EMPLOYMENT TRIBUNALS

Claimant: Mr S Yasin

Respondent: Boehringer Ingelheim Limited

Heard at: Manchester **On:** 6-10, 13-15 & 21 January 2025

Before: Employment Judge Phil Allen
Mr D Wilson
Ms B Hillon

REPRESENTATION:

Claimant: In person
Respondent: Mr M Green, counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The complaints of direct race discrimination are not well-founded and are dismissed.

2. The complaints of direct discrimination on grounds of religion or belief are not well-founded and are dismissed.

3. Allegations three to thirteen (inclusive), fifteen and sixteen of race discrimination and/or discrimination on grounds of religion or belief were not presented within the applicable time limit, but it was just and equitable to extend the time limit for those complaints.

4. Allegations one and two of race discrimination and/or discrimination on grounds of religion or belief were not presented within the applicable time limit. It was not just and equitable to extend the time limit for those complaints. We did not have jurisdiction to consider those complaints.

REASONS

Introduction

1. The claimant was employed by the respondent as a Senior Therapy Area Specialist (TAS) from 5 March 2020 until he was dismissed on 10 December 2021. The claimant is a practising Muslim of Asian origin, and he emphasises that at the relevant time (or, at least, for some of the relevant time) he had a beard which he believed identified him as a practising Muslim. The claimant alleged that he was treated less favourably in sixteen alleged ways because of his religion and/or his race. Those allegations started with him not being successful in applying for an alternative role in September 2020 and ended with his dismissal and unsuccessful appeal. The respondent denied discrimination.

Claims and Issues

2. A preliminary hearing (case management) was conducted by Employment Judge Ross on 29 March 2023. At that hearing the claims being pursued were clarified. The case management order contained, as a schedule, a list of the sixteen things alleged to have been the less favourable treatment. It also had appended to it the issues which it had been identified needed to be determined.

3. At the start of this hearing, the parties agreed that the list of allegations and the list of issues appended to the previous case management order, contained the list of allegations and issues which we needed to determine.

4. It was also agreed that we would determine the liability issues first. It had been agreed that, if time allowed and if required, we would go on and consider the remedy issues in the time allocated, but in fact it did not prove possible to also consider remedy issues in the time allocated.

5. The list of allegations and the list of issues to be determined, are appended to this Judgment.

Procedure

6. The claimant represented himself at the hearing. Mr Green, counsel, represented the respondent.

7. The hearing was conducted in-person with both parties and all witnesses attending in-person at Manchester Employment Tribunal.

8. An agreed bundle of documents was prepared in advance of the hearing. Where a number is referred to in brackets in this Judgment, that is a reference to the page number in the bundle. We read only the documents in the bundle to which we were referred.

9. In advance of the hearing, an issue had been identified regarding recordings and transcripts of those recordings. In an application made in November 2024, the claimant sought to rely upon a number of transcripts which had not been disclosed at the relevant time. The claimant's application was heard on the morning of the second day of the hearing, after we had read the witness statements and the relevant documents. As the application had been made in a witness statement prepared by the claimant, the claimant was sworn in, confirmed the truth of that witness

statement (S37), and was cross-examined by the respondent's counsel (before we also asked some limited questions). Each party was then given the opportunity to make verbal submissions regarding the application. The application was granted in respect of nine transcripts but refused for one. The parties were informed of the decision made and the reasons for it, just before lunch on the second day of the hearing (after an adjournment) and the decision made and the reasons are included in this Judgment below. The documents relating to the transcripts had been included in a supplementary bundle prepared by the respondent (where a document is referred to in this Judgment from the supplemental bundle, the number is included in brackets prefaced with an S). The claimant provided the Tribunal with a bundle containing the transcripts which he was allowed to rely upon during the lunch break on the second day, and where reference is made to those transcripts in the Judgment, the relevant number is included in brackets prefaced with a T (following the numbering used, there is a number which indicates the relevant transcript, a number which is the relevant page in that transcript, and a number which is the line number of the extract).

10. We were provided with witness statements from each of the witnesses called to give evidence at the hearing. On the first morning, after an initial discussion with the parties, we read all the witness statements and the documents referred to.

11. We heard evidence from the claimant, who was cross examined by the respondent's representative, before we asked him questions. His evidence was heard from lunchtime on the second day until the end of the third day. The claimant did not call any other witnesses.

12. For the respondent, we heard evidence from seven witnesses. They each gave evidence by confirming the truth of their witness statements, were cross-examined by the claimant, and we asked questions (where required). The respondent's evidence was heard from the start of the fourth day until the end of the seventh day.

13. Mr Richard Mathie had been witness ordered to attend the hearing and give evidence, and he attended the hearing in accordance with the order made. During the fourth day, when evidence was heard from Mr Beard and Dr Tanna, the claimant was unwell. He wished to continue with the hearing, and we did so until mid-afternoon, when we made the decision that the hearing should be ended early for the day. When we did so, we were reassured by the claimant, that Mr Mathie's cross-examination would not require more than a day. As a result, and because Mr Mathie attended the Tribunal hearing by obligation and under a witness order, we did say that the cross-examination of Mr Mathie was required to be completed by the end of the fifth day. The claimant did so and in practice the claimant was given ample time to cross-examine Mr Mathie. For many of the witnesses, we identified a time when we expected cross-examination to be concluded, to ensure that the case was heard in the time allocated (as far as was reasonably possible).

14. The claimant's cross-examination of the respondent's witnesses took longer than it could have done. That was, in part, because the claimant frequently made speeches rather than asked questions (even when he had been told not to), something which he appeared to be particularly prone to do when a witness gave evidence with which he disagreed. The claimant also, on occasion, chose to

repeatedly ask a witness the same question even when an answer had been provided or the witness had said they did not know or could not recall. There were also occasions (usually after listening to some questions on the topic), when we queried the relevance of the questions being asked to the issues to be determined. On some of those occasions, the claimant elected to continue to ask questions. We understood that the claimant represented himself and was not professionally represented and we accordingly gave him considerable lee-way during cross-examination in accordance with the overriding objective, nonetheless we did observe that the claimant did not demonstrate the understanding of, and adherence to, the usual approach to cross-examination which we would have expected of an experienced Magistrate, with a far greater degree of experience of listening to appropriate cross-examination than the vast majority of unrepresented claimants.

15. The witnesses heard as called by the respondent were:

a. Mr Ivan Beard, the UK & Ireland Cardiometabolism MSL Team Lead;

b. Dr Nikhil Tanna, the Head of Medicine for Oncology, Immunology and Mental Health;

c. Ms Anna Race, at the relevant time the Director of Sales for UK and Ireland and now the Director of Health Systems Engagement and Partnerships;

d. Mr Richard Mathie, formerly the Executive Regional Operations Manager (he is no longer employed by the respondent);

e. Ms Rachael Johnson, HR Specialist;

f. Ms Mairi Clark, Regional Operations Manager; and

g. Mrs Debbie Marsh, HR Business Partner.

16. The claimant said he has a hearing impairment, and he used a hearing aid during the Tribunal hearing. No specific adjustments were required to enable the claimant to engage in the hearing, save that it was on occasion necessary to pause the hearing briefly when there was loud external noise (as on occasion occurred because of the scaffolding being erected next to the Tribunal building).

17. After the evidence was heard, each of the parties was given the opportunity to make submissions. The claimant sought additional time to prepare his submissions and therefore we agreed to delay the start of the eighth day of hearing to give him that time. Lengthy written submissions were provided to the Tribunal by both parties by midday on the eighth day and limited oral submissions were heard from 12.30 pm on that day. The claimant chose to make almost all of his submissions in writing, rather than orally.

18. As there was insufficient time at the end of that allocated for us to consider and reach a decision and to inform the parties of our decision and the reasons for it, Judgment was reserved. We also arranged an additional day in chambers, arranged shortly after the end of the listed hearing, to reach our decision. Accordingly, our Judgment, and the reasons for it, are contained in this document.

The application to admit the additional transcripts

19. The key basic facts as they applied to the application were that:

a. The claimant covertly recorded a number of conversations between 12 February 2021 and 19 July 2021. They included conversations with colleagues and customers. The other participants in the conversations were unaware that the claimant was doing so, and he did not tell them. The application related to the transcripts of ten such conversations, being those which had occurred on the following dates in 2021: 12 February; 16 February; 19 February; 26 February; 3 March; 12 March; 17 March; 31 March; 25 May; and 19 July;

b. The claimant's evidence was that he had lost the recordings (or access to the recordings) in late 2021;

c. The claimant said that he recovered the recordings in February 2024;

d. Disclosure in the case took place in May 2023 and witness statements were later prepared and sent to the other party, with the claimant signing his statement on 23 February 2024;

e. The claimant did not disclose the recordings (or any transcript of them) at the time when they were recovered. He is not legally qualified, but we would observe that the case management order made was clear about what was required;

f. In November 2024 the claimant spoke to a Solicitor friend and discovered that he could potentially rely on the recordings, so he disclosed them, and made the application which we were considering; and

g. In response to an order from the Tribunal made prior to the hearing, the claimant had provided a list of the passages in the transcripts which he said were relevant and, in response to a further order we made on the morning of the first day, he added to that table brief explanations of why it was he said that the transcripts were relevant, including to which allegation it was contended the evidence was relevant.

20. We had considerable reservations about the timing and manner of the application and the claimant's account about what had occurred. We did not need to make any decisions on the evidence. Even on the claimant's own evidence, he disclosed in November 2024 documents/recordings which he should have disclosed in February 2024.

21. What had occurred was not how the process followed by the Employment Tribunals should work. We noted that the respondent's witnesses had prepared their statements without the benefit of the recordings or the transcripts.

22. In his submissions, the respondent's counsel did not rely upon the fact that the recordings were covert as meaning that in and of itself the transcripts could not

be relied upon. We had considered the key case of **Amwell View School Governors v Dogherty** [2007] ICR 135. He was right not to do so.

23. The starting point for considering the application, was that the evidence was only admissible if it was relevant to an issue between the parties. For some of the transcripts relied upon, the claimant had established relevance. For all of the transcripts, there was the possibility that they could be relevant.

24. In summary (and without reproducing the more detailed submissions made), the respondent's counsel in his objection to the transcripts being admitted, relied upon the fairness of the situation and the need to comply with the overriding objective and to deal with the case fairly and justly. We carefully considered the overriding objective (as set out in rule three of the rules of procedure), including, in particular, the factors set out at (a) (ensuring the parties are on an equal footing), (b) (dealing with cases in ways which are proportionate to the complexity and importance of the issues) and (c) (avoiding unnecessary formality and seeking flexibility in proceedings). We particularly took account of the matters set out at (c).

25. In practice, the respondent did not object strongly to the admission of most of the transcripts and, applying the overriding objective, we decided that they should be admitted.

26. One transcript was particularly in dispute. That was the transcript of 19 July 2021. The respondent said that it would be prejudiced if the transcript was admitted because the respondent had previously made the decision not to call Ms Dibble to give evidence (she was an HR Business Partner). She was the person to whom the claimant was speaking in the conversation recorded/transcribed. The claimant said that it was relevant to his claim because it showed him raising race and religious discrimination. We noted that the claimant did not assert in the relevant part of his witness statement (paragraph 120), where he gave evidence about a meeting on 19 July 2021, that he had done so, nor did he make any reference to the conversation. We concluded that the prejudice to the claimant of refusing the application was limited because a refusal to admit the transcript involved not allowing evidence of something to which the claimant had not referred in his evidence. The prejudice to the respondent of admitting that particular transcript was significant, because it had prepared the case for hearing without knowing of the recording/transcript and had decided who to call as witnesses based upon their knowledge (which may well have been different had they known of that transcript).

27. We therefore made the decision that we refused the claimant leave to admit the transcript (or recording) of his conversation with Ms Dibble on 19 July 2021, as that had been disclosed eighteen months after it should have been (as ordered) and approximately nine months after it should have been (based upon his evidence about when he said it was recovered). We agreed that the other nine transcripts referred to by the claimant could be admitted and considered at the hearing.

28. We would add that, in the course of the hearing the claimant referred to other elements of the transcripts admitted, over and above the passages which he had identified as relevant to the claims. On occasion, that was highlighted by the respondent's representative and/or by us. On the majority of occasions, we allowed the claimant to refer to passages within the transcripts and considered their content,

even though (for some parts) that went beyond the passages the claimant had indicated were relevant when his application was made.

Facts

29. The claimant was employed by the respondent as a Senior Therapy Area Specialist from 5 March 2020 (known as a senior TAS role).

30. The claimant is a practising Muslim of Asian origin. From the start of his employment with the respondent, the claimant had a lengthier beard which he maintained for religious reasons (following a pilgrimage in 2019) and which he believed identified him as a practising Muslim. We were shown a photograph of the claimant with the longer beard (1641) which he had from (or after) the start of his employment. He cut his beard much shorter later during his employment, in the period whilst he was absent due to ill health. The claimant said in evidence that was in approximately June 2021 (although in his witness statement he had said that it had been at a later date).

31. It was the claimant's evidence, that when he attended the interview for employment with the respondent, he explained his wish to move into an MSL (Medical Science Liaison) role in the future. It was also his evidence that during his previous employment (from which he had been made redundant) he had actively worked towards an MSL role, and that he told those at the respondent during his employment of his wish to undertake an MSL role. The claimant's senior TAS role with the respondent was part of the commercial part of the business, whereas the MSLs worked within a different line management structure. The TASs and the MSLs worked closely with each other (and the claimant emphasised to us his good working relationship with a number of the MSLs in his time at the respondent).

32. The claimant commenced employment on 5 March 2020. His role was a sales role. He reported to Nuala Philips from when he was appointed until December 2020. Ms Philips did not provide any negative feedback on the claimant's performance. Ms Philips was made redundant at around the time she ceased to manage the claimant (albeit she remained employed for a period of notice). We heard some limited evidence about the process by which Ms Philips was selected for redundancy.

33. Shortly after the claimant commenced work, his role was significantly impacted by the Covid pandemic. The claimant would have normally fulfilled his role by visiting his customers face to face and visiting hospitals to do so. His role focused on hospitals as opposed to primary care. He was responsible for hospitals in the Greater Manchester area. Visiting hospitals was not possible in 2020 or early 2021. As the claimant emphasised, his role was very different from what had been envisaged.

34. The claimant received ten spot prizes for his work in 2020. They were monetary prizes which recognised good or exceptional work.

35. In September 2020 the claimant applied for an MSL role in oncology. The respondent accepted that the role was at the same band as the claimant's. We were provided with a generic role profile for the MSL role in which the following was recorded in the section headed "*Required education and knowledge*" (1811):

> "*Candidates for the MSL role must possess a level of formal education and experience in a scientific or clinical discipline that enables them to be scientifically credible peers of SCEs.*
>
> *Advanced degree (e.g. PharmaD., MD, PhD) in a relevant scientific discipline is preferred but candidates with an undergraduate degree in a relevant discipline and demonstrated experience will be considered"*

36. The claimant was interviewed by Dr Nikhil Tanna (from whom we heard evidence), Dr Clare Bolton, and Dr Tom Cork. The respondent's position was that he was automatically progressed to interview as an internal candidate. The claimant was unaware that had been the case. He was not successful at interview.

