisor / team leader if he did not work on weekends (hypothetical comparator).

2.3 Was that less favourable treatment?

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 they were treated worse than someone else would have been treated.

The claimant says they were treated worse than Ricky Jenkins in relation to some allegations. In relation to the others, the claimant has not named anyone in particular who they say was treated better than they were.

2.4 If so, was it because of race?

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

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

3.1 Did the respondent do the following things:

3.1.1 The Respondent allegedly failed to pay the Claimant equal pay from June 2022 in comparison to other drivers

3.1.2 The Respondent caused the Claimant to work in an unsafe working environment and / or be treated without consideration and / or dismiss or fail to take prompt action in relation to his concerns and / or disregard his legal rights in relation to health and safety law on 05 August 2022;

3.1.3 The Respondent failed to make an apology and/or address the health and safety concerns on 05 August 2023;

3.1.4 The Respondent's Dean Sharp pressured the Claimant to conduct driving duties that resulted in a significantly increased workload

3.1.5 The Respondent's Dean Sharp allegedly made comments to the Claimant about the ability to easily dismiss an employee with less than two years' service (hypothetical comparator);

3.1.6 The Respondent's Dean Sharp allegedly instructed the claimant to sign documents confirming that he had received training, when this was not the case;

3.1.7 The Respondent's Dean Sharp allegedly denied the Claimant the opportunity of training from 6 February 2023

3.1.8 The Respondent alleged failed to promote the Claimant to the role of Deputy Manager in June 2023

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. Remedy for discrimination or victimisation

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

4.2 What financial losses has the discrimination caused the claimant?

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

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

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

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

- 4.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 4.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 4.9 Did the respondent or the claimant unreasonably fail to comply with it by specify breach?
- 4.10 If so is it just and equitable to increase or decrease any award payable to the claimant?
- 4.11 By what proportion, up to 25%?
- 4.12 Should interest be awarded? How much?

## **Findings of fact**

### The hearing

2. We had a Bundle of 419 pages.
3. We were provided with witness statements and heard evidence from the following witnesses:
  - The claimant on his own behalf;
  - For the respondent:
    - Ms S McNamara, area manager, North retail stores;
    - Mr D Sharp store manager Chelsea branch;
    - Mr D Edgar, at the relevant time area manager;
    - Mr M Hastings, CEO.
4. We were asked to admit a supplementary statement from Mr Hastings at the outset of the hearing and admitted it for reasons which we gave orally.

### Findings in the claims

5. The respondent is a company which runs a number of stores providing painting and DIY equipment.
6. In November 2021 Mr Sharp interviewed the claimant for a customer service adviser role. He was favourably impressed and appointed him. The claimant's CV showed that he had run his own ecommerce business but did not indicate that he had previous retail experience, although he had managerial experience in the mining industry.

7. On 6 December 2021, the claimant started his role at the respondent's Chelsea branch.
8. There are approximately twelve employees in the branch. The claimant described it as the respondent's flagship store and the respondent's witnesses did not demur from that description. Mr Sharp said that the claimant was always keen to do overtime and would turn up on shift an hour early and say he was doing overtime even when that was not planned. The claimant did not suggest in evidence that he did not wish to do overtime. He had a family to support and was keen to support his family and ambitious to advance.
9. We saw an email dated 7 June 2022 from Mr Sak, learning and development specialist, to the claimant, inviting him to a meeting to start an apprenticeship. This was a Team Leader Apprenticeship programme run by the Apprenticeship College. The claimant was funded by the respondent to attend. It was a one year programme involving assignments, classes and workshops.
10. Mr Sharp said he that supported the claimant to undertake this apprenticeship. Later the claimant's tutor, Ms W Jenkins, told Mr Sharp that the claimant was falling behind and he spoke with the claimant to see if he needed help but the claimant said he did not need anything from Mr Sharp.
11. The claimant said in the course of his cross examination that he had to chase Mr Sharp for involvement in his apprenticeship but this was not a complaint he had made earlier – in his grievance, in his claim form or in his witness statement.
12. On 12 June 2022, the claimant was promoted to team leader.
13. On 6 August 2022, the claimant emailed Mr Sharp about an incident which had occurred at the store and which the claimant saw as a health and safety incident. Mr Sharp was on holiday / honeymoon at the time until 11 August 2022.
14. There was angle grinding occurring in the basement area of the Chelsea shop to remove some existing equipment so that new fixtures to hold timber could be installed. The respondent's case was that employees had been told the works would be happening and when. Mr Sharp said that it was made clear that the basement area would be zoned off and colleagues were advised to remain on the ground shop floor. The claimant disagreed in evidence that he was told when the works would take place but accepted that he knew that the works would be happening.
15. The claimant said that on the day he went to investigate in the basement because there was smoke in the store that was troubling other employees as

well as himself. He found Mr R Naumowicz, inhouse maintenance technician, removing an existing fixture using an angle grinder, wearing PPE.

16. The claimant's account of what happened was that he told Mr Naumowicz he had to stop as there was a buildup of smoke. Mr Naumowicz initially refused to stop.
17. What Mr Naumowicz told Ms McNamara was that the claimant approached him and complained about the smell from the metal and that it gave him a headache; he said that the claimant had been really aggressive and had been shouting and swearing. The claimant told the Tribunal that he did not shout or swear.
18. Mr Naumowicz stopped work and went to seek advice from Ms McNamara. She was an area manager who was present in the shop as she was Mr Naumowicz's line manager and involved as we understood it in these works. Ms McNamara said she investigated the situation. There was a smell coming from the metal but it was not particularly strong and staff and customers were on a different floor. The area was zoned off. There had not been a problem in other stores when these works were carried out. She did not consider there was a risk to safety of customers or staff and told Mr Naumowicz to continue but to take the metal outside as soon as it was small enough to carry to reduce the amount of angle grinding required to be carried out inside.
19. The claimant's emails to Mr Sharp said:

*Work [sic] up not feeling great so called the doctor. Explained my symptoms and the situation, they called the poison centre who told them its likely metal poisoning; suffering from metal fume fever. And if I'm not feeling better within 48hrs visit A&E for a chest X-ray.*

*I spoke with the contractor on the day doing the work and told him to stop immediately as there was smoke and fumes building up in the shop and there were customers and staff in the building. The merchandising team manager then went and complained to an area manager who was present in the shop at the time 'Sandra' and convinced her to let it continue.*

*As you were on holiday I did as I believe you have trained us and tried to put the health and safety of our staff and customers first.*

He then wrote:

*Hi Dean, had to leave work early today because I felt faint. A work man with a full respiratory kit on was using a grinder in store. Something to look in to mate.*

20. Mr Sharp replied:

*Hi oj*

*Thank you for letting me know ? I will look into this now and I will contact the area managers to find out what has happened*

*Hope your feeling ok*

21. Mr Sharp forwarded the claimant's emails to Ms McNamara and Mr A Martins, store development manager.
22. Ms McNamara replied to Mr Sharp:

*would need to follow up the reasons for the absence and request medical evidence of the diagnosis. The VM team and build team have not reported any symptoms or illness. It would be good to understand if any other colleagues that were working that day also reported any symptoms.*

*Work was temporarily ceased and recommenced with the units being left in larger pieces and carried from the store.*

*As this is a sickness absence normal processes should be followed and supported with any documentation.*

*A complaint was made based on the colleagues aggressive behaviour towards the build team on the day but the colleagues welfare should be addressed first.*

*I have also copied in Dave Edgar, Area Manager west who will support in my absence.*
23. Ms McNamara said that she had a phone call with Mr Sharp when the latter returned from leave. The claimant was back at work and had not raised any further issues, She told Mr Sharp that the claimant had been aggressive to Mr Naumowicz and that a team leader should not be behaving that way. No further action was taken by her. It was not her area and she referred the matter to Mr Sharp and to the relevant area manager. She felt her role was complete. She denied in evidence that this was part of a culture of dismissing or treating with indifference or contempt the concerns of ethnic minority employees.
24. After his conversation with Ms McNamara, Mr Sharp spoke to the claimant about the suggestion that he had been rude and aggressive. The claimant denied that he had been rude or aggressive. Mr Sharp thought the matter did not seem serious so he dropped it 'and we moved on'.
25. Several weeks late, the claimant told Mr Sharp that he had spoken to a solicitor about the works. He said that he respected Mr Sharp and everything he was teaching him but he was considering bringing a claim. He said that he knew he had two years to bring one. Mr Sharp agreed with his area manager



that they would wait and investigate if a claim came in. The matter was not raised again by the claimant until the grievance he brought after his resignation.

