Case Number: 1300105/2023

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant:	**Mr. A Sharma**
Respondent:	**Jaguar Land Rover Limited**
SITTING AT:	**Birmingham**
ON:	**7 – 18 October 2024 in person in public and 18 – 22 November 2024 in chambers in private.**
BEFORE:	**Employment Judge G Smart Mrs M Howard Mrs J Whitehill**

RESERVED JUDGMENT

On hearing for the Claimant in person and Ms W Miller, Counsel, for the Respondent the unanimous judgment of the Tribunal is:

1. The various claims at paragraphs 2.2.6, 2.2.9, 3.2.2, 4.2.4, 4.2.6, 4.2.7 and 4.2.9 were dismissed during the hearing upon withdrawal under rules 51 and 52 of the Employment Tribunal Rules of Procedure.

2. The Claimant's claim for detrimental direct race discrimination under sections 13 and 39 of the Equality Act 2010 in paragraph 2.2.13 of the list of issues is well founded and succeeds. The Tribunal considers it just and equitable to extend time for the presentation of that claim under section 123 Equality Act 2010.

3. The Claimant's claim for detrimental victimisation under sections 27 and 39 Equality Act 2010 in paragraph 7.3.2 of the list of issues is well founded and succeeds.

4. The remainder of the Claimant's claims for detrimental race discrimination and detrimental victimisation under sections 13, 27, 39 and 108 Equality Act 2010 fail and are dismissed.

5. The Claimant's claims for detrimental direct sex and/or age discrimination under sections 13 and 39 Equality Act 2010 fail and are dismissed.

6. The Claimant's claims for race and/or age related harassment under sections 26 and 40 Equality Act 2010 fail and are dismissed.

7. A remedies hearing will be organised as soon as possible (if necessary) to address the upheld allegations of discrimination.

8. It is consequently hereby declared that the Respondent directly discriminated against the Claimant because of his race and that it victimised the Claimant after raising discrimination allegations.

REASONS

The issues to be decided

1. The Issues that were decided in this case are annexed to this Judgment as appendix 1.

2. At the start of the hearing, it struck the Tribunal that the list of issues was not explicit enough about the causes of action relied upon by the Claimant when referring specifically to Part 5 Of the Equality Act 2010 from which the employment Tribunal obtains its jurisdiction to hear cases under section 120 of the Equality Act 2010.

3. It was discussed that the majority of the claims brought by the Claimant were alleged to have taken place whilst the Claimant was still employed. However, that could not be said for the victimisation complaints at paragraphs 7.3.6 – 7.3.8. It was also likely that allegation 7.3.5 straddled both the Claimant's notice period, which he had mostly worked and the termination of his employment given the grievance outcome was not provided until after the Claimant left the Respondent's employment.

4. The result of this was that section 108 Equality Act 2010 for post termination discrimination needed to be applied. This was because it added additional tests of whether the alleged post termination discrimination arose out of or closely connected to the relationship that existed between the Claimant and Respondent and also that any post termination discrimination alleged needed to have been capable of breaching the Equality act 2010 had it been done during the live employment relationship. **Jessemey v Rowstock Ltd [2014] EWCA Civ 185** confirmed post termination victimisation could be pursued despite the face value wording of the statute in s108.

5. It also struck the Tribunal that given one of the allegations raised by the Claimant was that an internal job application had been declined by the Respondent when the Claimant was already employed, that this was likely to be a case brought under section 39 (2) and (4) Equality Act 2010 for employees rather than a case brought under section 39 (1) and (3) for applicants following the case of **Clymo v Wandsworth London Borough Council [1989] IRLR 241 EAT.**

6. The parties discussed the situation outside the hearing and confirmed by email they agreed with the Tribunal and the case was confirmed as being brought, where applicable, under sections 39 (2) and (4) rather than the applicant provisions.

7. It was also agreed that s108 applied to allegations 7.3.5 – 7.3.8 of the list of issues.

8. There was also a clear issue with one of the protected Acts relied upon by the Claimant for his victimisation claim as at paragraph 7.1.2 of the list of issues. Here, the Claimant alleged that him speaking to Paul Tremble on 12 September 2022 about his complaints of age and race discrimination amounted to a protected act, despite no new allegations or repeated allegations of race or age discrimination being made. It struck the Tribunal this seemed to be a repeat of paragraph 7.3.1 which was the allegation of victimising treatment rather than a separate protected act.

9. Having referred the Claimant to section 27 of the Equality Act 2010, the Claimant agreed this was not a separate protected act and therefore paragraph 7.1.2 was not relied upon.

10. It was also agreed that for the avoidance of doubt, allegation 2.2.12 was being brought as both race and sex discrimination.

11. From here on in the judgment, the Equality Act 2010 will be known as "the 2010 Act."

12. In addition, if any of the claims have failed because the facts put forward as the basis of the claim did not take place on balance, we have underlined the dismissal of such claims for ease of reference.

Key concessions and common ground between the parties

13. It was common ground the Claimant was an employee.

14. It was common ground the Claimant resigned and his last day of employment was 12 October 2022 and therefore his termination date was 12 October 2022.

15. It was conceded by the Respondent that under s108, there was a close enough connection to the former relationship with all alleged acts of post termination victimisation and that if the allegations were successful, these would be in breach of the 2010 Act had they took place during the live employment relationship.

16. It was conceded by the Respondent that paragraph 7.1.1, namely the Claimants alleged protected act that on 12 September 2022 the Claimant submitted a grievance which included allegations of discrimination on grounds of age and race was a protected act in accordance with section 27 Equality Act 2010.

17. The Claimant conceded that many of his allegations of discrimination would be out of time if no discriminatory conduct extending over a period had been committed by the Respondent.

Preliminary and other issues at the hearing

18. The first issue that was raised at the outset of the hearing was that of covert recordings.

19. During his employment, the Claimant had made a number of covert recordings of meetings that had occurred between his colleagues and him. He sought to include a number of transcripts that the Claimant himself had typed in the bundle. The trouble was, he had included words in the transcripts describing tone, behaviour etc. which the audio recording would not of course evidence. The transcript bundle the Claimant sought to include was paginated as pages 1694 – 1818 (124 pages) and was therefore a significant addition to the bundle.

20. The Respondent had already allowed some transcripts into the bundle that it believed were relevant or the parties had agreed to include summaries of these. These were already in the bundle at pages 734 – 763, 931 – 932, 934 – 935, 940 – 941, 946, 947 – 948, 949 and 968.

21. After a discussion and submissions being made, the parties were sent away while the Tribunal read into the case further, to try to agree a solution.

22. Upon their return, the parties had agreed that pages 1747, 1809, 1816 and 1817 were to be added to the bundle by consent with approval of the Tribunal. They were so added.

23. The Tribunal asked both parties if they were sure that was the end of the transcript matter and, especially, that the Claimant was content with that approach. We did this because after the bundle had been finalised, unless there was a material change in circumstances or otherwise any exceptional circumstances, then that order would not be revisited and no further transcript pages would be added to the bundle. The parties agreed and the order and restriction on adding further documents was therefore made by consent.

24. There were a few further additions to the bundle as the hearing progressed. These were A summary and screen shots of LinkedIn messages between Paul Tremble and Dr. Eugenia Puccio dating from 8 and 9 May 2022 numbering 7 pages. These were included by consent.

25. There was also a recording of a meeting that took place between the Claimant and Mr. Tremble on 13 September 2022, which had been transcribed by the Claimant at pages 734 – 763. The Respondent accepted that it was an accurate transcript in so far as the words used were said by both attendees. However, it was not agreed that any comments about context, tone and behaviour the Claimant had included in brackets were accurate.

26. As a result, by consent, the transcript was agreed, excluding the comments in brackets, and the Tribunal would listen to the recording, which it did, to make up its own mind about context, tone and behaviour that could be evidenced in the recording.

27. The recording was listened to on the morning of day 2 of the hearing before evidence commenced.

28. A witness statement was in the bundle from the Claimant's wife, Mrs Anubha Sharma. Upon discussion, the Claimant stated that the statement was only relevant to remedy and personal injury should he win.

29. The parties could not agree a chronology despite having additional time to do so. Consequently, both parties put in a separate chronology, which was not helpful, but we considered each, nonetheless.

Other issues

30. Before the final hearing took place, the Claimant had made an application for specific disclosure from the Respondent. That application was partly successful and the resulting order (of EJ Maxwell) complied with by the Respondent.

31. At one point during the hearing the Claimant attempted to revisit the decision of Judge Maxwell to try to obtain disclosure part way through the hearing that had previously been refused. The application was discussed with the Claimant and he conceded that there was no material change in circumstances to allow Judge Maxwell's decision to be revisited. He therefore withdrew the application.