37. Thirty candidates applied for the role (the claimant thought there had been eight hundred based upon what he said he was told by the recruitment agent). The claimant had an initial conversation with Drs Bolton and Tanna on 30 September 2020. Dr Tanna was able to provide his notes of the initial interviews (1813). Four people were initially interviewed, including the claimant. Three progressed to second interview. Of the claimant, Dr Tanna recorded that the pros were "*proactive, chatty, friendly, internal candidate and quickly up to speed with products*", and the cons were "*one style approach, ?agility, hard to get a word in"*. For the candidate who was ultimately successful, he recorded the pros as having been "*very articulate, good orator, driven and passionate about oncology, very professional, familiar with some ABPI"*, with the cons being "*new to MSL will require ABPI and disease area training".*

38. In that conversation, Dr Tanna suggested that the claimant spoke to the oncology team. The claimant did so by contacting members of the team in three different ways within a very short period of time. Dr Tanna found that the team members were somewhat overwhelmed by the contact and said that they described the claimant as having hounded them. The claimant did not recall doing so and accepted that such a perception might be a reasonable reaction, albeit he emphasised that he could not comment on what Dr Tanna was feeling.

39. A second more structured and detailed interview (or assessment centre) took place with Dr Cork and Dr Tanna. The process was documented, but it was Dr Tanna's evidence that his sent emails were automatically deleted after three months (unless saved) and the recruitment organisation appeared to have not retained the documents after a system change. Dr Tanna explained in his evidence why the role was offered to Dr Savi, an external candidate. He described Dr Savi as an exceptional candidate with *"considerable academic qualifications; a degree in cellular microbiology, a masters degree in medical molecular genetics and a PhD in Oncology and Cancer Biology*". He said that her presentation and interpersonal skills stood out above the other candidates (and a copy of what had been her presentation, obtained from her, was provided (1814)). He described Dr Savi's presentation as being the best which he had sat through. It was his evidence, that the claimant simply could not compare to her level of expertise and qualification for the MSL role.

40. It was the respondent's evidence that Dr Savi, the successful candidate, is a practising Muslim, Iranian. She observes religious practices. She wears a hijab on occasion, although Dr Tanna's recollection was that she did not wear one during the

interview. He believed that he would have thought she was Iranian from her appearance during the interview, but that he did not give it much thought as it was not important to him.

41. It was Dr Tanna's evidence, that the claimant did not show an understanding of all the MSL role. He understood the sales elements of the role, but not the other parts (which were significant).

42. Dr Tanna provided the claimant with verbal feedback about why he had not been successful in a subsequent conversation. There was no record made during the conversation of what was said. The claimant asserted that he had been told that he was good enough to be appointed to an MSL role. Dr Tanna's evidence was that he did not tell the claimant that. He recalled the claimant himself asserting in the call that he was good enough to be appointed, but he was clear in his evidence to us that he did not say so. In part, the reason why Dr Tanna was clear that he did not say what was alleged, was because he said he would not have made such a statement as it was not part of his role as a recruiter to do so, and because he did not think so. When explaining the suggestions he made in the feedback (that the claimant look to undertake a secondment or a shadowing in an MSL role), Dr Tanna explained that he made those recommendations to the claimant to endeavour to assist the claimant with his aspirations for the role, in the light of the shortcomings in the understanding which the claimant had shown (in Dr Tanna's view) in the interview.

43. The claimant placed reliance upon an email which he sent to Dr Tanna following their conversation which recapped what had been said and which asked Dr Tanna for permission to include it in the claimant's MAG (his appraisal document). That was sent on 22 October 2020 (1434). In it, the claimant stated that Dr Tanna had said that he felt that the claimant "*could do the role of the MSL now*". The following day, Dr Tanna responded in a brief email and did not correct what the claimant had said. Dr Tanna, in his evidence to us, denied that he had said what was recorded in the email and said that he did not correct what the claimant had said in the email as he had just rejected his application for the role.

44. The claimant's allegation was that Steve Jones stopped the claimant from progressing to the role. The claimant provided no evidence whatsoever that Mr Jones had done so and accepted that he could not prove it. Dr Tanna denied that Mr Jones or anyone in sales or the commercial team had any impact upon the decision. It was his evidence, that they were simply not involved in the decision. It was also his evidence that he was not aware of Mr Jones at the time.

45. During his evidence, the claimant said that he did not know who made the recruitment decision. He relied upon the email to which we have referred (1434) and said that Dr Tanna had told the claimant in the feedback following the interview that he was good enough to be appointed to be an MSL at the time. In answers to other questions put in cross-examination, the claimant said that he did not assess the successful candidate and he said he had no way of showing that he was the best candidate. He said he was saying that he didn't know if he was the best candidate, but he certainly knew that he wasn't the worst.

46. In answer to other questions put in cross-examination, the claimant emphasised that the job profile said that an advanced degree was a preference not a

requirement for the role (and he highlighted that others with sales experience had progressed to MSL roles, including Mr Beard). He clearly considered that his sales background meant that he was a candidate who should have been offered the role on merit in preference to others. The claimant accepted that Dr Tanna did not think he was the best candidate. The claimant said that he was not qualified to assess somebody else's decision. He said he could not say with certainty that the reason he had not got the job was because he was a Muslim. When it was put to the claimant that the successful candidate for the role was somebody who was a practising Muslim, the claimant asserted that he still contended that his non-appointment was discrimination because of his religion because his allegation was based upon his personal appearance and being identified as a Muslim.

47. In October 2020 the claimant applied for a Business Leader role. It was the claimant's evidence that Ms Philips had asked him to apply for the role (and that she later told the claimant that she had been told off for putting him forward). That role was two grades above the role fulfilled by the claimant (and one above the role filled by Ms Philips). He was not progressed to interview for it. Ms Race undertook the interviews for it with Richard Price, but she did not interview the claimant as he was not interviewed. She did not make the decision about who should be interviewed. Mr Price was the recruiting manager for the role. We did not hear evidence from him, Ms Johnson's evidence being that he left the respondent in February 2021 before the grievance investigation We did not hear evidence from anybody who had made the decision about the claimant's application, but Ms Race addressed his suitability for the role in her evidence. The claimant's witness statement contained a notable paucity of evidence about whether or why the claimant thought he should have been appointed to the role in preference to other candidates (save for relying upon what Ms Philips had told the claimant and the claimant's evidence that she believed that his skills and the experience which he had brought to the team, made him a great candidate). In cross-examination, the claimant agreed that possibly he had not had enough experience for the band two role (the claimant's role as a senior TAS was band four).

48. It was Ms Race's evidence, that the role was a strategic role which reported directly to a Director. It was very different to the work which the claimant had been doing. She did not believe that the claimant had strategic experience. She also did not believe that he had the relationships required for the role. Having now looked at the claimant's CV, it was Ms Race's evidence that the claimant simply did not have the experience required for the role. The person appointed was Karen Fox, who had a previous position as a Strategic Partnership Lead at another company delivering what Ms Race described as "*the exact same position*". Ms Race described her as being "*very qualified for the position*".

49. Ms Philips arranged for the claimant to speak to Ms Race about career progression. Ms Race believed that the conversation with the claimant took place ahead of any interviews. As, at the time, Director of Sales for UK and Ireland, Ms Race was considerably more senior than the claimant. When they spoke, Ms Race was not interviewing the claimant. She could not recall what she had said in the call at all. In cross-examination, Ms Race explained that at the time she was fulfilling a head of sales role, acting in another role, covering her absent manager's role, and was in part responsible for a restructure process. When questioned, she said that she did not recall the claimant at all (and therefore she could not remember his

beard). Ms Race denied specifically thinking or believing that the claimant was Muslim, and it was her evidence that she would not have consciously done anything with the information even had she known it. It was the claimant's evidence, that Ms Race informed him in the call that she had not read his CV, something Ms Race could not recall. The claimant took that as meaning that she was refusing to do so, although there was no evidence that was what she said, and Ms Race did not believe that she would have refused to have done so. We accepted Ms Race's evidence about what she would have said and found her to have been a forthright and credible witness.

50. A key part of the claimant's role was arranging events with a speaker and/or a presentation, for which the names of attendees would be recorded. In November 2020 the claimant arranged two meetings, the second being a repeat of the first with the same speaker speaking about the same topic. The claimant recorded largely the same attendees as having attended both meetings. The issue was not identified or raised with the claimant at the time. In his witness statement, the claimant provided us with no evidence about these meetings or why it was that there was significant duplicate attendance or recording of attendees.

51. On 16 December 2020 Stephen Jones emailed the claimant (241). Mr Jones was the Head of Sales and was Ms Philips' manager and, subsequently, Mr Mathie's manager. We did not hear evidence from Mr Jones. In the email, Mr Jones shared a table relating to three customers of the claimant (a pharmacist and two Doctors). What Mr Jones said was:

> "*Whilst there will be a story behind each of the frequency rates for the customers listed here … it is important that you are inspecting your individual coverage and frequency rates against your target list as we move through the year to avoid these extremes (99 1:1 calls placed against* three *customers since March). I understand the current circumstances are challenging, and access to our* customers *is varied and locality dependent for the most part, but the reason I flag this is two fold:*
>
> 1. *The ABPI code indicates a maximum number of calls made on a doctor or other prescriber by a representative each year should not normally exceed three on average. This does not include the following which may be additional to those three visits* [with a list of exceptions]
>
> 2. *Placing so much of your resource (time and effort) on these few customers will limit the opportunity for you to achieve the required coverage and frequency across the rest of your target list.*
>
> ***Clarity:***
>
> *Activity expectation is 80% coverage of your target list with a frequency of between 4-6 calls over the year. Current picture is:* [followed by an extract from a table which recorded the claimant as having seen 36 of 167 targets, being 22%]
>
> ***NEXT STEPS:***

> *I am keen to gather your thoughts on this picture and understand what steps you will take to ensure we don't see such high frequency of calls on customers from 4th Jan when we reset our activity expectations*"

52. It was the claimant's evidence, that he had already finished work for the Christmas period by the time that he received the email. He, accordingly, had no chance to address the issue during calendar year 2020. It was also his evidence that the email was the first time that his coverage had been raised with him. It was Ms Race's evidence that the claimant was flagged in emails in December 2020 as part of a question about whether meeting with the same person over thirty times and being rewarded for it, was rewarding the wrong behaviours.

53. The claimant did respond to Mr Jones in an email on 4 January 2021 (241) in which the claimant explained the context of working in Covid, the need to rely upon email permissions, and that he had worked closely with customers. He concluded his email "*Whilst I recognise it's not ideal only having a small customer base I believe I have done it in a compliant manner. Of course, my plan is to try to reach out and interact with more customers this year going forward. This will obviously be challenging whilst lockdowns are still in place, I'm hoping this will improve as the lockdowns are lifted*". Mr Jones responded on 5 January:

> "*Thanks Saghir, I appreciate the detail below as it helps paint the picture for these particular customers and the call volumes achieved against them. I am not surprised by the context and I totally understand the environment you are working in and the opportunity you have had to work across your target list, I just wanted to raise your awareness to the data so that you can manage it moving forward as*"

54. In January 2021 Mr Mathie began managing the claimant. There was no hand-over between Ms Philips and Mr Mathie. Mr Mathie's evidence was that he tried to speak to her, but it was not possible. Ms Philips gave the claimant an initial rating for 2020 of "*meets*".

55. On one day, the claimant recorded twenty-seven contacts at a location. Eight of the attendees at a meeting were also separately recorded as having been one to one contacts who the claimant had met with individually. The claimant did not address in his witness statement why he had done this. In cross-examination of the respondent's witnesses, he questioned them about where any policy said that this should not be done. The respondent's witnesses' view was that a contact should not be recorded both as an attendee at a meeting and as a one to one contact who had been spoken to. Ms Clark accepted that it was possible for someone to speak to a Doctor in the morning and record a contact, and then separately for that person to be recorded as an attendee at a meeting later in the day. She did not accept that would happen for the number of people recorded, or where the contact was recorded at around the same time. The respondent's witnesses' evidence was also that simply saying hello to someone should not separately be recorded as a contact, a contact required some conversation which took the business forward. That did not appear to be written down in a policy. It was said to be something that any salesperson/TAS would know.

56. We heard evidence from Ms Race about a redundancy process which the respondent undertook. That was in another team, not the team in which the claimant worked. However, in accordance with the wish to reduce the number of redundancies required, alternative employment was sought for those at risk. That had the impact that some members of that team (which had been managed by Ms Race in her previous role) joined the claimant's diabetes team. That included Mr Mathie. The claimant stated that the group constituted a clique.

57. In January 2021 the claimant applied for a contract MSL role. He was put forward to final interview. He was interviewed by Mr Beard (from whom we heard evidence) and Ms McNerney. The claimant was not successful. The role was offered to an external candidate. In cross-examination, when he was asked who had discriminated against him by him not being appointed to this role, the claimant asserted that he did not have the ability to say who, but he said that Mr Beard had made the decision influenced by Mr Jones or Ms Race. The claimant accepted that the role was one in a department which was not in the commercial part of the business (for which Mr Jones and Ms Race had responsibility).

58. We heard evidence from Mr Beard. He had been the temporary secondee to the position for which he was recruiting at the time. He subsequently was promoted to manage the MSL team around the time when the interview took place. It was clear from his evidence that he had been concerned about the recruitment, which was the first recruitment decision which he needed to make in his new role and which he was particularly keen to get right.

59. The claimant telephoned Mr Beard on 12 March 2021 about the appointment, between the interview and the decision being announced. That was one of the telephone conversations which the claimant covertly recorded without informing the other party. We were provided with the transcript of the call (T6). It was clear that Mr Beard did not expect, and had not prepared for, the call. The claimant asked about the position. Mr Beard did not inform him of the outcome. In it, amongst other things, the following was said by Mr Beard at points during the conversation:

> *"I have an unbelievably difficult decision on my hands …*
>
> *The decision was imminent, but I still have an incredibly difficult decision on my hands …*
>
> *Thanks for being so enthusiastic. Thanks for all your efforts. Thanks for everything. And, you've created a very, very, very challenging situation"*

60. The interview notes had not been retained by the respondent (Mr Beard had sent them to the recruitment organisation but he told us that because of a change of systems they were no longer accessible). Mr Beard had retained his own copy notes. The interview involved a presentation from the candidates, followed by standard competency questions. For the claimant's presentation, Mr Beard particularly noted (1841) that he felt there was no focus on advancing scientific dialogue. It was Mr Beard's evidence, that there were gaps, particularly around the scientific communications and the additional academic, scientific and medical orientated approach that was required for the MSL role. In his evidence to us, Mr Beard explained in some detail why the role was offered to Dr Monica Nafria, who he

described as having been the standout candidate. She had a degree in genetics, a Masters in research of cellular and molecular biology, and a PhD in modelling acute myeloid leukaemia (the claimant had a Bsc Hons degree in Chemistry and agreed that it was appropriate for Mr Beard to have taken her scientific knowledge into account). It was Mr Beard's evidence, that her interview impressed the decision-makers with her understanding of the role, her communications, her insights, and her technical expertise. He explained that she was significantly more scientifically qualified than the claimant. We accepted that meant something in a role which was all about talking to and working with healthcare professionals. Mr Beard accepted that the successful candidate did not have pharmaceutical experience but highlighted that she had been involved in research collaboration and he said post-degree expertise was important as a result of the nature of the duties of an MSL.