26. The claimant's account in evidence was that he believed that Mr Naumowicz would have stopped angle grinding when first asked if the claimant had been white. He believed the subsequent handling of the matter was due to his race, including the lack of apology and the fact that he considered his concerns had not been taken seriously.
27. Mr Sharp said that he could not apologise for something that happened when he was not there. He said that the claimant would have been aware of the 'Notify' system for raising health and safety concerns. It was publicised on the notice board and included in the induction for employees.
28. We saw some medical records which showed that the claimant had attended A and E several days after the incident. He had been examined and it appeared no physical signs were found but, based on his description of his symptoms of dizziness, chest heaviness and sore throat, he was diagnosed with mild smoke inhalational injury.
29. In September 2022, the claimant applied for the role of West London Deputy Store Manager and was not appointed. Mr Sharp was not involved in conducting this recruitment exercise but was surprised that the claimant had applied. The claimant had only been a team leader for a short time and the respondent had a development programme for deputy managers. This programme was not mandatory but the claimant had little managerial experience at that point.
30. Ms McNamara was responsible for shortlisting. She told the Tribunal that she had considerable experience in recruitment and had received unconscious bias training. There were external and internal candidates. The candidates had been required to submit a CV. We saw the claimant's CV and that of the successful candidate. The claimant's CV showed that he had no previous retail experience apart from in relation to running his own ecommerce business.
31. Ms McNamara told the Tribunal that she thought there were several hundred CVs submitted for the role. She remembered the claimant's application. She said that she did not shortlist him as she felt he did not have anywhere near the required experience and would not have had knowledge of the KPIs. She said that it was not her role to give feedback to internal candidates not offered an interview. That would be for their store manager. It was not an option to instead offer the claimant a deputy manager designate position – that role was not being advertised at the time.

32. The claimant's named comparator, Ricky Jenkins, had more service with the respondent as a team leader than the claimant and previous retail experience, including having worked for several years as a deputy manager for Homebase. He was shortlisted and performed well in interview and was offered the role.
33. The claimant said in oral evidence that he had feedback from Mr Sharp to the effect that he should not apply for a role in Ms McNamara's area because of the incident with the smoke. This was not put to Mr Sharp in cross examination nor had it previously been raised by the claimant.
34. On 23 September 2022, the claimant sent an email to Mr Sharp
- I do apologise for adding to the stress of your day. I've taken a grievance which I feel only right be brought to your attention as it will affect my work performance and our working relationship. It is of my opinion that promotions should be based on performance.*
- As you are fully aware I've taken no sick days. Only 2 days holiday for my children's birthdays for the entire year. Thrown myself at every course available and average 25hrs overtime every month. I do my job competently and try to ensure I have a positive attitude and influence in the work place.*
- I'm more than welcoming to increasing my work load by working weekends as a deputy manager. But have no interest in working significantly more to receive less.*
35. Mr Sharp said he subsequently had a conversation with the claimant and the claimant said he wasn't happy and felt he was being treated unfairly. Mr Martins organised a meeting with the claimant and gave him feedback on his application. The claimant did not raise the matter further or pursue a grievance and Mr Sharp believed the matter was resolved.
36. The claimant put to Mr Sharp in cross examination that at this point Mr Sharp said that the claimant would have to step down as a team leader if he was not working weekends. Mr Sharp denied saying that. The claimant was contracted to work weekends. The claimant had asked not to work weekends to accommodate his family arrangements and Mr Sharp had tried to make that possible as much as was practicable. The claimant worked few weekends, even when he became deputy manager designate. Mr Sharp said that he did have a discussion with him about how as keyholders team leaders did have to work some weekend days.
37. On 9 December 2022, the claimant chased Mr Sharp for his 360 feedback form for his apprenticeship and Mr Sharp sent it the same day. The feedback given by Mr Sharp was, as the claimant accepted in cross examination, positive:

*Oj is very effective in what he does , he works well under pressure and works well when it is quiet, oj is very effective at driving the sales and thinking outside of the box, he is a great team player and always knows what is going on around him.*

*He works well with the team and they know what his expectations are*

*What I value about oj is his dedication to work, nothing is too much for him, I value his work ethics and how he has continued to drive extra sales and margin, by working alongside his team and also in the process he is developing his team als . Oj is a great team player that not only thinks about himself but the colleagues around him and the business also. He looks for new opportunities to drive the business and always acts on these and passes this information to me and the bdm manager.*

*Oj is a well-rounded and highly thought of individual*

38. The claimant complained in evidence that Mr Sharp was slow in responding in relation to his input into the claimant's apprenticeship and that the claimant was not given time off for his apprenticeship work. The claimant had not previously mentioned these allegations in his grievance, his claim form or witness statement nor did he pursue them in cross examination of Mr Sharp. We were not able to conclude on the balance of probabilities that there was any issue with Mr Sharp's involvement in the claimant's apprenticeship.
39. On 19 January 2023, the claimant was interviewed for a deputy manager designate role by Mr B Cooper, South area manager, and Darren Carby, store manager. On 5 February 2023, the claimant was promoted to deputy store manager designate. The claimant said in evidence that someone from an ethnic minority background was on the interview panel and he did not believe he would have been appointed otherwise.
40. The deputy manager designate role was intended to lead to a substantive position of deputy manager. Mr Edgar's evidence was that the process to be signed off for the substantive position usually takes six months. The Newly Appointed Persons or 'NAP' folder outlines a three month training programme but the respondent's witnesses agreed that it was not the expectation that a deputy manager designate would be ready for sign off after three months.
41. On 6 February 2023: Mr Edgar emailed Mr Sharp:

*Hi Dean,*

*Please find attached the training folder for you to print off and go through with OJ, this will form his development programme over the next 3 months.*

*His final sign off interview will be with myself and Nigel, any questions please let me know.*

42. Mr Sharp emailed the document to the claimant as described below and also printed off a hard copy of the NAP folder which was stored in the staff room on top of the lockers.
43. On 9 February 2023, the claimant chased his change in job title and Mr Cooper said he would follow it up with Mr Sharp. Also that day Mr Sharp sent the claimant the NAP guidelines:  
*Hi mate*  
*Please see attached the big work book*
44. Mr Sharp told the Tribunal that the NAP guidelines were introduced in early 2023.
45. The claimant's case was that Mr Sharp deliberately did not train him on what was in the NAP guidelines because of his race. The claimant did not provide details about what he did and did not receive training on. He said that he did not believe Mr Sharp was a racist but felt that unconscious bias was in play. He said in evidence that he liked Mr Sharp's management style but had reservations about some of his behaviours.
46. Mr Sharp gave detailed evidence about the training he said the claimant had on the topics set out in the NAP folder. Mr Sharp said that he trained the claimant weekly on sales and store performance. The reports would come in on Monday and he trained him how to review the reports. He also provided ad hoc training on doing non-stock sale and accounts sales. Mr Sharp said that checkout and checkout management functions would have been part of the claimant's training and development as a team leader. POS printing training was completed when the claimant was a sales associate and when promoted to team leader. Team engagement and process was also part of the claimant's training to be a team leader. As to ER policies and procedures, Mr Cendelewski and Mr Sharp showed the claimant how to complete RTWs and the claimant completed ER policies with HR.
47. In relation to equipment and maintenance, the claimant did an online safety module.
48. On 5 March 2023, Mr Sharp said that he conducted a 4-week review with the claimant. There was a page from the NAP folder which both the claimant and Mr Sharp had signed to say that this review had taken place.
49. Mr Sharp said that he conducted this review in person. He recorded that the claimant showed good knowledge and skillset, but needed to spend more time on the NAP folder. Training was planned.