32. The Claimant also tried to revisit the order made by the Tribunal on day one about transcripts. He wanted to refer to an additional page that had not be admitted into evidence. This was discussed and the Claimant accepted that there had been no change in circumstances since that order was made and he therefore withdrew that application.

33. A number of claims were withdrawn when the Claimant was giving evidence. The Tribunal explained how rules 51 and 52 worked and the Claimant was asked whether there was any reason why the claims should not be dismissed there and then upon withdrawal. No reasons were provided. Consequently, the withdrawn claims were dismissed.

Liability only hearing

34. Given that the first day and a half of hearing time had been spent resolving preliminary issues, when discussing the timetable for the hearing, it was agreed that the Tribunal would hear the liability case only and remedy would be considered separately.

35. The hearing was timetabled and it very soon became clear that the case had been underlisted by some days. We were able to hear all the evidence and submissions by the end of the hearing.

36. The submissions finished at 15.30 on the final day of the hearing. Judgment was reserved and 5 additional days were allocated for the Tribunal to deliberate about the remaining 32 live claims and any time limit or extension of time points that may stem form any successful claims presented late.

The evidence

37. We heard evidence from the following witnesses:

    37.1. The Claimant;

    37.2. Mr. Alex Cooper, Chapter Lead for Physics of Failure and the Claimant's line manager at most material times;

    37.3. Mr. Paul Tremble, Chapter head for Reliability Engineering and Mr. Cooper's line manager at most material times;

    37.4. Mr Matthew Becker, Vehicle Engineering Director and the grievance decision maker.

    37.5. Ms Simran Johal, HR Case Management Adviser for the Claimant's grievance procedure.

38. We listened to a recording from 13 September 2022 of 41 minutes and 2 seconds, involving Mr. Tremble and the Claimant.

39. There was a bundle of 1693 pages plus the additions already discussed above, which was two lever arch files of documents.

40. All witnesses attended the Tribunal and were cross examined, with both sides being given the chance of re-examination for their witnesses or for further elaboration from the Claimant because he had no one else with him.

41. Once evidence began, the hearing ran relatively smoothly.

Background

42. The Claimant commenced his employment on 18 September 2017 as a Graduate - Product Engineering.

43. It is relevant note here that the Claimant is Indian, and he immigrated into the UK for the purpose of taking up this job opportunity.

44. Because of his immigration status, the Claimant did not have permanent leave to remain in the UK throughout the entirety of his employment with the Respondent.

45. This naturally led him to feel vulnerable in his job role, because if he lost his employment at the Respondent, it would place him at significant risk of being deported back to India under UK immigration rules.

46. On 2 January 2019, the Claimant completed his graduate placements and was asked to work in the subject matter expert team with increased responsibilities as a Graduate Engineer.

47. Graduate Engineers had a separate pay scale to the other branches of the Respondent's organisation.

48. The Claimant was at all material times a grade C graduate engineer. His line manager Mr. Cooper was an LL6 management grade.

49. As subject matter expert, the Claimant was tasked amongst other things with reviewing designs for new vehicle components from other engineers, to see if they were sound and would stand up to performance standards rather than failing and then causing potential product recalls. The role was very much based on physics and used applied physics to test and calculate whether a component was likely to fail if used repeatedly. This was known as "physics of failure" in the sector.

50. One example discussed (as best as we understood it) was that for some components where there is a flow of electric current through narrow wires/surfaces in components, applied physics of failure needed to be used to check for and guard against harmful "electromigration". This term is about the standard flow of electrical current, namely the flow of electrons from atom to atom in a conductor, which is most commonly some kind of metal or a semiconductor such as silicone in, for example, microchips. As electrons flow in the current and as the width of the conductive material becomes narrower, such as for example in microelectronics, if the current is high enough, electrons become separated from the main current flow and can then migrate to other materials nearby or into other nearby conductors. This can cause a current to be diverted, loss of current and/or harmful heat generation and therefore the failure of the component through a short circuit, physical heat damage or both. As the conducting circuit size decreases, electromigration increases and with it the probability of the circuit/component failing. Components, of course, need to have a reasonable length of service in a vehicle and this is why tests like these are important to ensure no product recalls, good customer satisfaction with vehicles lasting for a reasonable period of time and to ensure safety is maintained to acceptable standards.

51. This was therefore a highly qualified and technical role.

52. The Respondent is a very large organisation and is a well known vehicle manufacturing brand. It has vast number of employees with more than 40,000 employees worldwide. It has a substantial turnover and substantial resources available to it generally both in the UK and worldwide.

53. The Respondent had a number of relevant sites. Its IT teams were based in several locations, but there was a team of IT professionals in India and some based in the UK.

54. Similarly, there were two main offices the Claimant worked out of. These were the Gaydon site and the Whitley site.

55. At the Gaydon site had a building within it called the Gaydon Triangle. This had an older building called G Deck and there was a separate area called Deck X.

56. In Deck X there was also a more open plan area where members of the HR hub would often work. Situated off that open collaborative space, there were two corridors. One was to the toilets and one led to a different collaboration area.

57. Situated off this second collaboration area were offices that could be used as "break out rooms" or offices to have meetings. Some of them were regularly used, others were not.

58. This is in the context of these events taking place whilst there were still some Covid-19 risks and more people were working from home or in less crowded spaces etc.

59. During his 2019/2020 performance review conducted by his then line manager Carl White, the Claimant received a score of 2, developing performer. This effectively meant that the Claimant required improvement to be deemed to be performing in his role.

60. The Claimant raised a grievance about this score believing it to be too low. We do not need to go into the detail of that grievance process but record that it was common ground that the Claimant's performance review score increased to a score of three, meaning the Claimant was then deemed to be a performer.

61. Mr. Cooper became the Claimant's line manager in February 2022.

62. Mr Cooper was working as, what he describes as, the Senior Subject Matter Expert in the engines team.

63. Then, following a reorganisation and the creation of the "chapter" or team with specific knowledge and expertise, the Claimant, Magdelena Badescu and Bhuvnesh Bhardwaj all became Mr. Cooper's direct reports.

64. It was clear on the evidence we heard and saw that the Claimant got on well with Mr Bhardwaj and mostly got on well with Ms Badescu.

65. It was also clear to us that neither Mr. Cooper nor the Claimant were fully forthcoming or accurate in their evidence about the professional relationship they had when working together, or the events they described during this case.

66. In our judgment, for whatever reason, the Claimant and Mr. Cooper did not get on all the time.

67. Mr. Cooper had a blunt written communication style, which appears to have caused the Claimant to become annoyed or upset at times. In our view, it was reasonable for the Claimant to be irritated by some of the communications or lack of them between Mr. Cooper and him that we have been referred to and, to his credit, Mr. Cooper accepted that some of his communications or lack of them weren't in hindsight the best decisions he could have made.

68. The Claimant appeared to us to have an inflexible working style and seemed to think very highly of himself, which was clearly a view not shared by some of his colleagues, including Mr. Cooper.

69. We are persuaded that if the Claimant thought he was right in something, it was very difficult for others to persuade him otherwise. This came across generally through the written communications in the bundle we saw and through some of his answers given in evidence.

70. It therefore struck us that the Claimant and Mr. Cooper's working relationship was not friendly as such but was relatively stable to the effect that it worked most of the time. When the relationship did not work best was when there was a difference in view between the Claimant and Mr. Cooper about subject matter or decisions Mr. Cooper had made that affected the Claimant.

71. It was also clear to us, that despite portraying himself when giving evidence and meek, the Claimant was a relatively robust individual who could and would speak up for himself if he felt a decision that was not to his liking or what he felt was not in his best interests took place.

72. This was clearly evidenced by the questions he asked when he was not invited to attend a meeting with Kingston University for example, which is discussed later, and also because he submitted a grievance about his pay and raised other queries about his pay at various points throughout his employment.

73. Both the Claimant and Mr. Cooper, in our view, were upset by this litigation. In our view, Mr. Cooper and the Claimant at times had difficulty communicating properly with one another and, although they did not get on during some occasions, the relationship was not unsupportive or dysfunctional.

74. Mr. Tremble and the Claimant appeared to have a better relationship overall, until the point the Claimant submitted his grievance, which forms the subject matter of a lot of the claims before us.

75. The Claimant had not met or worked with Ms Johal or Mr. Becker to any material extent before his grievance procedure commenced in September 2022.

76. The Respondent has IT teams around the world. Those of relevance in this case are the IT teams in India and Britain.

77. It is within this backdrop and context that the allegations of race, sex and age discrimination were made.

Specific findings of fact

Pay rises in September 2021

78. In September 2021, the Company gave pay rises to the Claimant and Mr Bhardwaj.

79. As shown by pay slips in the bundle at pages 341 and 342, both the Claimant and Mr Bhardwaj, received an annual gross pay rise of £2,700.