61. Mr Beard provided feedback to the claimant. A copy of what he was said was included in the bundle (1470). Amongst other things, he said the following:

> "*Many thanks for putting so much energy, excellence and passion into your recent MSL role application. As we discussed, both Caroline and I were impressed with your skills and expertise and it made for an incredibly difficult recruitment decision …*
>
> *You have a very successful commercial career behind you with many achievements: I would have liked to have seen these achievements portrayed in the light of how you will have engaged your external experts in scientific expertise to enable them to make the clinical adoption decisions that would have led to your commercial success …*
>
> *You possess some rich and valuable soft skills, so I would love to have heard how you use these skills to strengthen your scientific communication in your current role, and how you would leverage these skills to enhance your scientific communication and interactions as successful MSL.*
>
> *On top of your current skills and valuable perspectives, it would be useful to think about any additional academic/scientific/medically orientated unique skills you could bring to an MSL team"*

62. On 2 February 2021 a yearly alignment meeting took place attended by management and others, being a total attendance of approximately nineteen people. Ms Philips was not present. Mr Mathie and Ms Race were. The meeting was to address the performance ratings of the team for 2020 and to apply a moderation process to the ratings. Ms Race said it was not a meeting which anyone looked forward to. The claimant was given a "*below*" rating, downgraded from the "*meets*" which Ms Philips had recommended. It was Mr Mathie's evidence, that this was an agreed consensus at the meeting which included reviewing the claimant's inputs and outputs and target calls. What was presented by the respondent as having been a significant factor was that the claimant's target calls had not reached the required standard, that was based upon the coverage figure as set out in Mr Jones email of 16 December 2020. The coverage figure was included in the spreadsheets which were considered at the meeting. Mr Mathie's evidence, was that the downgrading of the claimant was not as a result of the input of one individual or one person's comments, he described the process at the meeting as being a more collective one

where each individual was discussed with many people inputting into the discussion. Ms Race could not recall what was said in the meeting. It was the respondent's evidence, that one other person (not believed to be of the claimant's race or religion) was also downgraded at the meeting from a "*meets*" to a "*below*".

63. Whilst we were provided with copies of the data which would have informed the discussion at the alignment meeting, we were not provided with any record whatsoever which recorded the discussion, or which summarised the reason for the outcome. The claimant's rating was reduced without any input from him. Indeed no one who had directly line managed the claimant in the relevant period (2020) had any input into the decision. The claimant was given no record of what was said about him in the meeting or who said it. No such information was available to us. The claimant was provided with no genuine opportunity to consider in any detail what had been said about him in the meeting or to raise any challenge to it.

64. It was the claimant's contention that he was downgraded or targeted based upon looking different to everyone else. There was nothing specific upon which he relied as proving that had been the case, save for his belief or assertion.

65. It was Mr Mathie's evidence, that he informed the claimant about his below rating. He described the claimant as having a highly emotional and visceral reaction and being vulgar and rude to him saying "*is this a f***ing joke?*" and "*This is f***ing bulls****". No action was taken by Mr Mathie as a result. Based upon the evidence that we heard and save for the email of 16 December, this was the first time the claimant had been given any adverse feedback about his work.

66. As already detailed, the claimant covertly recorded a number of conversations between 12 February 2021 and 19 July 2021. They included conversations with colleagues and customers. The other participants in the conversations were unaware that the claimant was doing so, and he did not tell them. The first such conversation which the claimant covertly recorded and for which a transcript was provided to us, was of a conversation on 12 February 2021 with Mr Mathie (T1). The claimant recorded the conversation because he did not trust the respondent following the appraisal grade given to him the previous day. In his statement regarding admission of the transcripts, the claimant said that he did so both due to his hearing impairment and because of his lack of trust. However, as he did not record any previous conversations and as the recording commenced immediately after the grade was provided to him of which he was critical, we found that the covert recording was not related to his hearing but was related to his lack of trust. We found the practice of covertly recording conversations and retaining the recordings for personal use to be (using the words also used in the **Atwell** Judgment to which we have referred) somewhat distasteful. We found it demonstrated a lack of transparency from the claimant. We were also surprised by the claimant's lack of appreciation of the potential data protection issues which arose from such recordings (including of conversations with customers). The fact that he made covert recordings (and only disclosed their existence in November 2024), impacted upon our view of the claimant's reliability and credibility.

67. Mr Mathie spoke to the claimant on 12 February (T1). The claimant began the call by referring to himself the previous day and he said that he had showed "*raw emotions*" and that was how he felt. Mr Mathie said, "*it was a shock and it was*

honest, it was raw and it was visceral". In the call and in summary, the claimant spoke considerably more than Mr Mathie, particularly as it went on. He explained why he believed his performance had been better than the grade he received. He also referred to his experience. He asked how the respondent could rate his performance as "*below*" and said he had been shocked. Mr Mathie said (T1-11-585):

> "*I think we need to look at the reality I think, like you say, what you're actually delivering and I think the kinda consensus of all the kinda comments in the alignment where that there was still areas that needed development you know, there was inconsistencies and I think a lot of it was around the coverage and around, you know, very high [inaudible]"*

68. Slightly later the transcript recorded Mr Mathie as saying (T1-12-612):

> "*But the feeling I'm getting four weeks in is a feeling that you've still to improve yourself a bit, um, and I think a lot of that is around the kinda – the kinda numbers piece"*

69. At the very end of the conversation (T1-16-854) Mr Mathie said:

> "*well it's the high activity on, you know [inaudible] …*
>
> *The high activity on a couple of customers, you know [inaudible] …*
>
> *[Inaudible] reason for it"*

70. We were also provided with the transcript of a further conversation between the claimant and Mr Mathie on 19 February 2021 (taken from a recording which the claimant had covertly taken). Within that conversation, Mr Mathie told the claimant (T4-5-253):

> "*not to say you're not performing well on some of this because obviously all the stuff that you said to me, there's a lot of really good stuff in there er, you know, you've done a lot of great stuff last year even with the context of where you actually started, the environment, you know, the support you had from colleagues and stuff. So, there's been a lot of positives in there, you've achieved a lot. Erm, but specifically just KPI-based around, you know, those customer reports and the coverage as opposed to stretching it out to the whole target list and going to that to get to maximise that"*

71. On 3 March the claimant spoke to Rachael Johnson, HR Business Partner. We were provided with the transcript of the recording of the call which had been covertly made by the claimant (T5). The claimant explained his unhappiness with the grade he had been given, but also told Ms Johnson that he had now spoken to Mr Mathie and Mr Jones, he did not want to create a big fuss. In her witness statement for this hearing, Ms Johnson had stated that she did not know that the claimant wanted to be an MSL until the grievance process. The transcript showed the claimant and Ms Johnson discussing the claimant's aspiration to be an MSL and Ms Johnson explaining that he needed to demonstrate to the hiring manager that he was the right candidate for the MSL job. When she came to give evidence during the Tribunal hearing, Ms Johnson asked to delete the relevant erroneous sentence in her witness statement, which she accepted was incorrect in the light of the transcript

of the telephone conversation. She explained the error with reference to the time since the conversation and that she had not recalled that part of the conversation.

72. On 16, 17 and 19 March 2021 the claimant recorded on the respondent's system that he had arranged a speaker meeting for delegates to attend. A speaker was paid a reasonable sum of money for attending and speaking. We were shown meeting emails/responses which referred to meetings on those dates. The claimant provided no record of any attendees (besides the speaker). The records of such attendees were essential to the respondent's business. The claimant put to Mr Mathie that he had been invited and could have attended had he wished to, and Mr Mathie accepted that was correct. The meetings were virtual meetings, at least for the claimant. The claimant provided no evidence about who attended in his witness statement, but during his cross-examination he emphasised the difficulty a remote attendee had in seeing/knowing who had attended, particularly when he had not had the opportunity to get to know potential interviewees before Covid, and the reliance which had to be placed upon someone to provide a list of attendees.

73. On 30 March 2021 the claimant attended a call at the request of Mr Mathie. Unbeknown to Mr Mathie, another salesperson had been asked by someone else to also attend the call. The claimant was given the opportunity to leave the call if he wished to. He decided to do so. We were provided with an exchange of emails about it (245) in which the claimant said "*I'm happy to leave Ian to it*", Mr Mathie replied "*you are welcome to stay Saghir, or get some time back as you will need to attend the main session on Thu?"*, and the claimant responded "*I will take some time back. Thanks"*.

74. One of the telephone calls for which we were provided with a transcript of the claimant's covert recordings was a conversation between the claimant and Mr Mathie on 31 March (T8). Within that conversation, was a passage upon which the claimant placed reliance. What was said was the following (T8-6-294):

> "*[The claimant] You know, I've tried to, I've tried to, you know, you may have noticed, uh, one of the reasons I haven't hit 60 is because I haven't been putting down every call that I've been making with these guys.*
>
> *[Mr Mathie] Yeah, yeah*
>
> *[The claimant] Cos, you know, I get on really well with them, they're my mates as well, some of them so, as a result it's costing me 50 quid uh and uh, the name in lights but, equally, I could have put it down, you know like last year and you know, it's because I'm having these conversations with them but I don't want to, I, I want to be ver-, uh quite wary of, you know, how many times I've put these guys down so I'm not. Uh, quite easily if I did have another seven calls with these guys which is comfortable, you know, three or four of them easily a couple more times I could easily hit the target.*
>
> *[Mr Mathie] I think uh, I think that's good judgement Saghir, I think uh, that'll pay off in the long run anyway when it comes to looking at the outputs you're gonna get so, you know, for*
>
> *[The claimant] Yeah*

[Mr Mathie] Yeah, you could argue it's, it's worth XYZ but I think bigger picture stuff, well you'll certainly reap the rewards in that.

*[The claimant] But its more of an internal thing, you know, look I want you to be aware of what's going on, you know, I, I, you know, I need to be close with it so that, you know, it's not alien to you when, when we're having these conversations that you know, f***ing hell, Saghir's not, don't know what he's talking about, you know what I mean, never heard from him or whatever.*

[Mr Mathie] Yeah.

[The Claimant] As long as you know the reasons why I'm not hitting that and I still want the above so, you know, don't come back to me and say well, you didn't hit 60 because this is the reason that I could have done …"

75. Within the same call, the claimant also spoke to Mr Mathie about the call the previous day and said (T8-8-381):

"*I got invited to that meeting and then I didn't get invited you know …*

Look, I sensed it was wrong for me to be there so I just kind of came off but it shouldn't be, this is not a slate with Ian or anything but, you know, it shouldn't be a given that one person's getting it without anybody else knowing and it's not thrown out to the team. So, I don't get any opportunities, look, if you, as long as I get the above, I don't care if you don't give me any opportunities, you know, it's easier life for me, you know, I can focus on Manchester and I can focus on my bits but, you know, if these tick-box exercises and they're relatively not difficult to do, they shouldn't be reserved for one person"

76. In 2021 the claimant worked as part of a Manchester Pilot. This involved a novel way of working being undertaken in the Manchester region. It included the claimant and a number of others. It was clear that the Pilot involved some time commitment, and the claimant was required to attend meetings about it, including what were described as sprint meetings. On the respondent's systems, when an internal meeting was recorded, it (in some way) reduced an individual's other required targets. It was the respondent's case that the claimant recorded a significantly higher number of internal meeting that any other person. The claimant explained the number as being due to his involvement in the Pilot and said that there were no other equivalent senior TASs involved, as he believed that his position differed from TASs in primary care.

77. An issue in the claimant's disciplinary, was what work the claimant undertook in April and May 2021. The respondent's case was that between 1 April and 18 May (twenty-six working days), the claimant delivered/recorded five contacts to the same two customers (and nothing else, or at least nothing which could be evidenced). The claimant did not provide us with any specific evidence about what it was he did in that period; save for the answers he gave to questions about the demands of the Manchester Pilot. In cross-examination, the claimant told us that he had continued to contact the three people about whom his repeated contact had previously been raised, but he did not record those calls during this period in the light of what had been raised with him about high levels of contact with the same people.

78. On 18 May 2021 there was an MS Teams call involving the claimant, Amber Lynch and, initially, at least four others including Steven Crocker. Mr Mathie joined the call later and after the relevant part of the call. The claimant's evidence was that he said nothing which could be taken to have been bullying. Ms Lynch was not an employee of the respondent. She was an employee of another company (Lilly) but was working as an MSL on a joint project with the respondent. During the call nobody raised any concerns with, or about, what the claimant said to Ms Lynch.

79. It was Mr Beard's evidence, that Ms Lynch called him about what had been said on the call and she complained that the claimant had been aggressive in tone and had given her unwarranted criticism. His evidence was that Ms Lynch was genuinely upset. Mr Mathie's evidence was that Ms Lynch had tried to call him shortly after the meeting and he spoke to her some days later. Mr Crocker also telephoned Mr Mathie about the call, but some days after it had taken place.

80. On 25 May 2021 Mr Mathie spoke to the claimant and did not mention the 18 May call or any investigation into it. The call was one which the claimant covertly recorded and for which we were provided with a transcript of his recording (T9). Part way through the conversation, the transcript recorded (T9-13) the claimant as providing a lengthy statement about the way that the NHS is changing and he contrasted his position with that of the "*primary guys*" who he said were taking the lead and had the power. In response Mr Mathie replied (T9-14-700):

> "*That's good. It's good [Inaudible] So where's your head at with regards the whole team dynamic and all that stuff because I thought, um, it's interesting, I mean thanks for sending that email, um, around the speakers. I think that's really, really important, um, because I do – I do get – I – I sense this feeling that, um, everything is on you, right?...*
>
> *So I'm just – I find it quite interesting because it's almost kinda like there's this massive pushback all the time towards – towards you in secondary care and I'm thinking what's – what – why is it like that because when I go onto TCs and I speak to Stephen, trying to bring everything together and say let's just get key things [Inaudible] was great, basically said, look, I've got the guys here, you said you were gonna follow up so, great, keep me posted, Very clear, very action based, you know, the more you can do stuff like that ..*
>
> *The more it supports us when we're saying, look guys, you know, I'll speak to Steve Jones, Steve, Saghir has got these guys, right, nothing is happening with mobilisation, he can't see that email when he's copied in, that's brilliant …*
>
> *Because it gives him transparency as to, alright, Saghir has got half a dozen people here but we've still no' done any meetings and they've no' been mobilised and we don't know who the PCN leads are …*
>
> *People are forgetting actions and stuff and da-da-da-da-da. So- so that's why that's really important"*

81. Later in the same call, Mr Mathie was recorded as saying (T9-17-885):

> "*And I think that's why I keep banging on why emails are so important because it gives people transparency and visibility because if I'm a team of three and we've got 70 years between us and I say [Inaudible] we've no' got that speaker in that area and then Steve Jones says, well actually I've received an email from Sanghir over the last four weeks, he's got people there, he's consistently asking me to get him dates, you're not getting him them. It totally flips it on its head because it shows you the reality of what's actually happening …*
>
> *Um, because let's be fair, they are struggling, right, everyone is struggling [inaudible] but let's struggle together as a team, not scapegoats, you know and not, you know, push it all onto you, you know. [Inaudible] other people, you know, but you're working at that, you know. So I think, you know, we need to work as a team and I think, you know, enough of that kinda stuff*"

82. Later in the same conversation, the claimant said the following to Mr Mathie (T9-22-1179):

> "*Yeah, I mean, even, you know, when you mentioned last time when it was Steve Crocker and Lisa-Marie saying stuff, Lisa-Marie has had no interactions with me, Crocker has no interactions with me, so they just go with whatever their team says*"

83. In his witness statement, the claimant said that he was asked by Mr Mathie to present his business analysis of the territory to the primary care team including Mr Crocker, but Mr Crocker's response was that he did not need any more analysis. In his witness statement, Mr Mathie said that at the end of May 2021 Mr Crocker and Lisa Marie had mentioned at management meetings that the claimant was underperforming. Mr Mathie said that was around behaviour, communication, and support of his colleagues.