50. Between March and April 2023, Mr Sharp said the claimant had training from Mr Cendelewski on health and safety. The claimant said that he did not recall that and did not think it had happened.
51. On 20 March 2023, Mr Sharp said that there was a day of training of the claimant on accounts by Mr M Lewis.
52. On 8 April 2023, Mr Sharp said he had an 8 week review with the claimant; again there was a page from the NAP folder signed by both Mr Sharp and the claimant saying that there had been a review on this date. In this document, Mr Sharp said that the claimant had demonstrated the values and skills to be an efficient deputy. He should understand Ax and My Hub more. There was agreement about further training.
53. Mr Sharp said that during this period the claimant had Leyland Time and roster training from Mr Cendelewski; this was training on the HR and payroll system.
54. On 2 May 2023, the claimant sent an email to Mr Sharp:  
*Hey Dean,*  
*I was wondering if I should reach out to Dave for potential ways to increase my salary within the business??*
55. Mr Sharp emailed the claimant:  
*Your due to be signed off in 2-3 weeks so your salary will go up then on sign off.*  
*I will email him on his return to the business next Tuesday for you and ask him to come to store for your sign off mate.*
56. The claimant told the Tribunal that he had interpreted this email as meaning he would definitely be signed off at the meeting. He said in evidence that he was disadvantaged at the sign off meeting because he was prepared to have a general conversation and be signed off. He said he was blindsided when it was more of an interview.
57. It was hard to square the claimant's apparent impression with other evidence, including the fact that he accepted Mr Sharp had discussed potential interview questions with him and he told the Tribunal that he went in prepared to answer the questions Mr Sharp had discussed with him. In the course of his grievance he said that he answered the questions very well in the interview.
58. On 10 May 2023, Mr Sharp said that Mr Brittleton, area stock controller, trained the claimant on stock management and control and in particular the Ax stock related operations system. The claimant said in evidence that he had had some Ax training but was not sure it was from Mr Brittleton.

59. Mr Sharp said that around this time the claimant started pushing for his sign off meeting to be held early; he asked both Mr Sharp and Mr Edgar to schedule the meeting. After a few requests, Mr Sharp agreed with Mr Edgar that they would have a meeting within next couple of weeks
60. On 30 May 2023, Mr Sharp emailed Mr Edgar:
- I hope your well and ok*
- You mentioned to oj last week you would come on for his interview this week - his asking me what date and time as his expecting it this week and asking me.*
- Can you let me know you can come over please as he functions in a different way*
61. Mr Edgar rang Mr Sharp to discuss and they agreed Mr Edgar would come the following week.
62. Mr Edgar asked the claimant to consider three points of discussion prior to the meeting: development of staff, sales and account growth, increased awareness in store. Mr Sharp said he discussed with the claimant what would be asked. The claimant said he did not need help but Mr Sharp offered some anyway. He allowed the claimant to photograph some potential questions he had written up so he could think about his responses and emailed about what they had discussed on 1 June 2023 (punctuation and spelling as per original):
- Just wanted to drop down the points we spoke about the other day .*
- Development of staff - mentoring Sam and successfully getting him through his 3 month probation but also stretching his development by adding in supervisor responsibilities so he can be signed off as supervisor in next 2 weeks .*
- Sales and account growth - successfully opened up good raport with Slc and wo build and kinash to feedback on projects - arrange meetings with main people and have successfully increase account sales on Slc by over £14k in past 3 months*
- Kinash by +£30k on past 5 months and wo build by £16k*
- Increased awareness in store on margin lines ,by*
- Making people aware of higher margin lines to sell such as ionstines and and leyland over dulux*
- Increased qtys on spearhead scrappers , own brand brush's to drive add on sales and increased atv and margin*
63. The claimant in evidence said he had asked for this email; he said he asked a number of times and it was draining. He had not suggested in his

grievance, claim form or witness statement that he had to ask multiple times for help and we were not satisfied that he had done so. That evidence was again difficult to square with his stated belief that the sign off meeting was just a formality.

64. On 6 June 2023 the sign off meeting was held. Mr Edgar's evidence was that the point of a sign off meeting is to assess whether an employee has knowledge and skills to be promoted to the permanent position. He said that he would always ask the relevant store manager to attend as mentor to the designate deputy and also a witness to take notes. Afterwards he would often discuss the decision with Mr Driver, sales and operations director.
65. In this case he had had several discussions with Mr Sharp, who said that the claimant was confident he was ready. Mr Sharp was complimentary about the claimant and said he was very knowledgeable. Mr Sharp said he had completed most of the NAP training and that there was one final section to be completed. They agreed that the claimant could be assessed early. Ms S Kaminski, talent acquisition specialist, took notes of the meeting. The claimant agreed in evidence that he liked Mr Edgar and said the atmosphere was very informal.
66. It was put to Mr Sharp in cross examination that Mr Sharp was sat behind the claimant, which felt uncomfortable for the claimant. Mr Sharp said that he was next to the claimant at an angle and the claimant did not say anything about it at the time.
67. We saw two sets of handwritten notes taken by Ms Kaminski. It appeared from the evidence that one set was made in a notebook and the notes were then transferred in slightly expanded form to the respondent's official notetaking paper.
68. It was recorded that at the outset the claimant was asked if his NAP folder was complete and he said it was. He then answered some general questions about himself in what appeared to the Tribunal to be a very unforthcoming way, declining to give details.
69. He was then asked some work related questions and his answers were similarly sparse. Asked about KPIs, he said sales were good; he did not appear to know about other KPIs. He was unable to say what average transaction value or customer count were. When asked what he did to drive sales, he said that he drove the car.
70. There was a discussion about salary expectations and the claimant indicated that he wanted £36,000, which was what he was making with overtime. Mr Edgar explained that was outside the salary band for deputy managers.

71. The claimant said that the notes of this interview were incorrect but did he not tell the Tribunal much about what he says he did say during the interview. He did not say anything about the content of the interview in his witness statement and he said little in cross examination. He agreed that the answers recorded in the notes came across as offhand and dismissive but denied that they were the answers which he gave. He agreed that he had confirmed in the interview that his NAP was complete but told the Tribunal that was in fact untrue. He said that he felt pressure and coercion to say the NAP folder had been done because Mr Sharp was present at the interview.
72. The claimant said in cross examination that he had chased Mr Sharp for missing bits of his training countless times. There was no documentary evidence of any chasing. The claimant said he was having a dialogue with Mr Sharp and did not feel he should complain in writing. Later in his evidence he said he felt the NAP folder itself was a sufficient record of what training he was receiving or not receiving.
73. The claimant accepted that, as the respondent's witnesses had said, he ate an orange during the interview. He said he had come back from driving and was tired. He ate an orange to replenish his energy.
74. The claimant said that he felt disadvantaged because Ms Kaminski referred to having met him at the JobCentre. He said that she was treating him with contempt and undermining him.
75. Mr Edgar finished the interview by saying that he would need a few days to consider the claimant's progress and would then call or most likely come to see him with a decision. As to the context of his decision, Mr Edgar said that Mr Sharp was a very good store manager with a brilliant relationship with his team. Mr Sharp had always spoken highly of the claimant and he was a champion of the claimant. He himself had found the claimant engaging and enthusiastic about his development when he encountered him.
76. After the meeting, Mr Edgar asked Mr Sharp what he thought had happened. Mr Edgar said that Mr Sharp seemed surprised and said he wasn't sure. Mr Sharp's evidence was that he was shocked and a bit embarrassed as he had been advocating for the claimant and telling Mr Edgar how good he was. They agreed that the claimant in interview was not the claimant they were used to seeing. Mr Edgar said he would need time to consider his decision.
77. Mr Edgar then had a discussion with Mr N Driver, sales and operations director. They agreed that they should not sign the claimant off immediately. They would give him the opportunity for further training to see if he improved and Mr Edgar would meet him again in about six weeks. If he addressed the feedback, Mr Edgar intended to appoint him to the permanent position. Mr Edgar and Mr Sharp also had a conversation where Mr Edgar explained the



decision to Mr Sharp and told him he would reinterview the claimant in six weeks.