80. The Claimant's witness statement was silent about this claim because he says that he drafted the witness statement before the bundles were finalised and before the Respondent had provided additional disclosure.

81. It was common ground that the pay rise normally contained two parts to it. The first was a standard company wide pay rise given to all employees at a certain percentage. The second was linked to the individual's performance review score.

82. For this claim the Claimant stated that he was relying on hypothetical comparators not the named comparators in the list of issues.

83. In effect, the Claimant's evidence seemed to be that he felt the pay rises were race discrimination because both Mr Bhardwaj and he have been given the same pay rises and he therefore felt that Indian employees were being given matching pay rises, simply because they were Indian.

84. He explained that he found it difficult to believe that he and Mr. Bhardwaj had the same performance rating and so either one of them was being held back by being given the same pay rise.

85. The Claimant was asked specifically in evidence by the Tribunal whether he was comparing himself and Mr Bhardwaj to non-Indian colleagues as a group when considering the Company's decision to give everyone a pay rise due to percentage inflation and based on performance score. His answer to that question was *"I suppose so yes".*

86. We were referred to no documentary evidence that Mr. Bhardwaj had scored any differently to the Claimant in his performance review.

87. Mr. Cooper said in evidence that pay rises were the same because they had been negotiated with the relevant trade union and the performance scores were the same for both employees and all other graduates in the graduate scheme because it was the norm for all graduate scheme team members to be given the same pay rise until the graduate scheme had finished.

88. There was insufficient evidence to prove the Claimant was given a pay rise because he was Indian. We find that there was a general pay rise given to all colleagues and graduate engineers did not have the performance factor applied to them so were given the same pay rise regardless. Either way, there was insufficient evidence that the Claimant and Mr. Bhardwaj were on different performance scores in any event.

The IT team in India

89. On 11 March 2022, a team training session took place with Mr Tremble and the

Claimant in attendance.

90. The Claimant alleged that Mr. Tremble had said loudly in front of everyone present that *"Indian IT were being annoying".*

91. Whilst giving evidence Mr. Tremble said that he didn't remember specifically saying those words but didn't deny saying them.

92. When the grievance was submitted, which included this allegation at paragraph 5.14.1 of the grievance letter, at page 711 in the bundle, Mr. Tremble provides his comments to this allegation he said *"I fully accept this feedback, [no] racial bias was intended, I often refer to teams by their location i.e. 'Manchester or Shannon' Software teams, 'Gaydon Test Team', but understand how specifically use of ['Indian"] could be construed as racial bias and we'll take care not to use this terminology going forward. Note to Abhi: please provide this feedback directly in future, had this been raised I would have addressed this immediately."*

93. We accept that Mr Tremble said that Indian IT we're being annoying and that the Claimant took offence to that. In his grievance, the Claimant said *"… In my mind, I thought that Paul Tremble should be careful about how to appropriately use words related to race, ethnicities and nationalities in a workplace. In my opinion, whether inside or outside of a workplace, one should only use words such as "Indian" (in this case) only to refer to the geographical location, person independent topics like food, whether or when it is absolutely necessary to communicate someone's ethnicity/nationality and not for stereotyping in an uncalled for statement that only shows clear, unwarranted and inappropriate racial bias."*

94. The Claimant said in his evidence that upon hearing what the problems were with the IT team in India, it was his view that the IT team were only following their processes. However, given that he was not party to the conversation, all the full facts about what had happened between Mr Tremble and the IT team could not have been known to the Claimant and he was not therefore in a position to make such a conclusion.

95. Similarly, the Claimant had a perception that there is a stereotype about Indian people that a lot of them work in IT. In our industrial and professional knowledge as a Tribunal panel, we are not aware of any such stereotype and no other evidence other than the Claimant's perception that this is a stereotype of Indian people has been provided to support his view. We find that there is insufficient evidence to conclude that there is a stereotype of Indians working in IT.

96. The Claimant's evidence was also surprising given that, when he was asked whether he would have been offended if Mr Tremble would have said "the Indian IT Team were amazing", the Claimant answered that he would still have been offended, which we found to be a bizarre and incredible answer.

97. The German Christmas market has just opened in Birmingham. We take note

that, generally, when speaking using standard English, it is usually acceptable and indeed grammatically correct to refer to, for example, "the German Market". The market would not be described as "the Germany market" or indeed "the market from Germany" because that would, in general terms, be an odd way of describing the market, when considering general verbal use of English in day-to-day conversations.

98. The Claimant believed that Mr Tremble should have said "the IT team in India" or "India IT" or simply "the IT team". However, as we have indicated above, that is simply not the way that most people speak in our Judgment. Clearly, the most neutral way of describing the team that could not be offensive to anyone is "the IT team". However, that is with hindsight.

99. The other point the Claimant made was that when the word Indian is used, it denotes particular clothing and appearance. That may be true but it wasn't really relevant to the case argued before us.

100. We are persuaded that when Mr. Tremble made the comment he did, he was referring to the IT team's geographical location and his emphasis was on the IT team being annoying, with India simply being Mr. Tremble's way of identifying this particular part of the IT team rather than the IT teams located in Britain or anywhere else.

The Claimant's salary review request

101. In April 2022, it was common ground that there was a salary freeze for a number of job roles in the Respondent including a blanket freeze for all graduate engineers. This was due to the difficulties caused by the Covid-19 pandemic as per Mr. Cooper's statement at paragraph 21.

102. It was common ground that the Claimant had complained about this and had requested that this be looked into by Mr. Cooper.

103. Mr. Cooper said he thought the freeze for some roles and not others in the team, was unfair and therefore wanted to try to assist the Claimant. He therefore had a meeting with other graduate engineers to see what their salaries were and to try to understand what their views were and what could be done about it.

104. On 7 April 2022, one such meeting took place with Mr. Bhardwaj.

105. The Claimant alleges that during that meeting, Mr. Cooper informed Mr. Bhardwaj that the Claimant had made a salary review request without the Claimant's consent.

106. Mr. Cooper says that although he discussed graduate engineer salaries in general with Mr. Bhardwaj and said that he wanted to make sure that all engineers including the Claimant and Mr. Bhardwaj got a salary increase, he did not disclose to Mr. Bhardwaj that the Claimant had requested a salary review.

107. On 7 April 2022, the discussions within the team generally about pay, triggered Mr. Bhardwaj to message the Claimant on teams at page 355 in the bundle. Mr. Bhardwaj said *"Afternoon! Will you be free for a quick chat this afternoon about salary? Want to compare mine to yours if that's alright? (We should be on the same amount right?)".*

108. Later in that exchange, Mr. Bhardwaj said at 12.58 *"just about to have my 1:1. Let me know when you are back from lunch plz."* The 1:1 mentioned was the meeting that took place between Mr. Cooper and Mr. Bhardwaj and Mr. Bhardwaj had therefore messaged the Claimant before that meeting took place.

109. Of significance, is the investigation report into this issue found at page 800 – 801 in the bundle. When asked about the issue by Mr. Becker during the grievance investigation into this complaint, the following crucial exchanges took place:

"MB Around April 2022, Abhinav alleges Alex Cooper leaked his request for a salary review, to you. Abhinav says you then got in touch with him to discuss salaries. Did Alex Cooper share with you that Abhinav had asked for a salary review?

BB It's a while back, but I don't recall Alex ever telling me anything about salary reviews for Abhinav. I asked Abhinav out of interest as we had an end of year review coming up and I was interested to see what he was getting, to see if we were on the same page, and to compare. The reason for this is with End of Year, we talk about compensation and look at progress. Abhinav was unhappy with the pay freezes and people getting more money than us because we were stuck on the grad scheme pay system, while C and D grades were getting increases. Abhinav was challenging that, from what I could tell by what he was saying.

MB So, Alex didn't share any pay information about Abhinav with you?

BB No.

MB Did Alex share any information about Abhinav with you?

BB No."

110. We find that Mr. Bhardwaj's documented response is accurate. He was friendly with the Claimant and they had the same common goal, namely, to get a pay rise. There was therefore no reason for Mr. Bhardwaj to provide incorrect information. Despite the investigation interview and the meeting being nearly a year apart, his account is clear, succinct and definite.

111. Consequently, the most independent account of what happened is Mr. Bhardwaj's, we believe it and therefore we find that Mr. Cooper did not disclose the fact the Claimant had requested a salary review to Mr. Bhardwaj and the meeting and/or disclosure did not trigger Mr. Bhardwaj to message the

Claimant about salary. The fact salary reviews were coming up for the team and the general talk about pay freezes within the team was likely to have triggered that, in our judgment.

112. Consequently allegation 2.2.2 fails on the facts and is dismissed.

The lead engineer job advertisement and recruitment process

113. On 26 April 2022, the Company advertised a new job role which was a grade D engineering post. This would therefore have been a promotion for the Claimant.