84. In his witness statement, the claimant quoted from the conversation of 25 May. In cross-examination it was put to the claimant that Mr Mathie had not used the words "*selectively targeted*" as including in allegation nine, and the claimant conceded that Mr Mathie had not done so. In his answers to cross-examination, the claimant accused the whole of the Greater Manchester team of selectively targeting him as an act of discrimination, including four members of that team who he named.

85. Mr Mathie undertook an investigation into the bullying allegation following the call on 18 May and recorded what he was told by making limited handwritten notes in his diary/daybook. We were provided with a copy (589). He did not take full notes of what he was told. He did not ask the witnesses to provide statements, and he did not note what they had said in the form of statements. The notes taken were summary. Those notes were not provided to the claimant at the time. As an example, the words included on 2 June said the following (as best the handwriting is able to be read):

> "*Felt uncomfortable, challenged – defence/nervous.*
>
> *Sounds like he got it in for her.*
>
> *She felt it, see it in her face*

Dif – very uncomfortable.

Who amber – get in front of

Negatively towards her – went quiet

Spoke to name – after it

[?] can be patronising. Hold you to account"

86. On the last page of the notes provided (593), Mr Mathie included the following summary:

"*Amber Lyon - Felt attacked. Backed into a corner very aggressive lashing out went off like a firework*

Steven C - Aggressive. Distinct change tone voice + pace speaking. Much faster. Dominant tone. Attacking Distinct[?] *focused towards Amber. 0-100 straight away. Series of mild aggressions conversation*

[?] – *Aggressive tone.*

Lisa – Felt very uncomfortable. Spoke negatively Amber Sounds like Saghir has got it in for her. Felt atmosphere change, - went really quiet.

Ivan – See impact negatively Amber, on her face"

87. We were provided with a letter from Mr Mathie to the claimant of 3 June 2021 (248). In that letter the claimant was informed that Mr Mathie was conducting an investigation under the respondent's disciplinary policy. It was described as a fact-finding exercise and it was explained that, until the investigation had concluded, no decision had been made as to whether or not to instigate the formal disciplinary procedure. The allegations were set out as being the following:

" *1. Breach of the Dignity at Work policy, specifically bullying behaviour directed towards an individual during the virtual GM meeting on 18th May 2021.*

2. Falsification of records relating to the recording of 5 speaker meetings between November 2020 and March 2021. Also relating to recorded customer interactions within Veeva between January 2021 and May 2021.

3. Non-compliance in relation to the National Standards Document relating to Veeva CRM recording Time off Territory between January 2021 and May 2021.

4. Lack of Customer Activity during April/May 2021."

88. On 4 June 2021 Mr Crocker emailed Mr Mathie an account of the 18 May meeting (1057/790). What he said was:

> "*At some point in the call a dynamic/tone/aggression was observed from Saghir aimed towards Amber.*
>
> *The trigger of this was a general team based discussion on customers who we have/need to/haven't seen yet. There was no question posed to Saghir or anything highlighted regarding Saghirs lack of engagement with customers.*
>
> *The reaction I would describe as targeted micro aggression from Saghir directly to Amber.*
>
> *The meeting from this point was toxic and made the rest of the attendees feel uncomfortable"*

89. The claimant commenced a period of ill health absence in June 2021, from which he did not return.

90. On 15 June 2021 Ibrahim Amin emailed the claimant (513). The email was headed "*Message of gratitude*". He thanked the claimant for his support over the previous twelve months. He went on to say:

> "*In particular, the three meetings you supported the practice with earlier this year, and late last year have been particularly useful for the wider practice team. Although I was the one presenting the subject my fellow clinicians are now more up to date and, see the importance of prescribing in line with the latest evidence … As such, I am confident to say our management of patients with diabetes has also improved"*

91. We heard some evidence and discussion about what was meant by the first line quoted above from that email. There is some ambiguity in how it was expressed, however we read the email as stating that the claimant had undertaken three meetings for the writer in 2020 and 2021. We did not read it as stating that there had been three meetings in 2021 as the claimant contended. In any event, we accepted that the ambiguity and the date of the email, meant that the email did not prove to the respondent that three meetings had taken place in March 2021 as the claimant contended.

92. Lisa Finlay was given new responsibilities in June 2021. She was a primary care specialist (in contrast to the claimant who was a hospital specialist). The new responsibilities included some aspects for two of the hospitals in the Greater Manchester region for which the claimant had responsibility. That included one hospital where the claimant believed he had been able to create contacts and make progress. It was the claimant's evidence, that he was told that there would be conversations about any changes. He said there were not any such conversations. It was his evidence, that he felt that Ms Finlay was taking over his role without his knowledge and he was being pushed out of the company. The claimant accepted that, at the time of the changes, he was absent on ill health grounds and that it was correct for him not to be contacted about those changes while he was absent.

93. The claimant attended disciplinary investigation meetings with Mr Mathie and Ms Dibble on 22 June and 19 July. We were provided with notes (277 and 338). At the meetings, all of the allegations were addressed with the claimant. What it was

that Ms Lynch was said to have said was recounted to him. The notes record that the claimant was told "*AL had said that she felt attacked and that SY had been very aggressive towards her. She felt that SY had went off like a firework and had lashed out at her, SY acted like he was backed into a corner*". The claimant said that he did not believe that he had been bullying Ms Lynch. He said he believed that he was being targeted by others in the team and that he was being picked on unfairly. He said that he had not been aggressive, had a tendency to speak fast, he had not used any aggressive words, and had not intended to come across as aggressive in any way.

94. We were provided with a copy of Mr Mathie's investigation report (565). It was dated 23 July 2021 and said that the investigation had begun on 25 May 2021. Seven people (including the claimant) were recorded as having been interviewed. In the section which detailed the background to the investigation it was said that:

> "*2 individuals independently flagged inappropriate and aggressive behaviour by SY directed towards an attendee on a GM team call.*
>
> *Email from SJ around low TAS activity on Cardiology customers. This prompted me to get closer to the specific activity data which highlighted significant areas of concern regarding SY*."

95. The investigation report detailed findings in relation to the four numbered allegations. For breach of the Dignity at Work policy, specifically bullying behaviour directed towards an individual during the virtual GM meeting on 18th May 2021, the report said that it was beyond reasonable doubt that the Dignity at Work policy had been breached and there was a case to answer. For falsification of records relating to the recording of 5 speaker meetings between November 2020 and March 2021, also relating to recorded customer interactions within Veeva between January 2021 and May 2021, it recorded that it was beyond reasonable doubt that, due to the fact that certain information had not been provided, there was a case to answer. For non-compliance in relation to the National Standards Document relating to Veeva CRM recording Time off Territory between January 2021 and May 2021, the report said that it was beyond reasonable doubt that due to the fact of missing information there was a case to answer. For lack of customer activity during April/May 2021, it said that it was beyond reasonable doubt that due to the fact of the significant lack of customer activity during that time and the lack of proactive communication/accountability from the claimant, there was a case to answer. As a result, proceeding to a formal disciplinary hearing was recommended.

96. Following the conclusion of the disciplinary investigation, it was initially arranged that Cameron Brown would conduct the disciplinary hearing, supported by Rachael Johnson. Emails were exchanged and Mr Brown proposed an informal meeting to clarify the concerns about the process which the claimant wished to raise and in view of his failure to provide specifics of his discrimination allegations (603). The claimant objected to Mr Brown, as the claimant contended he was close friends with Mr Mathie, and part of a clique with Ms Race (601). Mr Brown did not conduct the disciplinary hearing. It was Ms Johnson's evidence that, in the light of the claimant alleging discrimination, she took the view that a formal grievance process needed to be followed. She supported the grievance process (and therefore did not subsequently provide support to the disciplinary hearing when it took place).

97. On 17 August Ms Johnson wrote to the claimant to tell him that the decision had been taken to address his concerns via the formal grievance procedure (605). Ms Jenkin invited the claimant to a formal grievance meeting (607). It was Ms Johnson's evidence, that the claimant was asked to put his complaints in writing but he did not detail the allegations of discrimination (although he provided some details in writing). On 6 September Ms Jenkin set out in a letter the issues which she understood to be the claimant's concerns, including that he had been the subject of discrimination (615). We were provided a document which included both the proposed agenda copied from the letter, and what was said to be the claimant's reply (623). In that, it was recorded that the claimant had alleged racial/religious discrimination and that he believed he had been treated less favourably, but it did not spell out or list the ways in which that was alleged to have occurred. A further letter was sent to the claimant on 9 September (624) which shared an expanded version of the discussion points for the following day's meeting, incorporating what the claimant alleged (which Ms Johnson said was used as the starting point for the discussion).

98. A grievance meeting took place on 10 September 2021 by MS Teams attended by the claimant. We were provided with a record of the meeting (626). It was conducted by Ms Jenkin. Ms Johnson, from whom we heard evidence, also attended. The claimant raised a number of the matters which were the subject of these proceedings, including the downgrading and his non-appointment to roles in 2020. The claimant alleged that the bullying allegation had been fabricated. He alleged that he had been overlooked or not liked because he was not part of a clique, which he considered to be all members of the respiratory team.

99. As part of her investigation, Ms Jenkin spoke to Mr Mathie, Mr Jones, and Ms Dibble. A member of the HR team at her employer, interviewed Ms Lynch, and meeting notes were provided (704) which contained an account from Ms Lynch of the relevant Teams call. Amongst other things, Ms Amber was recorded in that note as having said:

> "*Saghir verbally "lashed out" towards her … Saghir was "almost aggressive" and came across as angry …*
>
> *Amber found the way that Saghir spoke with her as unprofessional and inappropriate for a professional work call …*
>
> *Amber contacted Ivan Beard of her own volition as she was taken aback by the behaviour of Saghir on the call.*
>
> *Amber felt strongly that her work ethic had been called into question and felt the need to provide a rebuttal.*
>
> *Amber did not feel that she could provide a rebuttal directly to Saghir, given he came across as angry and upset on the call, and went to speak with Riche Mathie, Saghir's manager.*
>
> *Amber's objective for the call with Richie Mathie was to provide a rebuttal to the statements made by Saghir on the call and to agree how to work together with Saghir going forwards in a productive environment"*

100. The grievance investigation report (705) was provided and a letter of 19 November 2021 which contained the grievance outcome (868). Three elements of the grievance were upheld. The rest were not. Ms Jenkin stated that she had not found any evidence that the claimant had been subject to racial/religious discrimination.

101. Issue one was stated to be "*Your concern that your below rating was a surprise and contradicted messaging from your previous manager*". That was stated to be substantiated and was upheld. In the points, it was accepted that no evidence had been found which showed that the claimant was made aware until November 2020 that his performance could be considered to be below the required level. There was also said to be evidence that the handover from the previous manager was insufficient. No evidence had been found to show that the claimant had been made aware that his performance would be reviewed and calibrated in alignment meetings. The findings on this issue concluded with the following:

> "*It is however important to note that whilst this finding shows there is clear opportunity for process improvement, I do believe that the 2020 rating you were awarded was fair and just based upon your performance compared to that of your comparable peers*".

102. A particular issue of importance to the claimant's allegations at the hearing was what was said regarding issue five. The letter said the following:

> "***5) Your concern that the allegations were not shared in a timely manner following their occurrence and were only communicated for the first time in the formal invitation letter.***
>
> *After investigation, this point can be substantiated and is upheld. I have set out my findings below.*
>
> *Explanation of the findings that support this decision*
>
> - *No evidence could be found to show that the matters raised in the investigation letter had been discussed with you prior to you receiving said letter. This is of particular relevance to allegations 2, 3 & 4 which were alleged to have occurred much earlier in the year.*
>
> - *I propose this is addressed through improvements to the performance management process within GM Sales …"*

103. It was the claimant's case, based upon his understanding, that this part of the grievance decision meant that the three elements of the disciplinary case were concluded. It was the respondent's case, that what Ms Jenkin had decided was that the disciplinary investigation should progress to a disciplinary hearing. During cross-examination, what exactly was said in the letter was put to the claimant and it was contended that the letter did not say what the claimant had understood. The claimant accepted that was the case.

104. The third element upheld was bullying allegation number two, described as being "*Your concern that some of your responsibilities were allocated to Lisa Finlay*

in your absence without discussion". That was stated to be substantiated and upheld. The explanation for the finding said:

> "*Evidence that Richie himself had not been informed of this proposed action in a timely fashion which prevented him from discussing it in a timely fashion with you. It is however important to note that at the point in time that Richie had gathered sufficient information to enable a discussion with you, you were absent from work due to sickness and he felt it inappropriate to contact you to discuss work related matters"*

105. Emails were exchanged about arranging a meeting to discuss the outcome of the grievance, but a meeting could not be arranged due to the claimant's ill health. On 23 November 2021 the claimant was invited to a disciplinary hearing (896) in a letter from Mairi Clark, a Regional Operations Manager. The invite letter set out that the allegations could be considered to be misconduct or gross misconduct. The attendees and process for the disciplinary hearing was set out (at that time the hearing was arranged for a date earlier than when it actually took place). The allegations were stated to be:

> "*Breach of the Dignity at Work policy, specifically bullying behaviour directed towards an individual during the virtual GM meeting on 18th May 2021. This allegation, if proven, is deemed to be gross misconduct:*
>
> - *Offensive language or inappropriate behaviour towards employees*
> - *Bringing the company into disrepute*
>
> *Falsification of records relating to the record of 5 speaker meetings between November 2020 and March 2021. Also relating to recorded customer interactions within Veeva between January 2021 and May 2021. This allegation if proven, is deemed to be gross misconduct.*
>
> - *Theft, fraud or deliberate falsification of any records, such as expense claims and so on, in respect of yourself or any fellow employee*
>
> *Non-compliance in relation to the National Standards Document relating to Veeva CRM recording Time off Territory between January 2021 and May 2021. This allegation if proven, is deemed to be misconduct.*
>
> - *Failure to meet/comply with, or abuse of, any of our policies*
>
> *Lack of Customer Activity during April/May 2021. This allegation if proven, is deemed to be misconduct.*
>
> - *Insubordination or failure to carry out any reasonable management instruction"*

106. On 25 November the claimant emailed Ms Johnson (888) and said he had grave concerns about the conduct of the grievance meeting and the subsequent disciplinary meeting. He alleged that the respondent had ushered through a pre-determined outcome and said that if this discriminatory behaviour was endemic in the organisation it needed to be highlighted at a higher level. He said he had been

singled out by an unnamed individual within the organisation based on being different. Ms Johnson responded (887) stating that she considered that there had been a thorough and fair investigation process for the grievance, that the grievance and disciplinary appeal processes would be combined, and that the next step was the disciplinary hearing.

107. We were also shown an email from Ms Johnson to Mr Richie of 3 December 2021 (883), which provided replies to questions he had asked about the grievance outcome. In respect of the decision made in relation to allegation five as detailed above, Ms Johnson said:

> "*Some of the allegations that you presented to Saghir in June were claimed to occur as early as January 2021. It was felt that this could have reasonably been identified and addressed at a much earlier point in time"*

108. The disciplinary hearing took place on 7 December 2021. It was conducted by Mairi Clark. She was somebody from an entirely different part of the respondent's business who did not know the claimant. It was also attended by the claimant and Helen Norris, an HR Specialist. We were provided with notes (908).

109. Ms Clark's decision was that the claimant should be summarily dismissed on grounds of gross misconduct. Her decision was recorded in a letter of 10 December 2021 (992). In her decision letter, she re-produced the allegations as set out in the invite letter (as quoted above) and included her findings in respect of each of the allegations. Each of the allegations was upheld on the balance of probabilities, with the allegations stated to either have been found as gross misconduct or as misconduct (following what was said in the allegation).