77. On 13 June 2023, Mr Edgar had a feedback meeting with the claimant and Mr Sharp. He said he would not be able to sign the claimant off for the permanent position. The claimant needed to improve his knowledge of KPIs, think about what he brought to the business as a department manager and to think about how he led the team. The six weeks would involve additional training and a day out with Mr Edgar so Mr Edgar could get to know the claimant better. The claimant said that the feedback was not acceptable and he was going to leave the company. Mr Edgar was taken aback and said that the claimant should take 24 hours to think about it.
78. The claimant said in oral evidence for the first time that Mr Edgar had said the review would take place in six months. We noted that there was no reference to a period of six months by the claimant or anyone else in grievance documents or elsewhere in the documents we had. The only reference to a six month period was what Mr Edgar described as a typo in a paragraph at the end of his statement. Earlier in the statement he had referred, he said correctly, to a six week period.
79. The claimant told the Tribunal that he would have thought six weeks was reasonable but six months was a huge slap in the face.
80. Mr Edgar had one other deputy designate in his area at the time: this was an employee called Sebastian who was white Polish. He was also not signed off and was given a six month extension. He was signed off at the end of his extension. Mr Edgar said in respect of this extension, that when he spoke to the manager of the Tooting store, Sebastian had not even started his NAP folder. The store manager also had some significant concerns. The six month period was intended to give Sebastian a fair crack of the whip. Whereas for the claimant, despite his poor interview, Mr Edgar was influenced by Mr Sharp saying he was in a good place to do the role in deciding to provide a shorter review period.
81. On 14 June 2023, the claimant emailed Mr Sharp saying: *It's been a pleasure working alongside you, however I will be leaving last week of July 28<sup>th</sup>.*
82. Later that day he wrote:  
*Hi Dean,*  
  
*I like to start a formal complaint in regards to the decision not to promote me for the position of Deputy Manager.*

Then he wrote:

*Hi Dean,*

*I was hoping to get a written summary for the decision not to promote me to deputy manager.*

83. On 16 June 2023, the claimant was issued with a statement of fitness for work, signing him off until 30 June 2023 with work related stress.
84. On 23 June 2023, Ms McKnight held a grievance meeting with the claimant at a Starbucks near the claimant's home.
85. On 6 July 2023: Ms McKnight held a grievance interview with Mr Sharp. Some relevant passages from the notes of that interview are as follows:

*[Mr Sharp] he never once came to me and asked for training or advice, I asked if he needed anything from me (Dean). I provided him with training and learning opportunities in store, on the ax system, receiving deliveries, he sat in on back to work interviews... I pushed, but OJ was not forthcoming. OJ was picking up things well. Only concern was from Wendy who said he was falling behind on his apprenticeship work.*

*13 GM did he ever ask or raise concerns of needing more support from you?*

*14 DS no*

*15 GM can you explain How did the Nap folder work?*

*16 DS Dean knows nothing about it and wasn't made aware of how this process worked. He said it was before he started at LSDM*

*17 GM Was Oj's Nap folder completed ahead of the sign-off meeting*

*18 DS I believe there was a 3 month review that hadn't been done yet. Wasn't aware that NAP was in the folder and was not aware how to complete these*

86. Mr Sharp's oral evidence about this note was that there had been a new document rolled out a few weeks or months prior. The pack was sent to the manager and there was no formal training for managers but when you read the pack, it was self explanatory. He said he did know what to do with the pack. He had not done the NAP process previously in Leyland but had trained store managers across the business and also done sign off processes for store managers and for team leaders.

87. On 14 July 2023 Mr Edgar was interviewed by Ms McKnight. Mr Cendelewski was also interviewed. He commented about the claimant:

*He got most things his way, weekends off, anything he asked he would get, he loved to drive tbh. He always asked to drive as he said it was benefit to me to save money as he drove car home. We never forced him to drive, if we struggled on weekends we would ask him, he did only Saturday. In my opinion it is better to keep him happy than not as he can be very unhappy on shopfloor.*

88. Mr Martins was interviewed. He said:

- The claimant did not bring up an issue with driving;
- The claimant wanted to do overtime to earn more money. He offered to do overtime.

89. On 17 July 2023, the claimant was issued with a statement of fitness for work signing him off work until 30 July 2023 with work related stress.

90. On 28 July 2023 the grievance outcome was sent to the claimant. His grievance was not upheld.

91. On 31 July 2023, the claimant wrote to Ms McKnight.

*Hi Gill,*

*Unfortunately I can't accept the outcome of the investigation and see that the need to have an independent inquiry by an employment tribunal is necessary as any internal investigation will only result in the best interest of the company being met.*

*ACAS have issued me with an early conciliation certificate as they did not receive an any further communication from Leyland following initial their attempts. I have therefore submitted a claim with the employment tribunal.*

*I am still willing to resolve the case out of court. And wish to continue the internal complaint process.*

92. On 3 August 2023, the claimant sent the respondent his grounds of appeal.

93. On 11 August 2023, Mr Rendell emailed the claimant with a date of hearing and making requests:

*In the meantime, to aid with our investigations, could you provide me with the following paperwork/evidence that you refer to in your email please:*

*1. 1. Copies of the countless WhatsApp messages asking you to perform tasks outside of your usual work hours and role*

*2. 2. Copies of paperwork relating to your hospital visit including confirmation of your chest x-ray due to inhalation of metal particles, resulting in metal fumes poisoning*

94. On 23 August 2023 the claimant sent Mr Rendell a few WhatsApp messages. He wrote:

*As there are a vast number of messages I have selected just a few to highlight the difference in workload in comparison to my colleagues.*

95. Mr Rendell asked Mr Hastings to hear the appeal.
96. Mr Hastings was provided with a pack which included minutes of the grievance meeting, the investigation meetings, the outcome letter, the appeal email and the WhatsApp messages sent through by the claimant.
97. Mr Hastings made some further investigations:
- He spoke to Mr Edgar about the interview and why the claimant had not been signed off;
  - He discussed with Mr Rendell the process Mr Sharp and Mr Edgar had followed and also the health and safety element of the claimant's claim;
  - He obtained information about Ricky Jenkins.
98. On 22 August 2023, Mr Sharp provided details of training he said he had provided to the claimant:

*Oj had loads of training not just by myself but also with Chris , dan Brittleton , Damian , and matt Lewis*

*I organised ax training with dan, and this was done on the 10/5/2023, he also had a day out with matt Lewis organised by me , which I have provided the date for.*

*Oj had training and this was delivered on the shop floor in the moment , he was trained on many aspects of the folder such as cash handling and till operations , non-stock sales and haw to generate business and account sales.*

*He had scheduling training with kris on how to do the schedules and record sickness and do exceptions , he was trained on margin and also the kpis and reports we use like sales and account sales and atv*

*Oj was shown how to access account customer info on office apps and how run the reports.*

*Oj also had hr training on rtw , people's reviews ,interviews.*

*This was all done throughout the working weeks and was done in the moment , I would not be able to put a specific date on these events apart from the training I asked Damian , matt, and dan to do for m*

99. Mr Sharp was then asked for more detail and sent a longer email which essentially set out the training he also told the Tribunal had been provided:

*Stock management and control*

*This was covered off with Dan on 10/5/2023*

*This covered areas such as what ax is and how it operates , how to navigate around the ax system and how it is used in terms of receiving in and out orders via the system , regarding direct suppliers and also internal transfers from the warehouse and other stores. Oj was also shown how to look for stock loss via looking into the ax system and seeing when the last counts was done and what percentage any stock could have been attributed to and then work out what had happened within this time frame ,*

*Oj was able to successfully send store transfers and raise and firm purchase orders for brands such as Dulux and ppg .Oj was also shown and trained on how to receive in deliveries and how to report any discrepancies to the relevant company within the selected time period ,*

*Oj was also shown how to look at the min max of a selected product and the process on how to increase this and submit this, oj was also shown how to use the hht gun and how to process a transfer order to another store and print the paperwork.*

#### *Sales and store performance*

*Oj was shown the reports such as sales, weekly sales , account sales , atv and top1500 reports this was shown on a weekly basis and was also printed out every week and put on the wall for the whole team to see and read , it was communicated how we was performing also , oj was able to understand these reports and was able to understand how we was trading and how well we was doing in branch .oj was also shown how to process and do a non-stock sale and how we go about doing this also and the relevant people to contact , he had a rapport built with charlotte at Selco and also Kane and would process non stock sales for the store and would be actively talking about never say no to the customers and the team – this training was delivered by myself and was successful as he then rolled out what he had learnt to Sam – this is why same has then been able to process as many non-stock sales as he does . the training has been taking place since March and the talk around kpis and figures and non-stock and account sales would be spoke about weekly , as it was key for the managers to know how the store was trading .*

#### *Checkout and Checkout Management*

*Oj received all this training when he successfully went from a sales team member to a team leader.*

*The training that was provided for this section was via Kris and Tracey – Oj was shown the process of how to process a sale, how to process a refund , how to access trade account sales .*

*Oj was also shown how to cash up the tills of a evening , what documentation he would have to fill out and the correct procedure in successfully cashing up*

*a till , oj was shown the correct numbers to log down , who to contact should he need to get any other banking books and who to contact if there was any issues. He was shown how to secure the cash in the safe at the end of the evening and also how to do a change order from the post office next door.*

*Oj was shown over his time as a sales team member , team leader also on how to search for items on epos who to locate items via description or ax code , oj was also shown and was able to take telephone payments , process refunds , account sales and retail sales .*