114. The new job role was Lead Engineer – Reliability and Damage.

115. The closing date for applications was 9 May 2022.

116. This role was advertised both on Linked in, other agency websites and internally.

117. The Claimant was very keen to apply for the role, because in his view, his knowledge, experience and expertise was a good fit for it.

118. The role advertisement had the following essential criteria at page 374:

    118.1. Bachelor's degree in engineering (any discipline) or Bachelor of Science in physics/chemistry.

    118.2. Some experience in failure mode of winds and engineering validation.

    118.3. Ability to carry out self driven research of journals/papers on topics relating to physics of failure.

119. The role advertisement had the following desirable criteria at page 374:

    119.1. Experience in modelling one of the following: wear, chemical reactions, fatigue (high/low cycle) or electromigration.

    119.2. Some experience of the PCDS and agile frameworks

    119.3. 6 Sigma Green Belt certified

    119.4. experience in reliability engineering

    119.5. Matlab, Simulink, Python or similar experience.

120. On the same date, Mr Cooper messaged the Claimant on teams and commenced a conversation with him about the role. The following exchanges are of importance as per pages 630 and 631 in the bundle.

    "AC: I assume you've seen some of the teams vacancies are coming out now?

Claimant: No, didn't get time yet. On SF careers?

AC: yes, I thought you may have applied already, there will be more opportunities later on also.

Claimant: let me see. Just seen it, Alex. Will definitely apply for it tonight. Thanks for notifying me about the vacancy.

AC: I will warn you there is likely a lot of competition for this and there is still some development we need to work on (which we've discussed) it's good to see how you do with it but don't get disheartened if you don't get it this time.

121. We pause here to note that by this time, Mr. Cooper already had a preferred candidate in mind named Jinto Manjaly Anthonykutty, who was an internal male candidate of Indian heritage, who had a chemistry background and had already reached out to the chapter to say he was interested in the role.

122. Dr Anthonykutty had a PhD qualification and this was why Mr. Cooper said there was likely to be a lot of competition for this and why he mentioned about the Claimant not getting disheartened if he was not successful on this occasion. Effectively, Mr. Cooper knew that there was someone more qualified than the Claimant applying for the role. We find that this is the reason why Mr. Cooper said what he said to the Claimant.

123. The Claimant quickly identified this by "reading between the lines" and said in his next message as the chain continued:

"Claimant: is there an internal candidate already identified for this position as a lateral move?

AC: I've got a good potential candidate but it's still an advertised vacancy he has a PhD in chemistry and did chemical modelling of after treatment just remember we're trying to get you there too, hence the Duncan work stream. We can talk about it f2f tomorrow if you want.

Claimant: Ok."

124. We do not know whether a conversation then happened and, in any case, if neither side mentioned it, it is clearly not material to the case even if there was one.

125. Nothing appeared to happen then until further messages are exchanged on 4 May 2022 as follows at page 632:

"AC: did you apply for the D grade?

Claimant: Hi Alex, yes

AC: OK good"

126. There is then a further conversation by message on 5 May 2022. Here Mr. Cooper says at page 633:

"AC: Abi, just a bit about your application. Reviewed this and scoring is accordingly against the criteria within the IVN. Once the vacancy closes top 4 scoring applicants will go forward to interview.

Claimant: Ok

AC: want to keep it transparent with you what the approach is ETC.

Claimant: Photo [Man sat with his eyes closed and both hands held up with crossed fingers as if wishing for luck and success]

AC: one bit of advice for future applications make sure you've got the essential and desirable items within your CV for the application. Scoring is based on CV vs those and in some cases you can be screened out.

Claimant: thanks for the advice, Alex. I absolutely agree with this, hence, I made sure I kept the job description in front of me when I was updating my CV for this role. I believe I covered everything in the job description on my CV. But the fact that you pinged me about this, I would really appreciate if you could highlight what I have not covered on my CV that is on the job description as I gave it a hard long look again and couldn't find anything under desirable/essential that I have missed out on. Also, the job description literally resonated everything I'm already doing in this role so I didn't really have to alter my CV in any way to adapt it to the job description. I'm very excited about this opportunity and welcome any input so I can get on this. Thanks again, Alex, for your honest and transparent communication.

AC: I'll give you some feedback on it all once the role has been filled (in either case)"

127. Clearly, by the time the application process is finished, the Claimant no longer believed that Mr Cooper's communication was honest and transparent. Indeed, he argued that the comments about the being more opportunities later and there being lots of competition were intimidatory towards him because of his race and sex.

128. Having heard from Mr. Cooper, despite our findings below about the real reason for the process, we are not persuaded that these comments were attempts to intimidate or deter him from applying for the job. Mr. Cooper wanted him to apply for the job and had flagged the vacancy to him.

129. The Claimant alleged that the reason Mr Cooper told him that he needed to include desirable items were because of his race and sex and that Mr. Cooper also refused to answer his query about what things had not been included and wouldn't provide feedback until after the role was filled.

130. The Respondent accepted that Mr. Cooper would not respond until after the

role was filled. We believe that Mr. Cooper made that decision to avoid being seen as favouring the Claimant too much.

131. The Claimant admitted, during questioning, that feedback was provided at a face to face 1:2:1 and Mr. Cooper gave examples for one or two points during the verbal feedback but not all of them. This is also proven by page 772, which the Claimant accepted was showed to him during the 1:2:1. Page 772 provides elements of the feedback Mr. Cooper says he gave to the Claimant.

132. In addition, the real reason why, at this time, Mr. Cooper criticised the Claimant's CV was because he perceived that the Claimant had not included sufficient substance behind the points he included in the CV. During questioning he explained that the bare points were there, but no description or explanation as to what the Claimant had done supporting those points.

133. On 8 May 2022, for a separate job advertisement of data scientist within the JVMR team, a Dr Eugenia Puccio, an international particle physicist, had reached out to Mr Tremble on LinkedIn to express interest in that position.

134. In her message, Dr Puccio explains that she wanted to make sure that her experience was a good fit for the position and asked whether Mr Tremble could advise her after she found his profile on LinkedIn, or whether she needed to liaise directly with someone within the team advertising the job role.

135. She further mentions that she has a PhD in experimental particle physics, had been working as a research assistant in particle physics at Stanford University in California USA until 2014, where she took a seven-year career break to be a full time parent and she was now looking at going back to work and seeking to transfer her skills into industry.

136. On 9 May 2022, Mr Tremble explained that unfortunately, the role Dr Puccio was interested in had closed. However, he explained that there were other roles within the team that they were recruiting for, which may be of interest and asked the Claimant to submit her CV and a telephone interview could be arranged if she was interested.

137. On 10 May 2022, Dr Puccio sent her CV to Mr. Tremble via email. He then forwarded this onto Mr. Cooper.

138. Mr. Cooper then took HR advice and asked whether he could interview Dr Puccio even if the application was submitted late. He was advised that it was his decision whether he interviewed a late applicant or not.

139. It is significant that Mr Tremble does not mention any particular job role here. It is also significant to mention that during questioning, Mr Cooper accepted that Dr Puccio was missing some of the essential criteria for the job role in her CV. He also accepted that Dr Puccio was someone "we" wanted to interview based on her qualifications regardless of the fact that she had submitted her CV one day after the closing date and was missing some of the essential criteria for the role.

140. Mr. Tremble was of the same view as Mr. Cooper, but he did not take an active role in the recruitment process after forwarding Dr Puccio's CV to Mr. Cooper when it was received.

141. The recruitment process for the job role had a number of stages to it. First, the application CVs would be screened to check whether they met the essential criteria for the job. This would then create a shortlist for interview. The second stage of the process was the interview itself. This took place via a pretty usual question and answer session about competences and experience, as well as there being a technical presentation and questions asked about that. All candidates were given at least 48 hours notice before the interview date, of what topic they would be asked to give their presentation about.

142. In total, there were 17 individuals who applied for the role, of which Dr Anthonykutty and the Claimant were the only two internal candidates.

143. Mr Cooper scored the Claimant's CV. The Claimant came joint fifth in the short list, along with three other candidates. Mr. Cooper then informed the Claimant that he was not one of the 4 top scoring candidates.

144. However, despite not making the short list, Mr. Cooper decided to interview the Claimant in any event, which was common ground between the parties.

145. The Claimant alleges he was confused by this. After all, if he didn't make the shortlist then he thought why would they interview him? He claimed that the interview was just a mock interview used to prove that he wasn't ready for a higher graded role so that, in his words, the management could "bash him down" and that this was simply a suspicion at first, leading him to sincerely prepare for the interview. However, when he got the result and saw what he perceived to be flaws in the interview process and its fairness, that's when he came to the conclusion the interview was a façade as he called it.