110. With regard to the allegation regarding the conversation on 18 May 2021, (amongst other things) Ms Clark said:

> "*I consider that there has been a breach of the Dignity at Work policy, specifically relating to the harassment/bullying section. Your aggressive behaviour, tone and reaction was inappropriate and made members of the meeting feel uncomfortable, and especially the team member who this was directed at. This was reported by Amber Lynch to a Manager after the event and 2 independent colleagues also raised this individually to Richie Mathie. All statements were consistent, reporting inappropriate and aggressive behaviour"*

111. For the allegation of falsification of records (amongst other things) she said:

> "*With regard to the duplication of delegates across the two meetings in November, I understand that this was a repeat meeting from the week before at another surgery within the practice and I also appreciate that the same delegates may work out of both surgeries at different points in the week. However, I cannot accept that there would have been that number of duplicate delegates across the two meetings.*
>
> *You were unable to explain or provide me with the required delegate information for meetings on the 16th, 17th and 19th March which are required to*

be submitted… currently only the speaker is registered as attending … You have not provided any other mitigating circumstances regarding why this information has not been submitted onto Veeva. I accept that you received an email from the speaker on the 16th June however I do question why it took 3 months for him to send this email following the events in March.

With regards to the meetings in November and those on the 18th January 15th March and 20th May where there was duplication of attendees. I understand that this is not common practice amongst your peers. This is effectively doubling your call rate by recording them twice.

Therefore, I conclude on the balance of probabilities that you have falsified these records which is an act of gross misconduct"

112. In her evidence to the Tribunal, Ms Clark said that she found the claimant's explanation about the repeat attendees to the meetings to not be credible. She said her view was that, whilst there was a likelihood of some overlap, it was implausible that every attendee would come to two events in one month with the same speaker on the same topic. She concluded that there had been an element of fabrication.

113. For the allegation of failing to comply with national standards, Ms Clark recorded in her letter that the claimant had been unable to provide her with any reasons why his calls were not recorded within the recommended time of twenty-four hours which she said was recorded in the national standards document. She recorded that the time taken had doubled between 2020 and 2021 and the claimant had been unable to explain why (from 2.3 days to 4.3 days). The time off territory related to things recorded as being internal, such as meetings. No express findings were recorded on that matter in the letter, save that the two issues collectively were recorded as having been found to have been an act of misconduct. In her evidence to the Tribunal, Ms Clark said that the claimant had recorded fifty-six team meetings on the system which equated to 18.9 days, when the average time out of territory was fourteen team meetings. In the Tribunal hearing, the claimant contested that there was a twenty-four-hour national standard, and he explained the time off territory with reference to being a member of the Manchester Pilot team, which was unique to him as a senior TSA (not working in primary care).

114. The final allegation was lack of customer activity in April and May. The decision letter stated that in the period between 1 April and 18 May (twenty-six working days), the claimant had delivered/recorded five contacts to the same two customers (and nothing else). The letter also highlighted that the claimant had not flagged this or reached out to a manager about the lack of work undertaken. Reference was made to the demands of the Manchester Pilot. Ms Clark concluded that the claimant had failed to carry out management instructions and expectations and this was an act of misconduct.

115. On 22 December 2021 the claimant appealed. There was a dispute about whether or not the claimant appealed within the time required, but in any event his appeal was ultimately considered by the respondent. Within his appeal email (948) the claimant said

> "*Racial Religious Discrimination. I disagree on Kay's findings. Series of incidents have taken place to single me out, Manager Richie has been aware and hasn't been questioned. The process continues because my 'face doesn't fit' the organisation. I am Muslim and visually different from the rest of the Manchester team. I have been targeted due to my differences*"

116. A more detailed grounds of appeal was provided on 9 January 2022 in which the claimant said (943):

> "*Again I believe I have been subjected to racial/religious discrimination. I am the only person in the team visually different from everyone else. I have a long beard which distinguishes me from anyone else and also I believe has led to me being treated differently as my face clearly doesn't fit. Despite performing on almost all measures in 2020 and earning almost all bonuses, despite delivering results such as Manchester formulary guidelines and identifying real world partnership projects with clear benefits for the organisation, despite developing and mobilising advocates through numerous speaker meetings and having achieved all this within a short timeframe my face clearly doesn't fit with that which certain member of the clique desire"*

117. When the grievance had been determined, the respondent had informed the claimant that any appeal against the grievance outcome would be considered together with any disciplinary appeal. As a result, the appeal related to both the grievance outcome and the disciplinary decision. The appeal hearing took place on 19 January 2023 and was conducted by Robert Lucy and attended by the claimant and Mrs Marsh. We were provided with notes (960). Within the meeting the claimant was recorded as having said the following:

> "*The only reason that he could think of as to why he had been treated differently, had been due to the way he looked. He had grown his beard for religious reasons and had felt the need to trim it, due to the way that he had been treated. RL asked whether he felt that he had to trim his beard. SY said that he had. He had not felt that he could display his religious beliefs, as his face did not fit.*
>
> *He explained that he had not been judged on his merit, and Anna Race (AR) had not progressed him in a role that he wished to take …*
>
> *RL asked whether any comments had been made about his appearance. SY said that no comments had been made about his appearance overtly. He explained that his performance had been strong …*
>
> *He asked whether he had any hard evidence that showed that SY had been treated differently due to his face not fitting and him having grown a beard. SY explained that comments about his appearance would not have been said overtly and that he did have any verbal evidence of any comments having been made about his beard. He believed that it was clear that he had been dismissed, as his face did not fit"*

118. Mr Lucy and Mrs Marsh interviewed Mr Mathie on two occasions following the appeal hearing. One was on 24 January 2022 (1032). Mr Mathie explained that the

interviews he undertook about the bullying allegation were recorded in his daybook and he said that "*Normally it's the whites of their eyes. In an email it can be very cold*". He did not recount specific words said, but explained it was the way that the claimant's conduct had made Ms Lynch feel. Later in the same meeting, Mr Mathie said that he believed the claimant was liked within his team, but probably not within the wider team because "*Comes across as arrogant dismissive aloof …it didn't land well*". It was said to Mr Mathie that the claimant had said that Mr Mathie had acknowledged that the claimant had been treated differently and was asked why that was and he replied:

> "*He was in the wrong job. Sees himself as a MSL behaves like it. Not that sales is beneath him but it influences his thinking. Quite kurt aloof and they are left with a negative impression*"

119. Mr Lucy and Mrs Marsh spoke to Ms Clark on 26 January 2022. We were provided with notes which included Ms Clark's amendments (1090). Ms Clark was asked about the claimant having been given only forty-eight hours' notice of the meeting and whether that was reasonable, and she replied that there "*was doubt in my mind*" before detailing that she had re-arranged the meeting. She went on to say when asked about the length of her meeting with the HR advisor prior to the meeting:

> "*1 hour – I felt vulnerable. There was no coaching by HN – like in sales you have plenty of coaching before going out. The meeting lasted an hour … I did feel an enormous sense of pressure, given that at the end of the meeting with Saghir I had to make a decision on whether he would still have a job or not"*

120. Ms Clark was asked about her assumptions going into the process and she replied, "*that I was being thrown to the wolves – and to get it done*". Regarding the witness statements taken she said:

> "*I felt really uncomfortable about that specific point and all I could see were the handwritten notes … I was concerned that it was not enough information and said to HN I'm worried that the detail in the statements wouldn't be sufficient evidence if this was to go to court. HN said don't worry – we've got good lawyers and it wont get to that point"*

121. Towards the end of the meeting, Ms Clark was asked if there had been any pressure and she replied:

> "*a lot – I'm not the sort to bow to pressure, but I've not stopped thinking should I have questioned and pushed back but I made an assumption that a full PIP had been conducted prior to the start of the investigation and that this was the next step in the process. The more I think – the more I wish I had done"*

122. When asked how she felt about the process she replied:

> "*I would be reluctant to go through it again. Really stressed – time pressure. Minimal guidance. I had to decide if he stayed or didn't. I took that seriously. It was clear that the Company wanted him out. I wrongly assumed that all the checks had been done. Feeling whooshed through at break neck speed"*

123. When she was asked in the Tribunal hearing about what she had said to Mr Lucy, Ms Clark explained her answers with reference to feeling emotional about the process when asked about a very lengthy process shortly after it had finished. She emphasised it was the first time she had been required to decide if someone should be dismissed. She said that nobody had told her that they wanted the claimant out and that there had been a clear case to answer. We found Ms Clark to be a genuine and reliable witness and we found her credibility was reinforced by the doubts which she clearly expressed about the process during the appeal investigation and the fact that she emphasised how stressful and difficult she had found it to need to decide whether or not the claimant should lose his job. Ms Clark emphasised that she was part of the animal side of the business and said that she had not known any of the others from whom we heard evidence (including Ms Race) prior to the Tribunal proceedings. She also said that she had not appreciated the significance of a longer beard and she denied discrimination. It was unclear to us whether the claimant had a longer beard at the time he met with Ms Clark.

124. In an interview with Ms Dibble (the HR support to the disciplinary investigation) on 27 January 2022 (1070), Mr Lucy asked whether she would have done anything differently and Ms Dibble replied:

> "*yes – prefer to see the witness meeting notes – better if they were robust. I trusted RM to be doing a thorough job but complex when so much documentation and hindsight wish I'd seen them – don't know when they were taken so don't know if he could have padded them out weeks later. All I can blame is too much going on"*

125. After this exchange, Mr Lucy was recorded in the notes of the meeting as having said *"but with out evidence it could be seen that it was discrimination*" and "*showed the witness statement – I do not think that these would go down well in court*".

126. The appeal outcome was contained in a letter of 14 February 2022 (1146). Mr Lucy said that he had concluded that some of the findings of the original grievance/disciplinary hearing should be upheld, and some should not be upheld. On the finding of bullying arising from the call on 18 May he said:

> "*I find that an incident occurred where your actions were construed in a certain way. During the appeal process I considered that the evidence of exactly what had occurred should have been more detailed, and that the lapse of time since would have rendered the accounts subject to challenge. Therefore I do not uphold this allegation against you"*

127. Mr Lucy upheld the other allegations. He explained in his decision letter why he had done so. He said that he had not found evidence of bullying and therefore the case of gross misconduct for bullying was revoked. He acknowledged that "*the communication you were given in terms of your performance was inconsistent and potentially surprising*". He concluded that the claimant had duplicated and falsified calls and said, whatever the rationale behind it, that was a case of gross misconduct. He also said (1148):

> "*I do not question your feelings and discontent. However, I have seen no evidence to support any racial discrimination. I see that there have been lapses in process and miscommunications which I can understand was frustrating for you but cannot take away from your own failings …The company was entitled to expect a good level of activity and performance from you, and for an employee with short length of service, we expect high level of engagement. There was no obligation to put you on a PIP or follow any process because of your length of service"*

128. We did not hear evidence from Mr Lucy. Like Ms Clark, he was from a different part of the business, being Head of Sales Pet Vet (being animal product not human). We did hear evidence from Mrs Marsh, the HR Business Partner who supported the appeal process. She denied that the dismissal was pre-determined or that the decision reached was discriminatory. We found her to be a genuine and credible witness who was able to answer the questions put to her by the claimant.

129. It was Ms Race's evidence, that she was not involved in the claimant's dismissal or appeal. She also denied having any influence on his non-appointment for the cardio MSL role. In her witness statement, she criticised being dragged into the proceedings, which she felt was unfair, and stated that she was not a decision maker or sole decision maker at any relevant time.

130. The claimant did not provide any evidence whatsoever in his witness statement about two individuals named as comparators in the issues, Katherine Kirham and Becky Waterton (it was said they were not offered performance improvement plans). In her statement, Ms Johnson highlighted that the allegations against the claimant were of serious misconduct not simply poor performance. It was also Ms Johnson's evidence, that the two named received meets expectations in their MAGs for the entire period of employment to December 2021.

131. We heard evidence about the respondent working closely with the NHS in Manchester. That, by definition, would have involved the respondent working with many different people of different races and religions. We also heard evidence from the respondent's witnesses, that the respondent employs people from across the community of different races and religions (including other Muslim staff).

132. We heard a lot of evidence. This Judgment does not seek to address every point about which we heard or about which the parties disagreed. It only includes the points which we considered relevant to the issues which we needed to consider in order to decide if the claims succeeded or failed. If we have not mentioned a particular point, it does not mean that we have overlooked it, but rather we have not considered it relevant to record when explaining our decision on the issues we needed to determine.

The Law

133. The claim relies on section 13 of the Equality Act 2010 which provides that:

> *"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

134. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee. It sets out various ways in which discrimination can occur and these include any other detriment and dismissal. The characteristics protected by these provisions include race and religion or belief.

135. The claimant highlighted in his submissions that under section 9 of the Equality Act 2010 race includes colour, nationality, and national origins. He also highlighted that section 10 provides that religion means any religion and, in his submissions, explained that he is a Muslim with a very long beard during the employment.

136. Under Section 23(1) of the Equality Act 2010, when a comparison is made, there must be no material difference between the circumstances relating to each case. The requirement is that all relevant circumstances between the claimant and the comparator must be the same and not materially different, although it is not required that the situations have to be precisely the same.

137. Section 136 of the Equality Act 2010 sets out the manner in which the burden of proof operates in a discrimination case and provides as follows:

> *"(2) If there are facts from which the Court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.*
>
> *(3) But sub-section (2) does not apply if A shows that A did not contravene the provision"*

138. At the first stage, we must consider whether the claimant has proved facts on a balance of probabilities from which we could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination. This is sometimes known as the prima facie case. It is not enough for the claimant to show merely that he has been treated less favourably than his comparator and there was a difference of a protected characteristic between them. In general terms "*something more*" than that would be required before the respondent is required to provide a non-discriminatory explanation. At this stage we do not have to reach a definitive determination that such facts would lead us to the conclusion that there was an act of unlawful discrimination, the question is whether it could do so.

139. If the first stage has resulted in the prima facie case being made, there is also a second stage. There is a reversal of the burden of proof as it shifts to the respondent. We must uphold the claim unless the respondent proves that it did not commit (or is not to be treated as having committed) the alleged discriminatory act. To discharge the burden of proof, there must be cogent evidence that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

140. In practice Tribunals normally consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, second, whether the less favourable treatment was on the ground that the claimant had the protected characteristic. However, a Tribunal is not always required to do so, as sometimes these two issues are intertwined, particularly where the identity of the

relevant comparator is a matter of dispute. Sometimes a Tribunal may appropriately concentrate on deciding why the treatment was afforded, that is was it on the ground of the protected characteristic or for some other reason?

141. In most cases there is a need to consider the mental processes, whether conscious or unconscious, which led the alleged discriminator to do the act. Determining this can sometimes not be an easy enquiry, but we must draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). The subject of the enquiry is the ground of, or the reason for, the alleged discriminator's action, not his or her motive.

142. We need to be mindful of the fact that direct evidence of discrimination is rare, and that Tribunals frequently have to infer discrimination from all the material facts.

143. The protected characteristic does not have to be the only reason for the conduct, provided that it is an effective cause or a significant influence for the treatment.

144. The explanation for the less favourable treatment does not have to be a reasonable one. It may be that case that an employer treats an employee unreasonably without it being discrimination. The respondent's counsel submitted that the mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination, relying upon **London Borough of Islington Ladele** [2009] IRLR 154.