#### *Leyland Time and Roster*

*This training was carried out with Kris in April*

*Kris spent a few hours with him showing oj how to access the schedule , how to clear exceptions , how to generate a schedule and what to look for in terms of how many people we have to open and close the store and how many people we need at any one time .Oj was shown how to record sickness on the schedule and how to process a schedule and how to publish it , he was shown these via kris*

#### *Accounts*

*This training was set up by myself and carried out by matt Lewis account manager on 20th march , oj was shown what the role of the bdm is , he was shown how to access the trade information on office module ,how to access this information and how to interpret the information given on the report*

*Oj was shown how to open a cash account and a trade account and what the benefits of a cash account and a credit account are , oj was aware of who to call if he had any issues with an account and what credit controller looked after who ,matt explained how to look at low spending accounts and also customers who had a outstanding balance – matt also went over non stock sales also . On top of this joe b had spent some time with oj in store when he visited also speaking about accounts to him*

#### *Pos Printing*

*This training was carried out when oj was a sales team member , and also team leader – it was carried out on the shop floor , oj was shown how to print out labels needed for the shop floor , like shelf edge labels , swing ticket labels , a5 labels for ladders and any signage that was needed on the shop floor – oj was aware of how to process these.*

#### *Team engagement*

*Oj was shown how to look at the engagement survey while he was a team leader , he was shown by myself on how to understand this information and what it means this was done in 2022 – oj was shown how we generate a plan*

*as we had our engagement plan on the wall that was created with all the team and himself , he was aware of the importance of the engagement survey , and in 2023 was a big part of engaging the staff to fill out the responses this year in 2023*

*Oj knew about initiatives instore , where we would treat the staff with the £20 budget per month , and the most recently he collected and provided the easter eggs for the team , oj was aware of I like to engage the team and reward them via drinks , slush puppies and ice creams when it was hot and then also when the team did a great job, buying them all lunch – he was trained on engagement and being a big piece of the store culture and this was most recently in may and June of this year 2023*

#### *Health and Safety*

*Oj didn't have data on his phone for the store but was shown how to complete the weekly and monthly missions via yoobic on kris phone , this was demonstrated and shown by kris and oj also took part in this , this was carried out over march and April, oj had completed his eLearning and was able to speak to staff and colleagues of the importance of getting there training completed , he was able to deal with spillages in store and how to clear these up in line with correct procedure , this was done from when he was a sales colleague and team leader in 2022 .Oj was shown by kris what the fire evacuation plane was and where to go in the event of a situation , he was also shown who was the first aiders and where the relevant first aid kits was , this was carried out by kris in 2022.*

*Oj had also sat through and been shown how to complete a rtw ,how to do a 1 month 2 month 3 month review and how to conduct a interview , this shown and trained by myself and was on the job training , this was carried out over march and April of this year ,*

100. On 29 August 2023, the grievance appeal hearing was held. The claimant delivered a final statement at the outset:

#### *Final Statement*

*I have to the best of my knowledge throughout the entirety of this process behave openly and honestly, giving a true account of my experiences. Trying to the best of my abilities to be as objective to the situation as possible. The evidence that I have submitted should corroborate this.*

*Discrimination, Harassment and Injury at work is something that no employee should have to endure. It is the duty of the employer to ensure that a safe and fair workplace is provided for all it's employees.*

*At no point, at any stage has any member of staff offered any form of apology.*

*As we failed to reach a settlement at the first stage of the complaints process and due to the ongoing injury to feelings, I have adjusted the settlement figure accordingly to £46.000.*

*At this, the final stage of Leyland SDM's internal complaints process I do hope we can agree on settlement.*

101. Notes of the meeting were taken by a notetaker. The claimant said that he had not signed these minutes as he did not agree them and found them to have been manipulated. He said that he did not put forward his own version because so much had been changed and he did not recall all of the meeting. He did not explain to the Tribunal what was wrong with the notes and what he had said which was different from what we read in the notes.

102. Some relevant passages from these notes were as follows:

*[Claimant] Why I mentioned Ricky, he didn't do overtime he wasn't performing.*

*OD To make it clear to Dean, that is me doing overtime, driving, opening & closing and for him to say facilitate this*

*MH This is getting closer to what I mean. You are working super hard, flexible, deliveries, to the point where manager puts you forward for DSM programme?*

*OD It's me putting myself in position, it's not him putting me in this position otherwise he wouldn't stay*

*MH It would have been Dean that put you forward for the role. Dean nominated you?*

*OD Guessing so*

*MH Obviously the work you are doing for you to be considered for that role.*

*OD I can give you countless reasons, why I want to give you something. I can tell you what KPI's and sales are.*

*MH Do you think you would have got the job if you answered those questions well at the interview?*

*OD I'm sure Dave knew I was competent in the position. I gave him answers, that went above and beyond what he was asking. He probably didn't get that.*

*MH You have mentioned that you know KPI's of Leyland, it was referenced that you couldn't articulate the sales or the ATV, the knowledge wasn't quite there. There was also lack of information how you motivated the team, by your comment making team happy and unable to articulate what you could bring to the store as deputy manager. There was a proposal that you would be reviewed again in 6 weeks time and to give you the opportunity to have a successful interview as opposed to just declined.*



*OD Not my understanding.*

*MH You weren't aware of KPI's?*

*OD I can tell you all about the KPI's in this meeting yes.*

*MH Were you asked about KPI's in store?*

*OD Yes I was, I went above and beyond. Which is contrary of what is being said. Position of power. That is again, highlighting what discrimination is.*

*MH It's not an interview where you go for a job and either get it or you don't, This is a meeting to see if you were ready to be signed off and the Area Manager needed more knowledge?*

*Not for what ever reason. When test, your instructor can make more money if going to fail.*

*If that training document is there to train your designate deputy managers, it is not being followed, I'm being told not getting position. Looking at folder, you didn't teach me what is in that folder for me to pass. What is going on there? That is why I have highlighted it. My manager has refused training, he wouldn't pick it up. He hasn't trained, there is evidence for that.*

*MH We need to understand what the admin process was and why you weren't prepared for the interview.*

*OD That is the gap. If HR spend hours and resources coming up with manual, manager wants to go off and that is the problem I have. I have a new position in management. If we don't follow it, Dean didn't follow what the company had laid down the training. I can revert back to some form of discrimination, if my colleague has gone forward and passed it. All Ricky did was get the right training.*

*You were told you did not articulate yourself well .....[MH read point from feedback]. You believe, the answers you gave, you were discriminated against. Have you got details of what answers you gave?*

*OD No*

*MH Remember what you said?*

*OD No*

*MH Remember what the email said?*

*OD Dean gave me questions and told me he shouldn't share it and these are what they are going to ask you. He asked me to take photo of questions.*

*CR Discussion between you and Dean about points to raise at the interview, do you remember that email?*

*OD He sent me that and questions.*

*CR WhatsApp messages, you have provided 3 but other than the distance issue, you haven't provided any more and yet you say there are countless requests. Can you provide us with further copies?*

*OD No, it would take too much time to do this.*

*CR To help you out here OD, by not providing us with those messages, you are denying us the ability to conduct a proper investigation and that if this goes to tribunal, you will be asked to provide them anyway.*

*OD I will consider your request.*

103. After the hearing. Mr Hastings said he reviewed the documents and had a conversation with Mr Rendell who spoke with Mr Sharp and Mr Edgar about various points raised in the hearing.
104. On 6 September 2023 Mr Hastings produced the grievance appeal outcome: the appeal was not upheld.
105. It appears that Mr Hastings took the NAP folder the claimant showed him (which we understood to be the same version which the claimant produced on disclosure and which was in the Tribunal bundle) at face value; he concluded that some training had not been signed off by Mr Sharp . He concluded more training had been delivered than had been recorded. He concluded that the NAP process had not been as rigidly followed as it could have been.
106. As we discuss below, we were not satisfied that the NAP folder produced by the claimant to the grievance and to the Tribunal was the only version in existence or that it was the most complete version.
107. Mr Hastings found that there was no evidence of race discrimination.

### Driving

108. Mr Edgar's evidence was that the respondent had three car sized vans to deliver orders to specific core customers or special orders on a trial basis. Cars would be located at stores where there was someone available to drive. Driving these cars was optional. Only a standard driving licence was required. There was no expectation that anyone would drive and no increased pay attached to these driving duties. If there was no one in a particular store who wanted to drive, the car stationed there would be moved.