146. The Claimant identified a number of issues with the process. We have already mentioned that the eventually successful candidate didn't meet the minimum criteria for the advertisement. The Claimant also mentioned there were issues with the scoring of the interviews and the fact that for his interview, Matt Albrecht was present and Mr. Albrecht wasn't present at any of the other interviews for any other candidates.

147. On the other hand, Mr. Cooper would have us believe that he was doing the Claimant a favour by interviewing where there was a still a chance of getting the job. He says he wanted the Claimant to succeed and wanted to give him a chance at interview despite being sifted out, because he knew the Claimant was ambitious and he knew the Claimant wanted to progress and earn more money.
148. Mr. Cooper accepted that Mr. Albrecht wasn't present for any of the other interviews, but alleged this was so the interview could be fair by having someone who had had not recently worked closely with the Claimant as per paragraph 46 of his statement.

149. The answer to these questions can be found in the following message exchange, on Teams, between Mr. Cooper and Mr. Albrecht. This was very enlightening, as per pages 1068 and 1069 in the bundle, and went as follows:

"04/05/2022 09:36
Hi Matt, were you still able to support a couple of interviews for the reliability & damage lead? Need to make sure it's people with appropriate FMA and physics knowledge as it's going to be crucial to the role
Got JJ supporting for most of them

04/05/2022 09:36
Hey - yes happy to help if I'm available

04/05/2022 09:37
Thanks Matt, it'll be week 20/21

Think i'll need you for the aspirational c-grade in my team as i don't think they can dispute then

04/05/2022 09:39
OK - is it Abhinav?

04/05/2022 09:39
Yes

04/05/2022 09:40
OK - shouldn't be a conflict given I've managed him before

04/05/2022 09:41
good, could we just book that one then please? Rest i can do with JJ just want to make sure there is no wiggle room with that particular one

09/05/2022 13:51
Hi Matt, hope you had a good weekend?
Were you able to do any of those interview slots next week? Can get Paul to support if you can't

09/05/2022 13:57
Monday AM - Y
Monday PM - Y but not preferred
Wednesday AM - N
Wednesday PM - Y

09/05/2022 13:59
Ok thanks Matt will keep it to the two main ones

11/05/2022 11:58
Hello - please can you confirm if the Monday or Wednesday is the day you need me for interview?

11/05/2022 11:58
Lets say Monday am, less likely for you to be pulled away then i assume?

11/05/2022 11:59
Could go either way - main thing is my wife will have to be home on Monday whilst I'm at home Wednesday

11/05/2022 11:59
Ok, i can get Paul to support if need be

12/05/2022 10:49
Hi Alex - for the interviews next week are we still permitted to write our notes by pen and paper or does it have to be by laptop?

12/05/2022 10:50
pen and paper i've printed them all out

12/05/2022 10:53
Great - I hate typing and listening!"

150. So, from these messages it is clear to us that, certainly between Mr. Cooper and Mr. Albrecht anyway, the management in VM&R perceived Mr. Sharma to be a complainer. We heard no evidence from Mr. Albrecht, but as soon as Mr. Cooper says "Think i'll need you for the aspirational c-grade in my team as i don't think they can dispute then" Mr. Albrecht guesses immediately who Mr. Cooper is talking about. The word "dispute" is used, hence our finding that he had a reputation as a complainer. This situation is also set in the backdrop of a previous grievance about a performance review and a recent complaint about a salary review.

151. Mr Cooper wanted Mr. Albrecht present at the Claimant's interview so that the Claimant would have less of a chance of successfully complaining about the result. Yes, he may have wanted Mr. Albrecht to do more than one interview initially. However, the intention of trying to pre-empt a complaint is clear. Mr. Cooper could then say there was an independent interviewer as evidence against there being any bias against the Claimant. This is what we find the messages mean.

152. Mr Jackson was included on the interview panel because of his technical expertise and knowledge of chemistry as per Mr. Cooper's statement at para 47.

153. As soon as Dr Puccio applied, in our judgment, she had the job regardless of the process. If she didn't accept it, or hadn't applied, the job would have gone to Dr Anthonykutty. Either way, the Claimant was not going to be given that position regardless.

154. This is our conclusion because:

154.1. Mr. Cooper and the Claimant clearly didn't get on all of the time;

154.2. the Claimant had a high view of himself, which wasn't shared by Mr Cooper;

154.3. Dr Puccio had been allowed to interview despite not having the minimum criteria for the role;

154.4. she had a PhD in particle physics which seemed to significantly impress Mr. Tremble and Mr. Cooper;

154.5. she was invited to interview for a job role she hadn't specifically applied for (her CV covering letter at page 1551 doesn't address any specific job role) combined with the fact that her application was accepted after the deadline for the application process closed.

154.6. Consequently, Mr. Cooper and the rest of the management team involved in her process had already picked their candidate before she even interviewed.

154.7. Before Dr Puccio applied, the preferred candidate was expressly stated as being the internal applicant with a PhD in Chemistry, which was Dr Anthonykutty.

155. The words used by Mr Cooper in these messages predict a dispute before one has even happened. This supports our view that he knew the Claimant was not going to be offered the job regardless of his interview performance.

156. He also mentions in his statement at paragraph 35, that he was keen for this to be a learning experience for the Claimant. That is not what he said under cross examination or what he communicated to the Claimant at the time. He said that if the Claimant had scored the highest mark at interview, he would have been offered the position. That answer does not fit with his statement or the messages with Mr. Albrecht and we consider it to be disingenuous.

157. The messages also show that a decision had been made to interview the Claimant by 4 May 2022 initially because the preferred candidate earmarked for the job was Dr Anthonykutty and this was about the same time the Claimant's CV was scored and would not normally have made the shortlist.

158. However, the preferred candidate then changed when Dr Puccio when she sent in her CV. Either way, regardless of which of the two preferred candidates got the job, the dispute was still in Mr. Cooper's eyes likely to take place because the Claimant would still not have been offered the role.

159. The fact the Claimant would be interviewed despite not making the shortlist was communicated to him on 11 May 2022. It was not said to be a learning and development interview by Mr Cooper, but rather a real one to give him a chance regardless. This is proven by the phrase "either way" when Mr. Cooper says he will give feedback when the process is over. In our judgment, "either

way" meant, whether the Claimant got the job or not. Clearly, if the interview was simply a learning and development tool, then he had no chance of getting the job and there would have been no "either way" about it.

160. Ultimately, the interview process for the Claimant was a sham. It was a planned underhanded process under the façade of Mr. Cooper claiming to have the Claimant's best interests at heart, when really it was a self-serving back covering exercise, to try to pre-empt a complaint when the Claimant didn't get the job he wanted. Mr. Cooper hoped that including Mr. Albrecht and the fact he offered an interview regardless, would have provided evidence that there was an independent and positive process for the Claimant and that he lost out on the job because other candidates scored better than he did.

161. We fully understand why the Claimant was upset by what happened to him. Some of the other candidates were also likely to have been displeased if they knew that they had not been shortlisted, but weren't offered an interview like the Claimant was, or that the successful candidate won the position, despite not having the minimum essential criteria, her application being received late but she was still allowed to proceed, and/or her not having applied for that specific role but was instead fast tracked to interview.

162. The process adopted by the Respondent was unfair, biased and pre-determined. It was disingenuous, which was improper especially considering the size and administrative resources of Jaguar Land Rover.

The 1:1 on 10 May 2022 with Mr. Cooper

163. On 10 May 2022, the Claimant had a 1:1 with Mr. Cooper, which was common ground. It was a usual regular 1:1 between line manager and team member.

164. During that meeting, Mr. Cooper is alleged to have said to the Claimant: *"my jaw will drop if you gave the right answers to our questions".*

165. Given our findings above, we are not persuaded this statement happened. We say so because, at this time, Mr. Cooper was trying to portray himself in a positive light to the Claimant for giving him an interview despite the Claimant not passing the shortlisting sift. If he had said these words, that would have pierced that façade.

166. In addition, the Claimant alludes to the fact in his witness statement that he prepared for the interview in good faith and only had a suspicion that the interview was a mock one. If these words had been said by Mr. Cooper, we are not persuaded the Claimant would have only had a suspicion. The Claimant's view would have been firmer than that.

167. Consequently, allegations 2.2.5 and 4.2.3 fail on the facts and are dismissed.
168. At the same 1:1, the Claimant alleges that here was a conversation about progression and that Mr. Cooper made a number of age related comments.

169. It was conceded by Mr. Cooper that he said and/or discussed the following

things to/with the Claimant in that meeting, as per his statement at paragraph 39 and as per his evidence in cross examination:

169.1. That the Claimant was frustrated at the lack of perceived progression he had compared to his peers;

169.2. That the Claimant had implied that this was because he was young in age, which was holding him back;

169.3. That in response to this, Mr. Cooper had said that he was only about a year older than the Claimant and he was an LL6 management grade so age does not prevent progression.