145. The claim which we were asked to determine was not a claim for unfair dismissal and therefore it was not for us to decide whether the decision to dismiss was one which fell within the range of reasonable responses. It was not for us to decide whether the process followed was fair (applying the test set out in section 98(4) of the Employment Rights Act 1996). It was also not for us to decide whether we would have acted in the way that the respondent did, and it was not for us to decide whether we would have dismissed the claimant ourselves had we been the decision-makers.

146. The way in which the burden of proof should be considered has been explained in many authorities, some of which the parties in this case cited, including: **Barton v Investec Henderson Crosthwaite Securities Limited** [2003] IRLR 332; **Shamoon v Chief Constable of the RUC** [2003] IRLR 285; **Hewage v Grampian Health Board** [2012] ICR 1054; **Igen Limited v Wong** [2005] ICR 931; **Madarassy v Nomura International PLC** [2007] ICR 867; and **Royal Mail v Efobi** [2021] UKSC 33.

147. The claimant's submission said that the **Igen** Judgment meant that we should infer discrimination from the claimant's evidence unless the respondent provided a credible and sufficient explanation for its actions. That submission was not right, as it missed out the first stage we needed to apply when considering the burden of proof and the need for the claimant to establish the prima facie case as we have explained.

148. Section 123 of the Equality Act 2010 provides that proceedings must be brought within the period of three months starting with the date of the act to which the complaint relates (and subject to the extension for ACAS Early Conciliation), or such other period as the Tribunal thinks just and equitable. Conduct extending over a period is to be treated as done at the end of the period. A failure to do something is to be treated as occurring when the person in question decided on it.

149. The focus when determining whether there has been conduct extending over a period is on whether there was an ongoing situation or continuing state of affairs for which the respondent was responsible in which the claimant was treated less favourably. We look at the substance of the complaints in question as opposed to the existence of a policy or regime and determine whether they can be said to be part of one continuing act by the employer. One relevant factor is whether the same or different individuals were involved in the incidents, however that is not a conclusive factor. The claimant was entirely correct in his submission that if there was a continuing act of discrimination the time limit would run from the last event in that series. The claimant also relied upon the well-known case of **Hendricks v Commissioner of Police for the Metropolis** [2003] ICR 530, when submitting that the focus should be upon whether the acts form part of a continuing state of affairs.

150. If out of time, we need to decide whether it is just and equitable to extend time. Section 123(1)(b) of the Equality Act 2010 states that proceedings may be brought in, *"such other period as the Employment Tribunal thinks just and equitable"*. The most important part of the exercise of the just and equitable discretion is to balance the respective prejudice to the parties. The factors which are usually considered are contained in section 33 of the Limitation Act 1980 as explained in the case of **British Coal Corporation v Keeble** [1997] IRLR 336. Those factors are: the length of, and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the relevant respondent has cooperated with any request for information; the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he knew of the possibility of taking action. Subsequent case law has said that those are factors which illuminate the task of reaching a decision, but their relevance depends upon the facts of the particular case, and it is wrong to put a gloss on the words of the Equality Act to interpret it as containing such a list or to rigidly adhere to it as a checklist. In **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 23 it was emphasised that the best approach for a Tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time and that factors which are almost always relevant to consider when exercising any discretion whether to extend time are: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh). **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434 confirms the breadth of the discretion available to us, but also says that the exercise of a discretion should be the exception rather than the rule and that time limits should be exercised strictly in employment cases. The onus to establish that the time limit should be extended lies with the claimant. The Employment Appeal Tribunal in **Concentrix CVG Intelligent Contact Ltd v Obi** [2022] 149 set out the correct approach to considering the just and equitable extension to incidents which together were a course of

conduct but which were out of time. We must both consider whether it is just and equitable to extend time for the whole compendious course of conduct and, if we decide that it is not, we must consider whether it is alternatively just and equitable to extend time in relation to each of the allegations in their own right.

151. In his written submissions, the claimant also relied upon a case cited as **Royal Mail Group Ltd v Bashar** [2012] EWCA Civ 525 which he said acknowledged that the time limit may be extended in cases where the claimant did not realise the discriminatory nature of acts until later. We entirely accepted that a relevant factor in determining whether or not it would be just and equitable to extend time, would be circumstances where a claimant had only realised the discriminatory nature of acts at a later date. The case was not one of which we were aware, nor were we able to identify the Judgment relied upon from the information provided (the claimant having been unable to assist us during his oral submissions when he explained that he had received assistance with his written submissions and the case law referred to).

Conclusions – applying the Law to the Facts

Direct discrimination

152. We started by considering issue 2.4, as it applied to all the allegations in this case. That issue asked whether the claimant had proven facts from which we could conclude that any less favourable treatment was because of race/religion or belief? That reflected what we have described in the legal section above about the burden of proof. It was not sufficient for the claimant to merely identify a way in which he said he had been less favourably treated and highlight his religion or race; he was required to show something more which shifted the burden of proof.

153. We did not find that there was anything which we heard in this case which had the effect of shifting the burden of proof for any of the allegations. There was no "*something more*" which would shift the burden in showing that any of the alleged less favourable treatment was on grounds of religion or race. The claimant did not show anything which would have done so. Whilst the claimant complained of unfair treatment and unfair decisions and whilst he made the connection between what he alleged and his religion, race, and visible beard, we found there to be nothing which suggested the something more required to shift the burden of proof. As all of the claimant's claims were of direct race and/or religious discrimination, that finding meant that none of the claimant's claims could succeed. We have nonetheless gone on to consider each of the allegations, but our decision regarding the claimant not shifting the burden of proof, meant that none of them could succeed.

154. Similarly, and for the same reasons, where issue 2.2 applied relying upon a hypothetical comparator, we did not find that the claimant had shown the something more required to shift the burden of proof to the respondent. He did not show a prima facie case that a hypothetical comparator of a different race or religion in the same material circumstances as the claimant would have been treated differently. That requires something more than asserted unfair or unreasonable treatment of the claimant. We did not find that the something required to shift the burden of proof had been shown.

155. In our decision, we have not addressed the allegations of race discrimination and discrimination on the grounds of religion or belief separately. We considered them together, albeit the discrimination alleged involved two distinct protected characteristics. In his submissions, the claimant described his discrimination on grounds of race being based upon race (brown). In her case management order, Employment Judge Ross recorded the race relied upon as being Asian. The religion upon which he relied was being Muslim. His case, as he explained it throughout the hearing for all the allegations, was that he was visibly different as a result of his big beard (which he grew because he decided to do so as part of his religious beliefs, and later cut) and he alleged that he was treated differently because he was seen as different and as a Muslim. Neither party raised any arguments about him pursing his claim on that basis, and accordingly we have considered the claim as put forward. We have not however throughout the Judgment distinguished between the protected characteristics relied upon or necessarily on all occasions repeated the protected characteristics relied upon for each allegation.

Allegation one – the September 2020 MSL role

156. Allegation one was that in September 2020 the claimant reached the final assessment for the Oncology MSL Role but he was not appointed. In the list of issues, it was recorded that the claimant believed Mr Jones stopped his progression.

157. This allegation involved the decision which was made by Dr Tanna (and Drs Cork and Bolton), about which we heard evidence from Dr Tanna. His evidence during cross-examination was that the claimant had a very limited and poor understanding of the role. We have explained in the facts section of our Judgment, the evidence that we heard. In his written submission document, the claimant said that Dr Tanna's witness statement should be dismissed, as it was said it had been written in a manner which was inconsistent with the facts and relevant circumstances at the relevant time. The claimant submitted that this misrepresentation was to obscure the true reason for the claimant's non-selection for the role, which he said was based on his race and religion.

158. We preferred the evidence of Dr Tanna to that of the claimant and found Dr Tanna's statement and evidence to have been entirely consistent with the circumstances and the evidence at the time. We accepted Dr Tanna's evidence about what was recorded in the claimant's email (1434) and why it was that Dr Tanna did not say what was stated and did not contradict it at the time (he was not the claimant's line manager, and it was not part of his role as recruiting manager to tell the claimant about whether he was ready for the role at the time). We found Dr Tanna to have been very clear in his evidence about why the successful candidate was offered the position, and we accepted that evidence as true.

159. It was not for us to decide whether we would have appointed the successful candidates over the claimant for any of the relevant roles for which the claimant alleged that his non-appointment was discriminatory. For this appointment of the successful candidate for this role, we fully understood from the evidence provided why it was that she was the chosen candidate.

160. We heard absolutely no evidence that Mr Jones stopped the claimant's progression as was alleged in the allegation in the list of issues. We accepted Dr

Tanna's evidence that Mr Jones was not a part of the decision made in any way whatsoever.

161. Whilst not a material factor in the finding as explained, we would nonetheless observe that the claimant's allegations were weakened in our view, by the fact that the successful candidate was a Muslim. We did not restrict ourselves to considering and determining the allegation of discrimination on grounds of religion or belief on that basis, as we understood the claimant's argument that he perceived himself to be visibly a Muslim (as a result of his large beard), when others might not have been. Nonetheless, the fact that the successful candidate was a Muslim and the fact that the claimant did not recognise the challenges it gave him when alleging that her appointment over him was discrimination because of his religion or belief, weakened his assertion that the reason for the difference in treatment was religion.

162. The claimant was treated less favourably than the successful candidate for the role, as he was not appointed to it and she was. There was no difference of religion between them. There would appear to have been a difference of race. However, as for all of the allegations, the claimant's claim for discrimination for this allegation did not succeed because we did not find that the claimant had shown the something more required to shift the burden of proof in his claim that the non-appointment was because of race or religion or belief (as explained at paragraph 153 above, that same finding applies to all of the allegations albeit it will not necessarily be repeated for each and every one).

Allegation two – the Business Leader role and the conversation with Ms Race

163. For allegation two, it was recorded in the list of issues that although the claimant was encouraged by Ms Philips to apply for the Business Leader role, at a Microsoft Teams meeting in October 2020 Ms Race dismissed the claimant's experience and application for the role. In the list of issues it was said that when the claimant asked her if she had looked at his CV, she said "*no*" and stated she would not be looking at it at all.

164. We had no evidence which contradicted the claimant's assertion that Ms Philips encouraged him to apply for the Business Leader role.

165. As we understood the allegation, the complaint was not focused upon the claimant not being appointed to the role, but rather on what Ms Race said to the claimant.

166. In his written submissions, the claimant submitted that Ms Race prevented him from succeeding in the promotion and that was because of his race and religion (as well as because he did not fit in the image of being white, which he said she was attempting to promote). We found those assertions of the claimant to be unsubstantiated and untrue. We accepted Ms Race's evidence about her involvement in the process. Whilst she did interview the candidates put through to interview, she was not the recruiting manager, and she did not decide that the claimant should not progress to interview.

167. What took place, was a conversation between the claimant and Ms Race. We accepted Ms Race's evidence about the reason for the conversation and that she

was going out of her way to accommodate a request to speak to the claimant. Ms Race could not recall the call at all. We accepted her evidence about what would have been discussed about the claimant applying for a role at band two when he was a band four. It appears likely that Ms Race did inform the claimant that she had not read his CV. In his cross examination, the claimant accepted that Ms Race had not actually told him that she would not read his CV as asserted in the allegation in the list of issues. He said that he took the fact that she had not read his CV as being such a refusal, when he asked her if she had read his CV and she said no. We also accepted Ms Race's evidence that she had no recollection of the call or anything about the claimant at all, based upon what she explained about her responsibilities at the time.

168. As we have explained, we did not find that the claimant had shown the something more required to shift the burden of proof and therefore did not find that a hypothetical comparator in materially the same circumstances as the claimant of a different race or religion (or no religion) would have been treated differently and did not find that the claimant had shifted the burden of proof to show that the reason for any potential difference in treatment was his race or religion (or his beard).

Allegation three – the January/March 2021 MSL role

169. Allegation three was that the respondent failed to appoint the claimant to the role of Cardio Metabolic MSL role in January 2021. In the list of issues, it was recorded that the claimant reached the final assessment, but the position went to a white female without any pharmaceutical industry experience and without any customer facing experience.

170. This was a recruitment decision which was made by Mr Beard and Ms McNerney, and about which we heard evidence from Mr Beard. We found him to be a genuine witness. When questioned, Mr Beard accepted that there were similarities between his own career path and the claimant's aspirations. We accepted that he was very careful to ensure that the recruitment decision was right, for the reasons he explained. We accepted his reasons for appointing the successful candidate and not the claimant.

171. There was some inconsistency on the face of it between what Mr Beard said as recorded in the transcript of the call he had with the claimant (from a recording made without his consent) and what was said in his witness statement. His evidence to us was that the decision was clear cut. What he said to the claimant at the time, both in an email and in the conversation, was that the decision had been difficult and that it had been close.

172. We accepted Mr Beard's evidence to us about the decision. He told us that he was anxious about the appointment, where he had only just been appointed to the new role (after a rapid promotion, as the claimant emphasised). Our assessment of the telephone call was that Mr Beard was a person under pressure who did not wish to give the claimant bad news. We would observe that appeared to be a thread running through what happened with a number of the respondent's employees, who gave the claimant supportive and encouraging messages when those messages may not have reflected the claimant's performance and, in some cases, may have been misconceived. We heard no evidence that would have suggested that Mr

Beard would have been blunter, clearer, and/or more transparent and straightforward with the claimant in his conversation or feedback, if the claimant had been of a different race or religion. The transcript provided was of an unscheduled call from a candidate for promotion to one of the decision-makers, and we accepted that Mr Beard was unprepared for it and did not appear prepared to handle it. Clearly, Mr Beard should have refused to speak to the claimant about the unannounced appointment decision at all at that time. The fact that he said what was recorded in the transcript and later in the email, did not in our view undermine his evidence to us about why the recruitment decision was made and the clear-cut nature of that decision. We are critical of Mr Beard's messaging to the claimant at the time. We nonetheless fully accepted his reasons for appointing the candidate who was successful.

173. The claimant was treated less favourably than the successful candidate, as he was not offered the MSL role and she was. However, the claim did not succeed for the reasons already explained at paragraph 153.

Allegation four – the performance rating being downgraded

174. Allegation four was that in February 2021 the claimant's performance was downgraded to below performance category. It was recorded in the list of issues that the claimant was informed of this on 11 February 2021 by new manager Mr Mathie.

175. The claimant was downgraded. He was downgraded at the alignment meeting in February 2021. We accepted the evidence of the respondent's witnesses, that the decision was one made collectively by the numerous attendees at the meeting, and it was not made by any one individual.

176. There was no minute or written record of the reasons for the decision made or of the discussion which took place regarding the claimant. The claimant was downgraded from a "*meets*" to a "*below*" and not, as the claimant submitted, (paragraph 41 of his submissions) from "*above average*" to "*below average*". As the respondent emphasised throughout the hearing, that grading did not mean that the claimant had not performed in his role at all (or even not well in some areas), rather it recorded that there had been inconsistent performance.

177. The respondent relied primarily on the claimant's coverage statistic as explaining the downgrading. That was something which was included in the documents provided to the attendees at the alignment meeting. Mr Jones had flagged the poor coverage figure to the claimant in his email of December 2020. The claimant emphasised that the email was read too late for him to do something about it during the 2020 calendar year (which was being graded at the alignment meeting), but we considered it to be important because it showed that the respondent was concerned about, or critical of, the claimant's coverage figure in advance of the alignment meeting. Mr Jones' concerns were set out in that email with clarity. That coverage statistic, which was before the attendees at the alignment meeting, would, in our view, explain the below rating which recorded inconsistent performance, because it recorded that the claimant was significantly below that required target.