109. Mr Edgar said that the claimant had said to him that he was happy to drive the car. He enjoyed driving to other stores and meeting other colleagues.
110. Mr Sharp's evidence was that employees tended to enjoy driving the cars as it was time away from shopfloor. A car had been at the Clapham Junction store and not being used. He thought it could be useful in Chelsea. When it arrived, Mr Sharp said he asked the team who would like to be added to the car's insurance and the claimant volunteered himself. He was the only person who offered at that time. He said that Mr Cendelewski also did deliveries during the claimant's tenure. If a delivery came up, he or Mr Cendelewski would offer the driving duty to employees. He got the impression that the claimant enjoyed driving the car; he had a good relationship with trade customers and would sometimes make a delivery at the end of his shift and then drive home, which was beneficial to him. He only recalled the claimant declining a delivery once - on the day he resigned. He said that the claimant felt free to decline weekend working so he considered that he would feel free to turn down driving duties if he wished to do so. Not doing driving would have had no effect on his progression.
111. The claimant's complaint to the Tribunal was that he was pressured into driving. The claimant did not say he had complained about the driving or deny that he had done it voluntarily. He said that the pressure was created by Mr Sharp saying people could be dismissed if they had under two years service. That made him feel coerced and less inclined to raise issues.

#### Driver pay

112. The respondent had some dedicated delivery drivers who work from distribution centres driving large lorries requiring HGV licences. They are not on the same pay rate as shop floor staff. The claimant said that he should have been paid the same as dedicated drivers. He had to do a lot of deliveries often involving moving large quantities of paint. Mr Sharp said that on those occasions, the claimant had help getting paint into and out of the car.

#### Mr Sharp allegedly saying it was easy to dismiss employee without two years service

113. The claimant did not in his oral or written evidence provide the context in which this was said to have been said by Mr Sharp, despite invitations from the Tribunal to do so, nor did he put any context to Mr Sharp in cross examination. Mr Sharp said he never said nor would have said this.

NAP folder

114. We had in the bundle a copy of the NAP folder. It commenced with this introduction:

*Your Training and Development*

*You'll soon see that we're keen to make sure you get the right training to progress your Leyland SDM career. Our training and development program help's colleagues to learn the skills they need to do their jobs and the additional knowledge you'll need to progress to your next role.*

*The further skills required to prepare you for your next role*

*Once your Trainer is happy that you've demonstrated the skills required, you'll move to the next section. And, once you've completed all the activities in the relevant sections, your Manager will check your knowledge before signing off the completed section.*

*The emphasis of our training program is on shop floor training and learning through practice. The induction that you will be going through shortly has been designed to give you an overview of our company; its values, strengths and some of its achievements. We trust you'll have a good understanding of our business after you have completed your Induction and, when you have, hopefully you'll be as proud to work for Leyland SDM as we are!*

*A warm welcome from us!*

115. The copy in the bundle had, inter alia, the following filled in:
- The four and eight week reviews which were filled in and signed off by the claimant and Mr Sharp.
116. The claimant said in evidence that these were not signed off on the dates in the document but that in the run up to the sign off meeting he was asked to sign them by Mr Sharp.
117. Further, the claimant had initialled a number of skills but these were not countersigned by anyone.
118. The claimant agreed in evidence that he took away the NAP folder when he resigned. He said that the one in the bundle was the one had had taken away and not a version he had created from the electronic copy also sent to him.

119. Mr Sharp said that in the hard copy of the NAP folder which was kept in the store, there was much more filled in, with signatures from trainers. Most of the training was done and signed off.

### Ricky Jenkins

120. Mr Jenkins was trained by Mr Lee Brindley, the store manager of the Putney store. The claimant said that Mr Jenkins came over to the Chelsea store to get experience there as it was the flagship store and he thought that he and Mr Jenkins worked together for about six months.
121. Mr Sharp said that Mr Jenkins was already a team leader when Mr Sharp was appointed to be the manager at Chelsea. The claimant would not have been aware of the training Mr Jenkins had had. Mr Jenkins coached the claimant for the team leader role. Mr Jenkins also brought extensive knowledge from his previous employment at Homebase.

### Health and safety reporting

122. The respondent used an IT system – the ‘Notify’ system - for recording accidents and near misses.
123. Ms McNamara said that she did not take steps to formally document the issue raised by the claimant about the angle grinding incident as she did not consider that it was unsafe.

## **Law**

### Direct discrimination

124. Direct discrimination under section 13 Equality Act 2010 occurs when a person treats another:
- Less favourably than that person treats a person who does not share that protected characteristic;
  - Because of that protected characteristic.
125. In a direct discrimination case, where the treatment of which the claimant complains is not overtly because of the protected characteristic, the key question is the “reason why” the decision or action of the respondent was taken. This involves consideration of mental processes of the individual responsible; see for example the decision of the Employment Appeal Tribunal in Amnesty International v Ahmed [2009] IRLR 884 at paragraphs 31 to 37 and the authorities there discussed. The protected characteristic need not be the main reason for the treatment, so long as it is an ‘effective cause’: O’Neill

v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor [1996] IRLR 372.

126. This exercise must be approached in accordance with the burden of proof provisions applying to Equality Act claims. This is found in section 136: “(2) if there are facts from which the Court could decide, in the absence of any other explanation, that 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. “

127. Guidelines were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258 regarding the burden of proof (in the context of cases under the then Sex Discrimination Act 1975). They are as follows:

*(1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination 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 discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s.41 or s.42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as 'such facts'.*

*(2) If the claimant does not prove such facts he or she will fail.*

*(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.*

*(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.*

*(5) It is important to note the word 'could' in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.*

*(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.*

*(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.*

*(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.*

*(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.*

*(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.*

*(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.*

*(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.*

*(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.*

128. We bear in mind the guidance of Lord Justice Mummery in Madarassy, where he stated: 'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.' The 'something more' need not be a great deal; in some instances it may be furnished by the context in which the discriminatory act has allegedly occurred: Deman v Commission for Equality and Human Rights and ors 2010 EWCA Civ 1279, CA.
129. The tribunal cannot take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.)
130. The distinction between explanations and the facts adduced which may form part of those explanations is not a water tight division Laing v Manchester City Council and anor 2006 ICR 1519, EAT. The fact that inconsistent explanations are given for conduct may be taken into account in considering

whether the burden has shifted; the substance and quality of those explanations are taken into account at the second stage: Veolia Environmental Services UK v Gumbs EAT 0487/12. In Commissioner of Police of the Metropolis v Denby EAT 0314/16 the EAT confirmed that a tribunal may consider all relevant evidence at the first stage of the burden of proof exercise, even if some of it is of an explanatory nature and emanates from the employer, whether or not it is called by the employer. The case law did not require the tribunal at the first stage to ‘blind itself to evasive, economical or untruthful evidence’ from the employer which may help the tribunal to decide that there are sufficient facts to shift the burden on to the employer to provide an explanation.

131. In Chief Constable of Kent Constabulary v Bowler EAT 0214/16 Mrs Justice Simler said that: ‘It is critical in discrimination cases that tribunals avoid a mechanistic approach to the drawing of inferences, which is simply part of the fact-finding process. All explanations identified in the evidence that might realistically explain the reason for the treatment by the alleged discriminator should be considered. These may be explanations relied on by the alleged discriminator, if accepted as genuine by a tribunal; or they may be explanations that arise from a tribunal’s own findings.’
132. Although unreasonable treatment without more will not cause the burden of proof to shift (Glasgow City Council v Zafar [1998] ICR 120, HL), unexplained unreasonable treatment may: Bahl v Law Society [2003] IRLR 640, EAT.
133. We remind ourselves that it is important not to approach the burden of proof in a mechanistic way and that our focus must be on whether we can properly and fairly infer discrimination: Laing v Manchester City Council and anor [2006] ICR 1519, EAT. If we can make clear positive findings as to an employer’s motivation, we need not revert to the burden of proof at all: Martin v Devonshires Solicitors [2011] ICR 352, EAT.

### Harassment

134. Under s 26 Equality Act 2010, a person harasses a claimant if he or she engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of (i) violating the claimant’s dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant’s perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.
135. By virtue of s 212, conduct which amounts to harassment cannot also be direct discrimination under s 13.



136. In Richmond Pharmacology Ltd v Dhaliwal [2012] IRLR 336, EAT, Underhill J gave this guidance in relation to harassment in the context of a race harassment claim:

‘an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so.....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 discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.’