169.4. A typical timeline for progression as discussed and Mr. Cooper said that 5 years was the typical timeframe per grade for progression as a general rule of thumb, but this was not set in stone and depended on experience, skill, performance and expertise.

170. The Claimant alleged that Mr. Cooper mentioned his LL6 grade and age to boast and belittle him.

171. Mr. Cooper claims that he is not egotistical at all and this was said to reassure the Claimant and explain that age was not a bar to progression.

172. About this conversation, we again prefer Mr. Cooper's evidence for similar reasons as the "jaw drop" comment. At this time, we consider Mr. Cooper to be trying to keep the Claimant on side with the interview process about to take place for the job role he had applied for. If he was unpleasant and boastful as the Claimant indicated, Mr. Cooper would not have achieved that objective.

173. For the direct discrimination claim, the Claimant relies on James Twist as a comparator for this allegation. However, the difficulty the Claimant has with this comparator is that he did not know what Mr. Twist did in his job role and effectively could not challenge the Respondent's case that Mr. Twist worked in a completely different team to the Claimant, namely project management, and the Respondent's admission that Mr. Twist had effectively been promoted without any process being followed. The circumstances were therefore materially different to the Claimant's.

174. The Claimant also relied on a hypothetical comparator of different age and race to him. However, whilst it is clear that unfair recruitment processes went on at the Respondent, the evidence taken as a whole suggests that this wasn't because of race or age. For example, Dr Anthonykutty would have been given preferential treatment in the application process for the role the Claimant applied for and he was of the same heritage and race as the Claimant.

175. Dr Anthonykutty was at least 41 in 2022 and Dr Puccio was at least 36 in 2022 with the Claimant being 29. However, the thrust of the evidence we have seen overall shows that whilst clearly unfair recruitment practices were taking place and appeared to be widespread at JLR, this was because of perceived merit

and qualifications, not because of protected characteristics.

176. The Claimant referred us to a Diversity and Inclusion review performed by an independent external agency in December 2021, which for the senior leadership of the Respondent, should not have made for comfortable reading.

177. The report described, after data analysis, widespread beliefs amongst the workforce that performance ratings, progression and recruitment practices were out of date, based on nepotism and showed various biases towards underrepresented groups such as those who are not white, male and/or heterosexual.

178. We have taken this into account whilst being mindful that we still need to consider the facts of every case specifically on its merits. Just because a survey says that there is a widespread lack of inclusion and bias in recruitment procedures generally, doesn't mean that every procedure undertaken is tainted with discrimination.

179. Consequently, we have to look at the case based on the individual facts as we found them to be and the mindsets of the people making the decisions.

180. In the Claimant's case, any bias towards him during the recruitment process resulting in Dr Puccio obtaining the job, were based on the fact that Dr Puccio and Dr Anthoykutty having PhD's when the Claimant did not and because the Claimant was perceived to be difficult to manage and a complainer, not because of his age, race or sex.

The interview and the Claimant's birthday

181. During a telephone call on 11 May 2022, Mr. Cooper contacted the Claimant to organise the interview dates for the job role.

182. The Claimant's case is that during this conversation, he let Mr. Cooper know that it was his birthday on 16 May 2022 and he made it clear that he would rather not be interviewed for the job role on his birthday. The fact the interview was then scheduled to take place on his birthday was a further act of intimidation by Mr. Cooper. The Claimant said no attempt was made to change the interview date because of his birthday.

183. Mr Cooper says he agreed the Claimant's birthday was discussed in passing by the Claimant and, when the Claimant mentioned it, Mr Cooper says he asked the Claimant whether his interview should be scheduled on a different date and whether the Claimant had booked the day off as annual leave. He alleges further that the Claimant said it was a normal working day for him and he wasn't doing anything on 16 May 2022 because his wife had to work that weekend and so they would be celebrating some other time.
184. In cross examination, the Claimant confirmed that this was a normal working day for him and he hadn't booked it off and confirmed that his wife was working that weekend of 14 and 15 May 2022.

185. What is significant is the Claimant does not mention in his Grounds of Claim, his witness statement or his grievance that his wife was working the weekend of 14 and 15 May 2022.

186. Consequently, in our judgment, there was no way for Mr. Cooper to have known, on the evidence we have seen or heard, that the Claimant's wife was working the weekend before his birthday unless the Claimant had mentioned it. Additionally, the only likely context within which this was raised was if Mr. Cooper had offered to rearrange the date and the Claimant explained that it didn't make any difference because it was a normal working day and he wasn't doing anything with his wife that weekend in any event.

187. Consequently, the reason why Mr. Cooper arranged the interview was two fold, one because the Claimant was ok with the date on their conversation and also because all required panel members were available for it.

188. On 16 May 2022, the interview took place. The Claimant alleged that he was at a disadvantage because the panel members, except Mr. Cooper, weren't from the VM&R team. However, we have already found that the disadvantage was in place because it had already been decided that the Claimant would not get the job.

189. Either way, if the disadvantage was in place because of the panel composition, the two other members of the panel except Mr. Albrecht were used for all candidates of multiple different ages, heritages and both sexes.

190. The reason why the two other panel members were used, was clearly because Mr. Cooper was the manager recruiting for the job and Mr. Jackson was being used because of his technical expertise.

The interview feedback

191. After the Claimant was unsuccessful at interview, feedback was provided to the Claimant about his interview performance.

192. There is a dispute between the Claimant and Mr. Cooper about who provided the feedback. The Claimant alleges that it was Mr. Cooper and Mr. Cooper says it was Mr. Albrecht.

193. There is very limited evidence about this issue. We were taken to nothing documenting the feedback given about the interview (rather than the Claimant's CV) or who conducted the feedback meeting. The only other reference apart from the pleadings and witness statements for the proceedings we could identify was Mr. Cooper's response to the grievance at page 773 in the bundle where he recorded at the time of the investigation that Mr. Albrecht gave the feedback and the Claimant says in his grievance that he was given feedback on 7 June 2022 in a 1:1 feedback session at page 717.

194. Consequently, we are not persuaded the feedback session on 19 May 2022 took place. It occurred on 7 June with Mr Albrecht.

195. Consequently, the claims at paragraphs 2.2.11 and 4.2.8 fail on the facts and are dismissed.

The conversation in a team meeting with Magdelena Badescu

196. In the past, when the Claimant was line managed by Ben Faulkner, Mr. Tremble accepted that part of Mr. Bhardwaj's performance review had been cut and pasted into the Claimant's and sent to him.

197. The Claimant alleged that at some point in May 2022, that during a team meeting Ms Badescu called the Claimant "Bhuv" mistaking him for Mr. Bhardwaj, "Bhuv" being the shortened version of his first name. The Claimant was known by the shortened name *"Abhi".*

198. The unchallenged evidence of the Claimant during cross examination was that Mr. Bhardwaj looked very different to the Claimant.

199. The Claimant is fairly tall, slim and does not wear glasses. He was clean shaven or had nothing more than stubble and has an obvious Indian accent. The Claimant described Mr. Bhardwaj as being of a bigger and heavier build than the Claimant, shorter and he wore glasses. The Claimant also stated that Mr. Bhardwaj had a beard covering his lips, chin and surrounding his mouth and was British born so had a British accent.

200. Consequently, there could be no mistaken identity based on looks or voices.

201. We heard no evidence from Ms Badescu. That wouldn't ordinarily be that odd if she had left the Respondent's employment, was unaware of the Tribunal proceedings or could not make the hearing because of illness or another proven reason.

202. However, the Respondent's witnesses confirmed that Ms Badescu still worked for the Respondent and was aware of the proceedings.

203. Mr. Cooper covers this claim in his statement at paragraphs 83 – 84. He says that he cannot remember Ms Badescu getting the names wrong and she would not have done that in any way other than by accident even if she had done that. She was described by him as one of the kindest people he knew. He says that Ms Badescu had gone through some very traumatic incidents in her past and that for the Claimant to have raised this *"…is very upsetting and distressing for her…"*

204. Whilst being questioned however, his evidence was significantly different to his statement. He said that Ms Badescu had regularly gotten peoples' names wrong. He explained that on one occasion she had even called Mr. Cooper "Bhuv" by mistake and he explained the reason why she had done that by stating that this was because, at the time, Ms Badescu was seriously mentally ill.

205. None of that verbal evidence was in Mr. Cooper's witness statement.

206. Mr. Cooper is white with Brown hair and a clearly English accent. He does not wear glasses that we could tell and was again clean shaven.

207. We are not persuaded by Mr. Cooper's evidence. No health documents are provided showing that Ms Badescu had mental health issues. His statement and witness evidence under questioning are very far apart and we doubt the credibility of his evidence.

208. No other reasons were put forward by the Respondent about why Ms Badescu could not give evidence or provide even a written statement about this issue to explain the situation.