178. Based upon the evidence we heard, there was nothing which showed this performance issue being highlighted to the claimant prior to 16 December email. We

accepted the claimant's uncontradicted evidence that he received no negative feedback from Ms Philips. We did not hear from Ms Philips. A difficulty for the respondent's assessment of the claimant's performance, was that there was no handover from Ms Philips to Mr Mathie, which would have provided him with details of the claimant's achievements in 2020. That aligned with the fact that the claimant may potentially have been better placed had Ms Philips been at the alignment meeting and able to advocate for him (albeit even had she done so, that would not have altered the facts and the coverage statistic).

179. We also noted and accepted what Mr Mathie told the claimant in the telephone call of 12 February 2021 as recorded in the transcript (T1). Whilst that call was predominantly the claimant speaking, what Mr Mathie said were the reasons for the downgrading corroborated the respondent's reasons for the performance rating. He explained it was around the coverage (T1-11-589), the numbers piece (T1-12-614) and also the high activity on a couple of customers (T1-16-854).

180. The claimant placed considerable reliance upon the spot prizes he received in 2020. Whilst indicative of elements of good performance, those prizes did not undermine an assessment made based upon inconsistent performance, where the claimant had a coverage statistic which fell below what was expected. The spot prizes demonstrated that the claimant had done some things well in 2020, they did not evidence consistent performance.

181. In his submissions, the claimant alleged that the primary instigator of this alleged unfair treatment was Ms Race. There was no evidence that was the case, and we did not find that she was. We accepted the respondent's evidence, that the claimant's performance matrices indicated the rating given, albeit we noted the evidence we heard that there would always have been a discussion and there was no evidence about exactly what was discussed for the claimant.

182. In terms of comparators, the respondent's case was that somebody else was also downgraded. We accept that the claimant was not the only person downgraded. It appeared that the claimant relied upon a hypothetical comparator for this allegation and, to the extent that he did, we have explained at paragraph 154 why all of the claims relying upon a hypothetical comparator did not succeed. He was treated less favourably than others who were not downgraded. Their circumstances would have been materially different to the claimant's, as there was no evidence that anyone else had the same poor coverage statistic, but in any event for the reasons explained at paragraph 153 the allegation did not succeed (even if that did constitute less favourable treatment).

Allegation five – Lisa Finlay's role

183. For allegation five, what was said in the list of issues was that in around March/April 2021 the claimant was excluded from conversations during a restructure of the business. Ms Finlay was given a hybrid role PCS Primary Care Specialist to include some hospital work. The claimant was told he would be involved in the conversations about this as this role overlapped with his work. It was said in the list of issues that the claimant was not involved in the conversations and Ms Finlay was given hospital work which formed part of the claimant's role.

184. The way this was stated in the list of issues was misconceived, in part because the dates of the allegation were not supported by the evidence. The change in Ms Finlay's responsibilities occurred during the claimant's sickness absence. It was also not a situation when Ms Finlay was taking part of the claimant's role, it was about having roles which supported each other, albeit with an element of overlap.

185. Ms Jenkin's grievance outcome (876) upheld the claimant's complaint that some responsibilities were allocated to Ms Finlay in the claimant's absence without discussion. She noted that Mr Mathie had only been given the information at the point in time when the claimant was absent from work on ill health grounds (and there was no dispute that it would have been inappropriate to discuss the matter with the claimant whilst he was absent).

186. In his submissions, the claimant proposed that Ms Jenkin's finding established that the respondent was secretly plotting to do the claimant out of his role. We did not find that was the case, nor was it the impact of Ms Jenkin's finding. Ms Jenkin found that there should have been discussion with the claimant; she did not find that the reason was as the claimant proposed. Ms Finlay fulfilled a different job. We found the changes were part of the respondent's attempts to improve their sales, rather than an attempt to remove the claimant from his post as he proposed.

187. In his submissions, the respondent's representative submitted that it is the respondent's prerogative to try different structures and that the decision had nothing to do with the claimant or his race/religion. We agreed. As with all of the allegations, the claimant did not show the something more required to shift the burden of proof in his case to either show that the claimant was treated less favourably than a hypothetical comparator in the same circumstances of a different race/religion would have been, or that the reason for any less favourable treatment was race or religion.

Allegation six – what the claimant was told about certain customers

188. In allegation six, the claimant said that in or around April/May 2021 he was repeatedly told not to call customers by Mr Jones and Mr Mathie. The allegation said that the claimant was told he was not going to be measured on metrics and it was all about the "spring actions" for the pilot scheme for the GM Team. It also recorded that the claimant was being treated differently to other members of the primary care team and was being set up to fail. In the list of issues, it was said that other members of the team, Mark Scott and Lisa Finlay, were not treated in the same way.

189. From the claimant's evidence, it appeared that he was relying upon what he was told in February 2021, which he said had implications in April and May 2021, rather than relying upon something he was told in April or May. The claimant was told not to contact the same three individuals as frequently. He was first told that in December 2020 by Mr Jones in an email. He was also told not to do so by Mr Mathie in 2021. The reason for that was because the respondent believed that the claimant's contact with those three individuals was excessive and was significantly greater than anyone else's contact with individuals. In contrast, the respondent had little or no evidence of the claimant contacting a large number of others who were his targets (the email recorded him as not having contacted over one hundred and thirty of his one hundred and sixty-seven targets). There was no evidence that any comparator had the same level of repeated contact with the same individual. The

claimant was required to contact his other targets. It was the claimant's own evidence that, in fact, he chose to continue to contact the same three people, but he did so surreptitiously.

190. The claimant was also involved in a Pilot scheme which took up some of his time, but which did not remove the need for him to contact his other targets. We heard no evidence that the claimant was told that that he would not be measured on metrics (other than his own assertion, which we did not accept). Sprint actions (short term, discrete actions) were required, but in addition to the claimant's duties.

191. For the reasons already explained at paragraphs 153 and 154, this allegation of discrimination did not succeed.

Allegation seven – the mentoring opportunity

192. Allegation seven was that the claimant was selected by Mr Mathie for a new mentoring opportunity for transitioning and selecting targe customers on the laptop, however despite this at a meeting on Microsoft Teams a colleague, Ian from Ireland, was given the opportunity instead and the claimant alleged he was told by Mr Mathie to "*drop off the call*". The claimant alleged that he was therefore denied the opportunity and excluded.

193. This allegation arose from a telephone conversation on 30 March 2021. We have explained the evidence which we heard/saw, in the facts section of this Judgment. It was the claimant's decision to drop off the call. He chose to leave. He was not denied the opportunity or excluded from it. There was no evidence of less favourable treatment at all.

Allegation eight – what was being said about the claimant

194. Allegation eight was that on 25 May 2021 Mr Mathie told the claimant that Mr Crocker and Lisa Marie were saying at management meetings the claimant was not performing (which the claimant contended was untrue).

195. For this allegation, the claimant relied upon what he had said to Mr Mathie in a telephone conversation (which the claimant had covertly recorded) on 25 May. The transcript of that call (T9) did not record what Mr Mathie told the claimant, it recorded the claimant telling Mr Mathie that Mr Mathie had previously mentioned that Mr Crocker and Lisa Marie had said things. There was no document or transcript which recorded what they had said or why. Mr Mathie, in his witness statement, acknowledged that the two named had mentioned in management meetings that the claimant was under-performing. In his submissions, the respondent's representative highlighted that the only evidence given by the claimant about Mr Crocker in relation to this allegation, was that Mr Crocker had told the claimant that he did not want any more analysis, when the claimant had asked to provide it.

196. Factually, the allegation that Mr Crocker or Lisa Marie said anything about the claimant which was untrue, was not proved. The respondent submitted that two other managers were perfectly entitled to give their opinion on the performance of a TAS. The remainder of the allegation did not succeed, for the reasons we have already explained as they applied to all of the allegations.

Allegation nine – selective targeting

197. What was said for allegation nine, was that Mr Mathie acknowledged in a meeting on 25 May 2021 that the claimant was performing well but told him that he was being selectively targeted by others. In the list of issues, it was said that the claimant relied on the fact he was being selectively targeted by others as an allegation of discrimination.

198. The claimant relied upon his conversation with Mr Mathie of 25 May 2021 for this allegation. That was a conversation for which he provided a transcript (T9). Mr Mathie did not tell the claimant that he was being selectively targeted. In the conversation, Mr Mathie did comment about everything being on you, with reference to the claimant. There was also reference to pushback against the claimant.

199. We found that there was no evidence that the claimant was being selectively targeted by others. In the hearing, the claimant broadened this allegation and contended that four named members of the Greater Manchester team all selectively targeted him and did so due his race/religion. There was no evidence that they did. It was not what Mr Mathie said at the time. We have addressed below the impact we found it had on the claimant's credibility and/or the reliability of his allegations, that he made (and extended) his allegations against a large number of others without evidence or any apparent basis. The conversation of 25 May, as a whole, was clearly a discussion about conflict between teams in the type of way that would occur in many businesses. The claimant disagreed with the primary care team and their actions. We accepted that Mr Mathie's comments were made in the context of teams having a competitive situation, a rivalry, or a difference of approach, they were not about the claimant as an individual as such. As with all the allegations, this allegation was not found for the reasons explained at paragraphs 153 and 154 (to the extent that Mr Mathie's comments identified any adverse view taken of the claimant by others).

Allegation ten – the bullying allegation

200. Allegation ten arose from the bullying allegation raised against the claimant following the call on 18 May 2021. What was said in the list of issues, was that on 3 June 2021 the claimant was told an allegation of bullying had been made against him arising out of a meeting on Microsoft Teams on 18 May 2021. The claimant said the allegation was false. The claimant was invited to a disciplinary investigatory meeting.

201. As has been explained in the facts, an employee of another company working jointly with the respondent, felt bullied by the claimant in the call on 18 May 2021. Others also reported it, albeit perhaps in the case of Mr Crocker he was slow to do so. As the respondent submitted, once the complaint had been made, the respondent was obliged to investigate it. Allegation ten was that there was an investigation, but we found that the investigation was the obvious and inevitable consequence of such a complaint having been made.

202. The claimant asserted that the allegation was a fabrication. He also asserted that the bullying allegation was dropped following the appeal. There was no evidence at all to support the claimant's assertion that someone with whom the claimant had

previously been friendly and had had no issues, had fabricated a complaint. We accepted Mr Beard's evidence about the complaint being raised with him. Mr Mathie was obliged to investigate (particularly in circumstances where the complaint was raised by the employee of another company). The appeal did not drop the allegation as such and as alleged; the appeal determined that the finding could not be sustained due to the paucity of evidence and for reasons related to the process.

203. We found that the outcome of the process undertaken was not predetermined. We found that the fact that the appeal did not maintain the finding on the bullying allegation, demonstrated a fair and even-handed approach from the respondent's decision-makers. We accepted Ms Clark's evidence about what she decided regarding this allegation and why. We accepted the evidence that we heard regarding the respondent's witnesses' view that the complainant was genuine when she made her complaint, and that the complainant had been genuinely upset and had felt uncomfortable with what had occurred.

204. There were certainly deficiencies in the investigation undertaken by Mr Mathie with regard to the bullying allegation, in particular around the standard of the documentation and the records made of the witnesses' accounts. The claimant had a valid criticism that it was only six months later, when a proper account was taken and recorded from the complainant herself. Mr Mathie's hand-written records were sparse and wholly insufficient. However, as with all the allegations and for the reasons explained at paragraphs 153 and 154, the claimant's allegations of discrimination did not succeed even if considered in relation to the shortcomings in the investigation.

Allegation eleven – the disciplinary investigation

205. Allegation eleven was about the disciplinary investigation, but the list of issues was more detailed. What was said was that the claimant was invited to an investigation meeting on 22 June 2021 and 19 July 2021 but he alleged:-

1. The outcome was predetermined.

2. The claimant was treated unfairly. He was repeatedly asked the same questions when Mr Mathie didn't wish to accept his answer but if the claimant says something such as "I may have forgotten to do that", then Mr Mathie recorded it in his note.

3. The evidence the claimant collated and provided was ignored and there was no acknowledgement which part of it was accepted (if any) and which was not.

4. The claimant was not informed what it was he was supposed to have said in the allegation of bullying made against him.

206. We did not find that the investigation undertaken by Mr Mathie was predetermined. We accepted Mr Mathie's evidence about the investigation. We have already addressed its shortcomings, but did not find that the lack of detailed notes or statements meant that the investigation was predetermined.

207. We did not hear any evidence that the claimant was repeatedly asked the same question or what that question was alleged to have been.

208. There was no evidence that Mr Mathie ignored any evidence submitted by the claimant. The claimant was interviewed. The claimant was asked to provide documents on more than one occasion, and he did not provide certain documents sought such as the lists of attendees at the 2021 meetings and the receipts for food purchased in 2021. There was no evidence that what the claimant did provide was ignored. A grievance process was undertaken by the respondent after the claimant asserted discrimination and, in that process, the claimant was given the opportunity to raise what he wished to and to provide documents. Ms Clark did consider documents provided when reaching her decision.

209. With regard to the last of the matters raised within allegation eleven, the claimant was informed by Mr Mathie in the investigation meeting on 22 June 2021 what had been said about his conduct in the 18 May meeting (279), including what Mr Mathie had been told by other people present. It is correct that the claimant was not given the details of what exactly it was that it had been alleged he had said. That was a weakness in the disciplinary case against the claimant. It was the reason why the appeal was upheld on that point (at least in part). The fact that the investigation focussed on the tone and atmosphere in the meeting and of the claimant's conduct, rather than the precise words said, may have been open to criticism, but it did not show discrimination on grounds of race or religion (and, as we have said, the claimant did not show the something more required to show such discrimination as explained in paragraphs 153 and 154).

Allegation twelve – disciplinary hearing

210. Allegation twelve was dated 7 December 2021. In the list of issues, it was said that at a disciplinary hearing, a recommendation made by Ms Johnson and Ms Jenkin in their outcome of the claimant's grievance on 19 November 2021 that the performance allegation should not be included, was ignored.

211. The claimant misunderstood what was detailed in the grievance outcome (874). During his cross-examination, the claimant acknowledged that he had done so. Ms Jenkin found, in her grievance outcome, that the substance of some of the allegations had not been communicated to the claimant before the formal invitation letter. There was no recommendation that the allegation should not be included as part of a disciplinary hearing. As a result, such an outcome of the grievance was not ignored, as it was not one which had been made.

Allegation thirteen - dismissal

212. Allegation thirteen was not in dispute, that was that the claimant's employment was terminated. The claimant was dismissed. That was clearly detrimental treatment. However, we did not find that there was any evidence that the claimant was treated less favourably than a hypothetical comparator in precisely the same circumstances of a different race or religion would have been.

213. We entirely accepted Ms Clark's evidence that she made the decision to dismiss, and the reasons she gave for doing so.

214. We noted what Ms Clark said to Mr Lucy when he was investigating the appeal. The fact that she had concerns and misgivings about her decision and having dismissed the claimant, was clear evidence of the thought she had given to the decision. She was a compelling witness, and we were entirely convinced that she had scrutinised the information, her decision, and herself as the decision-maker. Had she thought that the claimant should not have been dismissed, she would nit have dismissed him. We accepted that she was not influenced by others.

215. It was not for us to decide whether we would have dismissed the claimant ourselves (if we had been the decision-maker), nor was it necessary in this case for us to decide whether the dismissal was fair. However, we would emphasise that we fully understood the reasons why the claimant was dismissed, and we had no doubt that Ms Clark considered the reasons sufficient to dismiss the claimant. Much of the argument we heard during the hearing, in reality, focussed upon the disciplinary allegations and the fairness of the decision to dismiss. That was not our role in this case.