137. An ‘environment’ may be created by a single incident, provided the effects are of sufficient duration: Weeks v Newham College of Further Education EAT 0630/11.

## Conclusions

*Issue: 2.2 Did the respondent do the following things:*

*2.2.1 The Respondent allegedly failed to pay the Claimant equal pay from June 2022 in comparison to other drivers (hypothetical comparator);*

138. To the extent that the claimant was comparing himself with dedicated delivery drivers with HGV licenses, we concluded that the latter were simply inappropriate comparators. They were doing a different job driving different vehicles which required them to have different licences from that possessed by the claimant.
139. We concluded on the evidence we had that the claimant was treated the same as other shopfloor employees who were also doing a bit of driving, ie he was paid the appropriate rate for his substantive grade. In those circumstances there was no evidence of less favourable treatment. Alternatively there were no facts from which we could reasonably draw an inference that a white person in the claimant’s shop doing the same amount of driving would have been paid differently. The claimant was on the highest

hourly paid rate for shopfloor work. Mr Cendelewski, the deputy manager at Chelesea, also did driving and was paid at the deputy manager rate; the reason for the difference in pay was that he was substantive deputy manager.

140. We did not uphold this claim.

*Issue: 2.2.2 The Respondent caused the Claimant to work in an unsafe working environment and / or be treated without consideration and / or dismiss or fail to take prompt action in relation to his concerns and / or disregard his legal rights in relation to health and safety law on 05 August 2022 (Ricky Jenkins – White British);*

141. There were a number of elements to this complaint.

142. In terms of the alleged exposure to an unsafe working environment, the evidence which we had was that everyone working in shop was treated the same. The downstairs area was zoned off; insofar as smoke and smell emerged onto the shopfloor in the first instance, there was no difference in treatment of staff and indeed customers present in the shop.

143. The gist of the claimant's complaint appeared to be that, as the incident unfolded, the handling would have been different if he had been white. We looked carefully at whether there were facts from which we could reasonably draw that conclusion.

144. We had no evidence from which we could infer that Mr Naumowicz would have stopped work more quickly had the complaint been made by a white employee. Ms McNamara investigated the situation once it had been drawn to her attention. She made a judgment call that the work was not unsafe for the reasons she described to us but also made an adjustment to reduce the amount of angle grinding that had to take place inside the basement. No one else complained and there had not been an issue in other shops where similar work had taken place.

145. There was no evidence which would have caused us to think that Ms McNamara would have taken a different view if the claimant were white. She clearly had an interest in the works being completed but also an interest in not exposing staff and customers to danger. Nothing about the incident suggested to the Tribunal that the claimant's race was in play.

146. In terms of what happened after that, the claimant did not have further time off work and did not himself log the incident on the respondent's Notify system. Mr Sharp, who was on holiday at the time of the incident, nonetheless

engaged with the claimant and escalated the issue. Ms McNamara had taken a view on whether there was a health and safety risk but fed back to Mr Sharp about what she had been told about the claimant's behaviour. Mr Sharp discussed that feedback with the claimant and concluded that no further action was necessary.

147. It is true to say that no one conducted a further health and safety assessment but by then the works appear to have been completed and Ms McNamara had taken a view as to whether there was a risk. If the claimant disagreed with that view it was open to him to pursue the matter further but he did not do so.
148. It was not possible for the Tribunal to say whether Ms McNamara was right or wrong ultimately about the health and safety issue but we had no good evidence that her view was unreasonable nor anything from which we could draw an inference that the claimant's race played a role in the assessment. We considered that we had no evidence from which we could draw an inference that race played any role in any aspect of the handling of this matter.
149. We dismissed this claim.

*Issue: 2.2.3 The Respondent allegedly overlooked the Claimant for promotion in September 2022 in favour of Ricky Jenkins to the position of deputy manager designate (Ricky Jenkins – White British);*

150. As a matter of fact it was the substantive deputy manager job which the claimant applied for at this point.
151. We accepted Mr Sharp's evidence that he was surprised because the claimant had only been a team leader for a short period and had not applied for a designate role which would have involved appropriate training.
152. It was Ms McNamara who decided not to shortlist the claimant, she said based on his CV. We accepted that she had several hundred CVs to look at, including one from the successful candidate who had far more retail experience and managerial retail experience than the claimant, including several years as a deputy store manager at Homebase.
153. The claimant's CV by contrast had no relevant managerial experience in retail and no other retail experience apart from his own ecommerce business.

Deputy manager was a significant step up from team leader and the claimant was seeking to bypass a step which would have involved training for the role.

154. We accepted that Ms McNamara did not shortlist the claimant because he lacked skills and experience. We could not see why the claimant would have got through the first sift for the role based on his then CV, so we did not have to resort to considering the burden of proof.
155. Had we considered the matter on the basis of the burden of proof, alternatively there were no facts from which we could reasonably conclude that the claimant was treated less favourably than Mr Jenkins due to race.
156. The result is the same whether, on a proper analysis, Mr Jenkins is an appropriate comparator or not. If Mr Jenkins is an appropriate comparator, there is nothing apart from the difference in treatment and difference in race from which an inference could be drawn. Alternatively he is not an appropriate comparator because the difference in experience is a material difference in circumstances.

*Issue: 2.2.4 The Respondent's Dean Sharp pressured the Claimant to conduct driving duties that resulted in a significantly increased workload (hypothetical comparator);*

157. The claimant told the Tribunal that the 'pressure' was that Mr Sharp said that he could be dismissed with less than two years service. He did not suggest that any other kind of pressure was exerted.
158. We found as a fact that Mr Sharp did not say those words for reasons we set out later in this Judgment.
159. We accepted the respondent's consistent and credible evidence that there was an offer made to employees generally about driving duties, that the claimant did offer to drive and thereafter the claimant never complained about it or raised it as an issue. He was keen to earn more and the driving was sometimes an opportunity to earn overtime. We accepted that the claimant may have felt at some point that he wanted to do less driving but he never said so and never raised the issue. We accepted that the impression he gave to the respondent was that he enjoyed driving.
160. There was no evidence of less favourable treatment since the driving task was offered to everyone regardless of race.

161. We dismissed this claim.

*Issue: 2.2.5 The Respondent's Dean Sharp allegedly made comments to the Claimant about the ability to easily dismiss an employee with less than two years' service (hypothetical comparator);*

162. The claimant would not put any context on these statements, despite being invited by the Tribunal to do so. The failure to provide any context, which appeared to be discordant with what the claimant seemed to accept was largely a good relationship with Mr Sharp, made it hard to understand how the comment could have come to be made.

163. It was also clear to the Tribunal that Mr Sharp had acted as a champion for the claimant and, as he asked rhetorically in cross examination, why would he support him through two promotions and then make a veiled threat to dismiss him?

164. The statements were not brought up in the claimant's grievance when, had Mr Sharp said something of this sort, it would have been a striking and memorable remark for the claimant to complain about.

165. For all of those reasons, we did not conclude on the balance of probabilities that these remarks had been made and we dismissed this claim.

*Issue: 2.2.6 The Respondent's Dean Sharp allegedly denied the Claimant the opportunity of training from 6 February 2023 (Ricky Jenkins – White British);*

166. We had to reach some conclusions about the copy of the NAP folder we had in the bundle, which did not have many areas of training signed off. Was there a version, as Mr Sharp said, which had much more filled in?

167. We noted that Mr Sharp had, during the grievance investigation, been frank about his lack of familiarity with the NAP document. We think there was implicit in that some acceptance that the paperwork was not necessarily as complete as it ought to have been.

168. However we also concluded on the balance of probabilities that there was a version with substantially more filled in than the document we saw. We noted that there were sections for the training to be carried out by managers other than Mr Sharp such as the Ax training and the training in accounts, to be noted. It seemed to us improbable that none of that would have been filled in. We noted also that within the 4 week review, Mr Sharp noted that the claimant

had been very good at working through his folder. We also bore in mind that Mr Sharp represented to Mr Edgar that the NAP folder was largely complete – it seemed to us that it was highly improbable he would have risked saying that to his own manager in circumstances where, if it were untrue, he might be exposing himself to negative scrutiny or even disciplinary action.