Conversation with Paul Tremble on 10 May 2022

209. The Claimant alleged that he and Mr. Tremble had a conversation about his career aspirations. There was some confusion between the parties about when the discussion about age took place.

210. Mr Tremble said, when questioned about the situation, that he now recalled that there were two distinct conversations. He described the first conversation as taking place on 8 February 2022 when he was going through a SWAT analysis with his team to consider development and progression plans for all of them. These were described as being general informal chats and were also a way for Mr. Tremble to get to know the people in his team that he did not directly line manage. He added that he remembered this conversation distinctly because he felt it was a genuinely positive conversation and his unchallenged evidence was that it ended with both the Claimant and him finding common ground in liking spicy Asian food and the Claimant offering to bring him some home cooking for him to try.

211. Mr Tremble accepted that he asked the Claimant's age at this meeting, in the context of getting to know him generally and when discussing the Claimant's views that he felt he was not progressing quickly enough because of his age.

212. He also accepted that he said to the Claimant that if the Claimant was upset about the past, he couldn't change that, he could only focus on the future and changing things now and, if the Claimant was still unhappy, he might consider leaving.

213. Mr. Tremble couldn't remember any conversation on 10 May 2022. The Claimant was not sure of the date of the conversation either because he pleads it took place *"on or around"* 10 May 2022.

214. Either way, regardless of when the conversation took place, it was common ground that a conversation had happened about the Claimant's career aspirations, and the subject matter is not really in dispute except for one comment where Mr. Tremble allegedly said to the Claimant that he still had a lot more he needed to see and experience in his work life, allegedly said after

the Claimant disclosed his age.

215. We were taken to no documentary evidence supporting either sides' case and we therefore have a situation where it is one person's word against the others. Both witnesses came across as genuine about this conversation and, at this time, we find that the Claimant and Mr. Tremble had a fairly good working relationship.

216. When taking everything in the round, there is insufficient evidence that Mr. Tremble said the words the Claimant ascribes to Mr. Tremble as objectionable harassment related to age.

217. Consequently, allegation 5.1.2 in the list of issues fails on the facts and is dismissed.

The planned Kingston University collaboration

218. In April 2022, the Claimant had attended a seminar presented by a Dr. Emillio Martinez – Paneda from Imperial College London, about lithium ion battery degradation. The Claimant was impressed by the presentation and reached out to Dr Martinez – Paneda with a view to organising a meeting with him so that JLR and Imperial College might explore some sort of collaboration.

219. Dr Martinez-Paneda responded positively. Mr Cooper was initially happy for the Claimant to make contact and there are message exchanges about the fact that conversations were to be kept very high level and no trade secrets were to be discussed at page 677 in the bundle.

220. However, later on, the unchallenged evidence of the Claimant was that Mr Cooper had said this should be performed by a different team other than by the Claimant, and the project was then passed onto a colleague.

221. Then on 20 June 2022, Mr. Cooper sent an email to the team about a collaboration with Kingston University where they had come to an agreement to support a set of student projects at page 681.

222. A calendar invite was then sent to the team called Kingston/JLR kick-off meeting. This invite did not include the Claimant but included virtually all other team members including Dr Puccio and Mr. Bhardwaj.

223. The Claimant became aware that the meeting had been organised and attended by others in his team on the day after it had happened. The following exchange then took place between the Claimant and Mr. Cooper:

"Claimant: I was just wondering why I wasn't invited to the Kingston university talks yesterday? Please can you let me know. I was very eager on being involved with this activity.

AC: They were the high level kickoff talks and we had one representative from each subsection of the team. Everyone has the opportunity to be a project

mentor going forward

Claimant: please can you tell me why I wasn't chosen as the representative for damage modelling?

AC: Eugenia has academic experience and it was good to expose her to this side of things

Claimant: OK. My question wasn't about why Eugenia was chosen and not me. Rather, this meeting was about showcasing damage modelling to students to enthuse them about taking itself as a project with us. I have been working on this topic for a year now and I feel I should have been involved in that talk with the students to motivate them to take it up as a great technical topic worthy of their interest.

AC: 1. It was just discussing the terms of engagement with the lecturers
2. We weren't even covering damage modelling in detail
3. There were no students

the plan afterwards was to involve the perspective mentors for each core topic and ensure they are all involved in more detail discussions with the respective project tutors on the university side. This was very high level steps and discussing more about how we project plan.

Claimant:

1. OK period since you mentioned you had one representative from each sub section of the team, I believe I should have been included as a representative for damage modelling topic I have shown active interest in working on a university project and mentoring since April this year when I initiated talks with Dr Emilio from Imperial College. Dr Emilio was very keen on creating damage models for cell degradation and was completely on board with the idea of a collaboration after my meeting with him. Since you asked me to hand over that bit to the cell team, I did exactly that hoping you will pull me in when the Kingston discussions resume. I was then waiting on these project discussions to get involved with them but I'm not sure why you didn't include me as a representative for damage modelling topic.

2. I have been told that the attendees weren't clear about the damage modelling project and wanted more detail. This is something to be expected since it is a very niche topic and requires a novel approach to infuse the attendees to collaborate. I've been told that there is interest already from ~ 2 attendees regarding data science topic but none for the damage modelling which is concerning for me.

3. Obviously, since I wasn't on the invite, I wouldn't know if the attendees were students or lecturers. I assumed students. If it was lecturers then it becomes all the more important in my view. From my perspective, I was completely in the dark about this topic and had absolutely no idea about these discussions taking place until today. And that is not a great feeling since I was actively showing

interest in pursuing this. I even asked you several times about the progress of the university discussions regularly in our 1:1 meetings. It feels like I was completely ignored and sidelined. And this is not a very good feeling when I've been working so diligently for so long on a topic.

AC: 1. You will be involved, this was literally a high level discussion and I wanted to see how Eugenia would cope with it as she hasn't been exposed too much yet

2. Yes because we didn't have a NDA so I had to use high level bullet points and this is the purpose of the follow up sessions.

I am sorry you feel that way it was never the intention, when we engage with the other unis we can rotate people to do the initial kick off if you feel this is the right thing to do. It was impractical to have everyone attend to a high level kick off which would run sure would lead anywhere. The most important thing is refining the project scopes in reality and ensuring they entice the students to sign up to them. This is the next step in both you and Eugenia being in the damage modelling team can propose project titles to the corresponding lecturer.

Claimant: if I look at the original team which began working in VM&R, only Magdalena and myself were not invited to this. Even Dan was on the invite although he was on holiday. I remember you said sometime back that the entire team will be part of these discussions with Kingston and we will all attend this talk as a team.

AC: Yes you will just not that particular session- Bhuv wasn't even meant to go it was meant to be Aparna. As Aparna delayed her start Bhuv had to cover.

Claimant: I understand but Bhuv's attendance is not my concern here.

AC: sometimes we have to decide who is going to support won't, I've been trying to get you to work with Duncan on the power electronics. I wanted something for Eugenia to work on and it was a good opportunity to see how she did outside of her comfort zone

Claimant: Ok

AC: it's nothing against anyone, you will be involved I just wanted Eugenia to do something which she was uncomfortable with and I could see that is in the session. We didn't know whether we were even going to come to an agreement with Kingston from that kickoff so we didn't involve the others until we had a clear plan identified on how we want to proceed as a team".

224. It was common ground that Aparna was a female colleague of Indian heritage.

225. Having considered the evidence from both the Claimant and Mr. Cooper, it is clear the Claimant was not the only person missed out of the invite, Ms Badescu was too, and she is white and female.

226. We are persuaded this was poor communication from Mr. Cooper and, really, he could have either included everyone or explained why he was excluding the Claimant and Ms Badescu. He failed to do that, and we can see why the Claimant was annoyed given his interest in University projects and previous work he had done on arranging one with Dr Martinez – Padena.

227. However, given that both Indian heritage and non Indian heritage colleagues were invited and attended the meeting and given that both male and female colleagues attended the meeting, we are not persuaded the reasons for the Claimant being excluded were because of his protected characteristics.

228. On balance, the reasons given by Mr. Cooper are more probable and it appeared to us he was simply being clumsy when organising this meeting and not communicating in an effective way with all the team. In fairness to him, Mr Cooper admitted that this was poor communication when giving evidence.

The Claimant's grievance and meetings with Paul Tremble

229. On 12 September 2022, the Claimant resigned by giving one calendar months' notice.

230. The letter reads as follows:

"Dear Alex,

Please accept this email as formal notification of my intention to resign from my position as SME Powertrain Damage Modelling (on SAP and MS Teams)/ Engineer – Reliability & Damage (on circulated organisation structure) at Jaguar Land Rover. In line with my notice period, I believe my last working day at Jaguar Land Rover shall be 12 October 2022.