216. As we have said in paragraphs 153 and 154, the claimant did not show the something more required to reverse the burden of proof and, as a result, that was not the reason for the dismissal (and we found that a hypothetical comparator of a different race/religion in the same material circumstances would have been dismissed).

Allegation fourteen – the appeal

217. The claimant's fourteenth allegation was that, when he appealed against his dismissal, the appeal was unfair. It was said that the Appeal Officer Mr Lucy dropped the fabricated allegations of bullying but decided to reinstate the other allegations about meetings and low activity despite strong evidence to the contrary and in contradiction of the report by Ms Johnson and Ms Jenkin.

218. The element of this allegation which refers to the impact of the grievance outcome, has already been addressed for allegation twelve. We did not find the allegations of bullying to have been fabricated. The allegations which led to dismissal (as they remained after the appeal outcome), were not reinstated. The claimant misrepresented in this allegation, the outcome of the grievance.

219. The fairness of the appeal was demonstrated by the fact that Mr Lucy did not simply uphold the decision. He investigated at some length. He interviewed a number of people (quite rigorously). He upheld the appeal to the extent that the bullying finding was not part of the respondent's final grounds of dismissal (post appeal, for procedural reasons).

220. There was no evidence of: any less favourable treatment in the conduct of the appeal; or of any unfairness. There was no something more to show that someone of a different race or religion would have been treated differently. The very fact that Mr Lucy scrutinised the decision as he did and found as he did on the bullying allegation, spoke to his open mind.

Allegation fifteen – the lack of a performance improvement plan

221. Allegation fifteen was that the respondent failed to provide the claimant with a Performance Improvement Plan if there was low activity as they did for other employees who were alleged to be underperforming: Katherine Kirham and Becky Waterton.

222. The claimant not being placed on a performance improvement plan, in and of itself, was not unfavourable treatment. Not being placed on such a plan could not amount to less favourable treatment compared to someone who was. The real issue raised by this allegation, was that the claimant was dismissed rather than what he did being treated as if warnings were required (which would have been the process under a performance improvement plan). The reason for this was because what was alleged/found was falsification of records. We accepted that falsification of records was misconduct not performance. That was how the respondent classified it. It was able to do so.

223. Ms Clark's evidence was that she considered each of the allegations separately and the matters for which she made the decision to dismiss were the harassment (which was subsequently overturned on appeal) and the falsification of call reports and meetings. The other things which she found she told us were misconduct but were not sufficient for dismissal. She explained why she considered those matters to be gross misconduct and dismissible (and, therefore, why they were clearly not matters to be addressed under a performance improvement plan). Those matters were conduct, not capability or performance, and therefore a performance improvement plan was not relevant (nor was it relevant whether anybody else with performance and not conduct issues, had been addressed under such a plan).

224. In the context of a decision which was that the claimant had fabricated records, whether or not some of the other elements of the allegations might more appropriately have been defined as performance (or subject to a performance improvement plan) was immaterial. We did consider that there was a potential argument that the time taken by the claimant to record the calls he made was potentially more of a performance issue than a conduct one. We also understood the claimant's argument that the required twenty-four-hour period for such recording recorded by Ms Clark for that allegation, was not one based on the documents. However, that issue would not have resulted in the rest of the decision being unfair, and it certainly did not prove discrimination. As that element was only found by Ms Clark to have been misconduct (not gross misconduct), it was also not part of the gross misconduct for which the claimant was dismissed.

Allegation sixteen - redundancy

225. Allegation sixteen was that the claimant considered that his role was made redundant as he has not been replaced. He alleged failure to pay him a redundancy payment was discriminatory as this was done for another colleague in the team.

226. This was a complex allegation. It appeared to be alleged, based upon the claimant's answers to questions asked, that he said that he would have been made redundant if he had been of a different race and/or religion and he contrasted his dismissal with other employees who were made redundant and received a

redundancy payment. As an allegation, it appeared to us to run contrary to the majority of the claimant's case, which was in summary that he was good at his job (which was not redundant) but he was pushed out because of his race and/or religion. The claimant did not have sufficient service with the respondent to have been entitled to a redundancy payment even had he been made redundant, a point which he explained by contending that the time taken for a redundancy process would have taken him beyond two years' service. We agreed with the respondent's submission that this allegation was factually flawed. There was no evidence that the claimant's position was redundant. Indeed, we noted Ms Race's evidence that the focus of the respondent was on avoiding redundancies, in contrast to other companies in the pharmaceutical sector at the time. As we have already said, we accepted Ms Clark's evidence as to why she dismissed the claimant. Her reasons for doing so were as set out in her letter. Those reasons were the claimant's misconduct not redundancy. This was, in our view, a baseless allegation.

The claimant

227. We have already explained for our decisions the view which we took of the evidence which we heard from the respondent's witnesses. In practice, on occasion, that involved determining a conflict between the claimant's evidence and that of the respondent's witnesses, albeit in many cases there was not such a conflict because the claimant did not actually know, or could not evidence, what occurred or the reasons for it (as, for example, was the case for the reasons why the claimant was unsuccessful in his MSL applications). Wherever there was a conflict between the claimant's evidence and that of witnesses called by the respondent, we preferred the evidence of the respondent's witnesses. We did that for the positive reasons we have described regarding our view of the respondent's witnesses, but on occasion and in part we also did that based upon our view of the claimant's evidence. We found the claimant to be an unreliable witness and we found him to have been evasive (when answering questions). We formed this view of the claimant's reliability and/or credibility because of: the fact that he covertly recorded conversations with others without informing them that he was doing so and without telling anyone that he had done so until November 2024; the breadth of the allegations which he made of discrimination and the large number of people who he alleged had discriminated against him (which made his assertions less reliable, where there was no tangible evidence of discrimination upon which to base such an assertion - it was also notable that the number of people covered by the allegations proliferated during the hearing); the claimant's capacity to accuse others of lying, fabrication, and/or of racial discrimination, without hesitation; the claimant's narrative that a staff member employed by another employer discriminated against him without evidence other than his assertion; his inability to accept any other viewpoint or explanation about decisions or what occurred; and his selective quoting (or misquoting) of what was recorded in documents, transcripts or statements (as the respondent highlighted in submissions one such example being paragraph 72 of the claimant's own submissions). The respondent's representative's oral submissions were that the claimant was disingenuous or mistaken in his evidence, and we agreed with and adopted that view.

Time limits and jurisdiction

228. In his oral submissions, the respondent's counsel set out which allegations he said had been entered out of time and why. He accepted that allegation fourteen (regarding the appeal) had been entered within the time required. He submitted that all the other claims had not been entered in the time required. He highlighted that the claim had not been entered within one month of the expiry of the period recorded in the ACAS Early Conciliation certificate and therefore the impact of the period of early conciliation was to extend the usual three-month period for claiming by the (approximately) five weeks of early conciliation. His calculation was that, as a result (and putting aside whether it was a continuing act, or any just and equitable extension), the claim for anything which occurred prior to 4 January 2022 had not been entered in time. We found that to be correct. Allegation fourteen was brought within the time required. All of the other allegations were not brought within the primary time limit.

229. Issue 1.1.2 asked whether there was conduct extending over a period? We accepted that the following allegations would have been found to have been conduct extending over a period with the appeal (allegation fourteen), had that been found to have been discrimination: ten; eleven; twelve; thirteen; fifteen; and sixteen. Those were all allegations which arose from or related to the allegations, the investigation of those allegations, and the dismissal which was the outcome of the process undertaken. We did not find that any of the other allegations would have been part of the same continuing series of events. As we did not find for the claimant on allegation fourteen, the fact that we would have found other matters to have been part of a continuing series with it if it had been found, does not alter the fact that the earlier allegations were not entered within the time required.

230. We then considered issue 1.1.4 as it applied to all of the allegations except for allegation fourteen. That asked whether it would be just and equitable to extend time? We considered it for each of the allegations separately, this was not a case in which we found there to have been a single answer for all the other allegations collectively as a compendious course of conduct.

231. A key factor in applying the just and equitable test, is the balance of prejudice between the parties. The prejudice for the claimant would be that he would not be able to have a determination in the claims which he wished to pursue. The prejudice for the respondent was different depending upon the allegation being considered.

232. The claimant submitted that the reason why he did not enter a claim earlier was because it took him time to see the connection between the treatment and race/religion. He suggested that became clearer over time. The claimant raised discrimination with the respondent in August or September 2021 (albeit without any specificity) which led to the respondent undertaking the grievance process. We therefore did not find that the claimant identified the potential discrimination later, he was aware of the potential discrimination in August/September 2021 and therefore he had the ability to have claimed at that time. It was our decision that what the claimant submitted was his reason for delaying, was not correct. That meant that there was no genuine reason why the claimant had not entered his Tribunal claim much earlier. He is an intelligent man, well able to investigate Tribunal time limits

and with access to legal advice through a friend and family members (albeit we understand they are not employment specialists).

233. Taking account of the importance of us determining discrimination allegations and the fact that the respondent was able to ably defend the claims brought, we found that it was just and equitable to extend the time for all of the allegations from four to thirteen, fifteen and sixteen. The allegations all related to matters from February 2021 onwards, they were addressed by the respondent in the hearing, and we decided to exercise our discretion to extend time on a just and equitable basis.

234. We considered the position to be different for the first two allegations. Allegation one occurred in September 2020. Allegation two occurred in October 2020. That was much earlier than the other allegations. The claim was not entered until May 2022, some eighteen months later than allegation two. Ms Race, who was referred to as part of allegation two, could not recall the call which led to the allegation. The respondent's recruiter's file was no longer available. There was a significant prejudice for the respondent from the delay in claiming for those two allegations. As a result, we did not find it to be just and equitable to extend time for allegations one and two.

235. Allegation three was about a role for which the decision was made in March 2021, not January as was stated in the allegation. That was clear from the claimant's conversation with Mr Beard recorded in the transcripts of 12 March 2021 (T6). That meant that what was alleged occurred some months later than the other recruitment allegations, albeit still some considerable time before the claim was entered at the Tribunal. As with the other recruitment allegations, the respondent's recruiter no longer had the file, but Mr Beard had kept his own records. Whilst this decision was finely balanced, we decided that it was just and equitable to extend time for allegation three.

236. As a result of those decisions, we found that we did not have jurisdiction to determine allegations one and two (albeit we have in in any event recorded in this Judgment what we found and our reasons for it). The claim for allegation fourteen was entered in time. For the other thirteen allegations, we found it to be just and equitable to extend time and accordingly we did have jurisdiction to consider those complaints.

Summary

237. For the reasons explained above, the Tribunal found that it did not have jurisdiction to consider two of the allegations and found that the claimant did not succeed in any of his allegations of direct discrimination relying upon either of the protected characteristics of race or religion.

Employment Judge Phil Allen

23 January 2025

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
31 January 2025

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription
Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Schedule of Allegations
Appendix A

The claimant relies on the following as specific acts of less favourable treatment because of his race and /or religion

1. In September 2020 the claimant reached the final assessment for the Oncology MSL Role but he was not appointed. The claimant believes Steve Jones stopped his progression.

2. Although the claimant was encouraged by Nuala Philips to apply the Business Leader role, at a Microsoft Teams meeting in October 2020 Anna Race dismissed the claimant's experience and application for the role. When the claimant asked her if she had looked at his CV she said "no" and stated she would not be looking at it at all.

3. The respondent failed to appoint the claimant to the role of Cardio Metabolic MSL role in January 2021. The claimant reached the final assessment. The position went to a white female without any pharmaceutical industry experience and without any customer facing experience.

4. In February 2021 the claimant's performance was downgraded to below performance category. The claimant was informed of this on 11 February 2021 by new manager Richie Mathie.

5. In around March/April 2021 the claimant was excluded from conversations during a restructure of the business. Lisa Finlay was given a hybrid role PCS Primary Care Specialist to include some hospital work. The claimant was told he would be involved in the conversations about this as this role overlapped with his work. The claimant was not involved in the conversations and Lisa Finlay was given hospital work which formed part of the claimant's role.

6. In or around April/May 2021 the claimant was repeatedly told not to call customers by Steve Jones and Richie Mathie. The claimant was told he was not going to be measured on metrics and it was all about the "spring actions" for the pilot scheme for the GM Team. The claimant was being treated differently to other members of the primary care team and was being set up to fail. Other members of the team Mark Scott and Lisa Finlay were not treated in the same way.

7. The claimant was selected by Richie Mathie for a new mentoring opportunity for transitioning and selecting targe customers on the laptop. However despite this at a meeting on Microsoft Teams a colleague, Ian from Ireland, was given the opportunity instead and the claimant was told by Richie Mathie to "drop off the call". The claimant was therefore denied the opportunity and excluded.

.

8. On 25 May 2021 Richie Mathie told the claimant that Steve Crocker and Lisa Marie were saying at management meetings the claimant was not performing (which was untrue).

9. Ritche Mathie acknowledged in a meeting on 25 May 2021 that the claimant was performing well but told him the claimant was being selectively targeted by others. The claimant relies on the fact he was being selectively targeted by others as an allegation of discrimination.

10. On 3 June 2021 the claimant was told an allegation of bullying had been made against him arising out meeting on Microsoft Teams on 18 May 2021. The allegation was false. The claimant was invited to a disciplinary investigatory meeting.

11. The claimant was invited to an investigation meeting on 22 June 2021 and 19 July 2021 but he says:-

    5. The outcome was predetermined.

    6. The claimant was treated unfairly. He was repeatedly asked the same questions when Richie Mathie didn't wish to accept his answer but if the claimant says something such as "I may have forgotten to do that", then Mr Mathie recorded it in his note.

    7. The evidence the claimant collated and provided was ignored and there was no acknowledgement which part of it was accepted(if any) and which was not.

    8. The claimant was not informed what it was he was supposed to have said in the allegation of bullying made against him.

12. 7 December 2021. At a disciplinary hearing, a recommendation made by Rachel Johnson and Kay Jenkin in their outcome of the claimant's grievance on 19 November 2021 that the performance allegation should not be included was ignored.

13. The claimant's employment was terminated.

14. When the claimant appealed against his dismissal, the appeal was unfair. The Appeal Officer Robert Lucy dropped the fabricated allegations of bullying but decided to reinstate the other allegations about meetings and low activity despite strong evidence to the contrary and in contradiction of the report by Rachel Johnson and Kay Jenkin.

15. The respondent failed to provide the claimant with a Performance Improvement Plan if there was low activity as they did for other employees

who were alleged to be underperforming: Katherine Kirham and Becky Waterton.

16. The claimant considers that his role was made redundant as he has not been replaced. He alleges failure to pay him a redundancy payment is discriminatory as this was done for another colleague in the team.

ANNEX B
COMPLAINTS AND ISSUES

1. Time limits

1.1 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1.1 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?

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

1.1.3 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

1.1.4 If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.4.1 Why were the complaints not made to the Tribunal in time?

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

2. Direct discrimination – race and religion/belief (Equality Act 2010 section 13)

2.1 Did the facts alleged in the schedule of allegations document occur?

2.2 If yes,has the claimant adduced facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances of a different race and/or a different religion was or would have been treated? The claimant relies on a hypothetical comparison except in relation to the specific allegations concerning his team under performance/management. He relies on comparators Kathryn Kirkham and Becky Waterton who were identified as having low activity and supported and coached through a Performance Improvement Plan (PIP).

2.3 In his allegation relating to unsuccessful appointments to post he relies the successful candidates as a comparator(s)

2.4 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of race/religion or belief?

2.5 If so, has the respondent shown a non-discriminatory explanation for the treatment.