169. We therefore concluded that there was another version of the NAP folder which it is likely was not perfectly filled in but which contained significantly more evidence of training. The NAP folder was a new system and we had evidence that the Tooting manager and Sebastian had entirely failed to fill the folder in. The folder was intended to capture the ad hoc training that happened on the shopfloor as well as the more structured training and we could well understand that not all of that may necessarily have been captured contemporaneously, even if the more formal elements were properly recorded.
170. It seemed to us entirely possible that several versions might have been printed at some stage for convenience and the one the claimant disclosed was a version which best supported his case as to lack of training.
171. As to the level of training which in fact occurred, we accepted the very detailed evidence of Mr Sharp, which was challenged only in the most general terms by the claimant. It seemed to us that Mr Sharp would have exposed himself to very undesirable repercussions had he simply invented, during the course of the grievance, training allegedly carried out by other managers.
172. We also considered that it was highly improbable that the claimant would have been pushing to be signed off if he knew that he had not had a large amount of the required training. We noted that there was a reasonable body of evidence showing that the claimant did not feel unable to raise issues about his entitlements, such as his job title, a salary rise and the need for Mr Sharp's input into his apprenticeship, even where those issues might be difficult or cause conflict. If he was genuinely not receiving the training he expected, we considered that he would have raised the issue.
173. We bore in mind that Mr Sharp clearly was a supporter of the claimant but also that, looking at his own self-interest, it would make no sense for him to put the claimant in front of Mr Edgar to be signed off if he did not think he would get through. That would potentially call into question his own professional judgment. We also noted that, as the claimant accepted, Mr Sharp took action to help prepare the claimant for the sign off interview.

174. All of these factors supported our conclusion that Mr Sharp was supporting the claimant's training, rather than denying him training opportunities, and that, as they both said at the sign off interview, the NAP folder was effectively complete.
175. There were simply no facts from which we could reasonably conclude that the claimant was given less training than a hypothetical white comparator or Ricky Jenkins.
176. We did not uphold this claim.

*Issue: 2.2.7 The Respondent alleged failed to promote the Claimant to the role of Deputy Manager in June 2023 (Ricky Jenkins – White British);*

177. We concluded that the interview notes were a broadly accurate account of what had occurred at the sign off interview. We had the evidence to that effect from two people who were there plus the note taker; all would have had to conspire to disadvantage the claimant for the notes to have been concocted.
178. We also bore in mind that the claimant was not able to give a single detail of what he said which had not been recorded in the notes, in his witness statement, as part of the grievance or grievance appeal or at the Tribunal hearing.
179. We further took into account that the claimant's case as to what happened at the interview and why he had not succeeded in being appointed to the deputy manager post shapeshifted and maintained no consistent form. He suggested at different points that he could not do his best as he was not prepared, because he was not trained, because he was tired from driving and/or that he was intimidated by where Mr Sharp was sitting or what Ms Kaminski said.
180. For all of those reasons, we did not accept that the claimant did not give the answers recorded in the interview notes. He himself accepted that if this is what was said it was not adequate.
181. It appeared to us that the interview had started off with warm up questions which would have been designed to relax the claimant. The answers even to these questions were sparse, the attitude apparently dismissive and disengaged.
182. Both Mr Sharp and Mr Edgar were surprised by the claimant's performance and Mr Edgar had to go away and think about it and talk to his own manager

as this was very much not what Mr Sharp and his own observations had led him to expect.

183. We concluded on the facts that the respondent had very much been looking to promote the claimant if that were possible and the reason he was not promoted was his very poor interview performance.
184. We concluded that Mr Edgar was persuaded to give a six week extension for the claimant to prove himself because of Mr Sharp's advocacy and what Mr Sharp had been saying about the claimant's qualities.
185. We did not have resort to the burden of proof, but if we had, there was nothing from which could reasonably conclude that a white comparator in the same circumstances with those answers would have been promoted; alternatively we were satisfied that there was an explanation for the treatment which was in no way tainted by race.
186. We did not uphold this claim.

*Issue: 2.2.8 The Respondent's Dean Sharp informed the Claimant that he was required to step down from his role as a supervisor / team leader if he did not work on weekends (hypothetical comparator).*

187. The evidence we accepted was that there was a discussion between the claimant and Mr Sharp about how, as a team leader, the claimant would have to be available as keyholder at weekends sometimes. We also had ample evidence that in fact Mr Sharp avoided asking him to do weekends as much as possible, bearing in mind the store was open seven days a week, the claimant was contracted to work over seven days and there was a rota system.
188. The claimant did not suggest that he did work many weekends or challenge Mr Sharp on that point and his evidence was that he did not wish to work weekends, and was helping his daughter with her studies.
189. There were no facts from which we could reasonably conclude that Mr Sharp would not have said made the same point to any team leader of whatever race who was reluctant to work weekends, and was seeking advancement. There was nothing which would have caused the burden of proof to shift.
190. We did not uphold this claim.



191. For completeness we should say that even when we looked at all the claims holistically, we could find no facts from which we could reasonably draw an inference of race discrimination.

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

3.1 Did the respondent do the following things:

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

*Issue: 3.1.1 The Respondent allegedly failed to pay the Claimant equal pay from June 2022 in comparison to other drivers*

192. The claimant was paid in the same way as other employees who did ad hoc delivery driving whilst working in a store.

193. We found no relationship with race for same reasons as we found the claimant's pay was not materially because of race.

194. There was no proscribed purpose or effect on the facts we found.

195. We did not uphold this claim.

*Issue: 3.1.2 The Respondent caused the Claimant to work in an unsafe working environment and / or be treated without consideration and / or dismiss or fail to take prompt action in relation to his concerns and / or disregard his legal rights in relation to health and safety law on 05 August 2022;*

196. Our findings are as set out under the direct race discrimination heading. We did not conclude on the balance of probabilities that the claimant was caused to work in an unsafe working environment.

197. We found no relationship with race for the same reasons as we found that the treatment was not materially because of race.

198. There was no proscribed purpose or effect on the facts we found.

199. We did not uphold this claim.

*Issue: 3.1.3 The Respondent failed to make an apology and/or address the health and safety concerns on 05 August 2023;*

200. We concluded that the respondent did address the health and safety concerns and Ms McNamara made an assessment of the situation, even if that was not to the claimant's satisfaction.

201. We found no relationship with race in terms of the handling of the health and safety complaint for the same reasons as we found that the handling was not materially because of race.

202. There was as a matter of fact no apology but we were not satisfied on the facts we found that an apology was justified.

203. There were no facts from which we could draw an inference that the failure to apologise related to race.

204. There was no proscribed purpose or effect on the facts we found.

205. We did not uphold this claim.

*Issue: 3.1.4 The Respondent's Dean Sharp pressured the Claimant to conduct driving duties that resulted in a significantly increased workload*

206. We did not find as a fact that Mr Sharp pressured the claimant to drive.

207. The offer of driving duties was not itself related to race

208. In the circumstances, what happened could not have the proscribed effect and we found no evidence of a proscribed purpose.

209. We did not uphold this claim.

*Issue: 3.1.5 The Respondent's Dean Sharp allegedly made comments to the Claimant about the ability to easily dismiss an employee with less than two years' service (hypothetical comparator);*

210. We have already found that we were not satisfied that this occurred and we therefore did not uphold this claim.

*Issue: 3.1.6 The Respondent's Dean Sharp allegedly instructed the claimant to sign documents confirming that he had received training, when this was not the case;*

211. The only evidence we had from the claimant on this matter was evidence that he had been asked to sign the four and eight week reviews in the lead up to the sign off interview not on the dates indicated on the document. He did not take issue with particular statements in the review documents, which included positive feedback and statements about what training would be organised. It was not put to Mr Sharp that he had coerced the claimant or made him sign something which was untrue.
212. This allegation was not made out on the facts and we dismissed this claim.

*Issue 3.1.7 The Respondent's Dean Sharp allegedly denied the Claimant the opportunity of training from 6 February 2023*

213. As per our findings in respect of direct race discrimination, we did not find that the claimant was denied training or that we could connect what he had had by way of training with race.
214. We did not uphold this claim.

*Issue: 3.1.8 The Respondent alleged failed to promote the Claimant to the role of Deputy Manager in June 2023*

215. We found no evidence from which we could reasonably conclude that there was a relationship with race.
216. In circumstances where we found both managers involved were looking to promote the claimant, there was no proscribed purpose. We considered that there was no proscribed effect because a reasonable person would have perceived the situation as it really was – that the claimant was being given a further chance to prove himself after a bad interview.

217. In all of those circumstances, whether taken individually or together, we did not find the harassment claims made out and they are also dismissed.

Employment Judge Joffe

Date: 9 January 2025

Sent to the parties on:

13 January 2025

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For the Tribunal Office:

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