During my remaining time at Jaguar Land Rover, I will do everything I can to make the transition as smooth as possible and will support in whatever way I can to hand over my duties to my colleagues and team.

Please do let me know if there is anything further I can do to help the team with this transition and I would be happy to help.

Thank you.

Kind regards,
Abhinav Sharma"

231. On the same date, he submitted a grievance document entitled *"Racial and age discrimination at Jaguar Land rover plc"*. Attached in a separate document, but on the same email, was an annotated set of appendices starting at page 561 and ending at page 691.

232. The grievance and appendices were forwarded onto Mr. Tremble and Ellie

Quelch, HR Business Partner, for advice about the next steps by Mr. Cooper.

233. The grievance complains about discrimination by Mr Tremble and Mr. Cooper within it, as well as other senior managers.

234. The Claimant alleges that after this grievance was submitted, he was subjected to various acts of victimisation starting with an alleged discussion between him and Mr Tremble.

Conversation on 12 September 2022

235. After receiving the resignation letter, grievance and appendices, Mr Tremble read the grievance and appendices before trying to contact the Claimant to discuss them as per his witness statement at paragraph 21 *"I spoke to Abhi again on 13 September 2022 as I had skimmed through the grievance notes to understand the basis of his complaints, and asked to speak to Abhi in private to discuss."*

236. There was also a conversation between both Mr. Cooper and Mr Tremble as per Mr. Tremble's statement at paragraph 18, following which Mr Tremble messaged the Claimant on teams to organise a discussion about them. The message chain reads as follows:

"[12/09/2022 11:03] Paul Tremble
Hi Abhi, Alex just chatted me ref your resignation, very sorry to hear this - can we have a quick call when you're free?

[12/09/2022 11:04] Abhinav Sharma (Unverified)
Hi Paul,
Sure. I have a sprint planning meeting at 11:05-12am and a meeting with Jerzy from 1-2pm.
When would you like to talk?

[12/09/2022 11:05] Paul Tremble
thanks, I'm flexible, maybe just chat when you're free?

[12/09/2022 11:05] Abhinav Sharma (Unverified)
Ok, I will. Thanks

[12/09/2022 11:25] Abhinav Sharma (Unverified)
Hi Paul,
Sprint planning finished early and I am available now for a chat.

[13/09/2022 15:43] Paul Tremble
Hi Abhi, sorry running late, ready in 2 mins

[13/09/2022 15:44] Abhinav Sharma (Unverified)
No problem, where would you like to have the 1:1?"

237. Consequently, on Mr. Tremble's own evidence, he read both the grievance and

the appendices and understood generally what the allegations were about. Further, both Mr. Tremble's and Mr. Cooper's statements provided no detail about what they discussed during their chat. It was, in our view, highly unlikely that Mr. Cooper and Mr Tremble did not chat through the content of the grievance with each other during their conversation at paragraph 18 of Mr. Tremble's statement.

238. The Claimant alleges that Mr Tremble victimised the Claimant at a discussion on 12 September 2022 trying to get him to withdraw the grievance.

239. We are not persuaded such a discussion took place on 12 September 2022. Yes, there was talk of a conversation happening with Mr Tremble on the 12 September by messages, but we are not persuaded that any detailed discussion between the Claimant and Mr. Tremble took place until 13 September 2022.

240. We are supported in this finding by the Claimant's witness statement that he submitted to try to extend time about some discrimination complaints that were eventually struck out by Camp EJ. This was, namely, at para 33 (page 134 in the bundle) where he said *"33. Paul Tremble victimised, threatened and intimidated me the very next day after I filed my formal grievance in order to dissuade me from proceeding with my formal grievance…"*

241. The grievance was submitted on 12 September 2022. Consequently, by the Claimant's own statement, the victimising conversation was alleged to have taken place the next day on 13 September 2022, not on 12 September 2022.

242. Consequently, allegation 7.3.1 fails on the facts and is dismissed.

The meeting on 13 September 2022

243. It was common ground that, following the message exchange already quoted above, a meeting took place in an office in Deck X, between the Claimant and Mr Tremble. The office had not been used for some time due to the pandemic and home working.

244. The first allegation the Claimant makes about this meeting, is that Mr Tremble attempted to intimidate the Claimant by mentioning that this was a secret room and you could have a fight in there if you needed to or it could be used as a fight gym.

245. Having listened to the recording, we are not persuaded that the Claimant was in fact intimidated in a physical way at this meeting, or that the mention of a fight gym or having a fight in the room was anything other than an attempt by Mr Tremble to soften a meeting he thought might be difficult by making a joke.

246. Unbeknown to Mr Tremble, the Claimant recorded the entirety of this conversation covertly on his phone.

247. Regardless of the intentions or motivation put forward by Mr Tremble, which we

discuss later, there are a number of comments made by Mr Tremble that are significant. We summarise these below:

247.1. Mr Tremble said he supported some of the allegations the Claimant made in his letter about poor management behaviour saying that some of what was reported was the sort of thing that the company was trying to bring out and change in the leadership transformation project that was currently underway.

247.2. Mr Tremble identifies that there are some parts of the Claimants grievance where he says *"it looks a bit like you're looking for problems and that's my concern. That it will undermine some of the stuff that is really a problem."*

247.3. Mr Tremble says that some parts of the Claimant's grievance come across as the Claimant "looking for problems".

247.4. He alleges the Claimant is being "petty" about some of the allegations;

247.5. Mr Tremble continues by saying that if he were the Claimant, he would take some of that "stuff" out of the grievance;

247.6. He questions the relevance of some of the points put forward by the Claimant, such as, the Claimant comparing himself to a colleague John Harris when considering progression opportunities and promotion.

247.7. Mr Tremble stated that he was worried that if you put all of the content of the grievance together, it looked like the Claimant was looking for problems and he would "burn bridges".

247.8. He mentioned that people have "long memories" and people were well connected with other companies and that Mr Tremble would hate for that to affect the Claimant in the future.

247.9. Mr Tremble also says *"and one thing I must say as well is the bit about the Indian colleague thing as well, where you said again, like it's a racial connotation attached to it. And again, I'm looking at that from the outside and it's like well why is there any racial connotation there? And again I just think it's up to you I'm trying to help you I don't think you shouldn't raise a grievance on that stuff if it has affected your well-being as well absolutely but I just think you've put so much in there that's not necessarily relevant or obviously relevant and is maybe very subjective that it then undermines the stuff that really is clearly just wrong. Do you see what I'm saying? It looks like you're just trying to you know throw your teddies out a bit potentially."*

247.10. Mr Tremble suggests that the Claimant didn't need to leave and there were better ways of trying to resolve these issues. He explained that he spent a lot of time reading the grievance the day before and wanted to make sure that he understood it all and it might be seen that some of

the things mentioned in it aren't really there.

247.11. Mr Tremble later mentioned that Ben Twining and Iain Gray who are both one grade below director level at the Respondent, will see the Claimant's grievance. He then says that he believes these individuals will simply go *"you know this person is just on a bit of a mission to paint some bad pictures that's all."*

247.12. Mr Tremble also stated that he once had conversations where people have applied for jobs before and it was a shame that he believed the Claimants grievance would reflect badly on him when he's got a very clean career up to now with JLR and he's had people in the past that have applied for jobs and he's *"… kind of gone like yeah I wouldn't employ them…"*

247.13. Further, Mr Tremble stated that he couldn't see anything positive coming out of the grievance exercise and alluded to the fact that if this was sent in other than as a grievance, then he gave his word to the Claimant he could sit down with the people involved to try to resolve matters. He said he didn't think the grievance would amount to anything and might end up being "just a nothing".

248. The meeting came to an end when Mr. Tremble started to appreciate the outcomes the Claimant wanted. He said in evidence that he thought the Claimant was initially doing this for other people so they wouldn't be subject to the same treatment. In our view, when he read the outcome part of the grievance again and appreciated that the Claimant was asking for compensation, that's when he appears to have brought the meeting to a close.

249. Having reviewed the transcript and with Mr Tremble having admitted during questioning that he was upset and shocked at the allegations being made in the grievance, some of which were against him, and he had conducted no investigation into any of the matters before having the conversation with the Claimant, it is clear that the purpose of this meeting with the Claimant was to try to get the Claimant to do a number of things. These were to withdraw his resignation, withdraw at least some parts of the grievance including the racial allegations made within it and to follow a less formal route of redress for the perceived behaviours the Claimant had taken exception to.

250. Clearly, a significant part of the reason why Mr Tremble had this conversation with the Claimant was because the Claimant had raised complaints of race discrimination against him, which had upset Mr. Tremble. We are not convinced Mr. Tremble's actions would have been so swift or stark if the allegations made in the Claimant's grievance had simply been non- discriminatory ones.

251. We are also content the Claimant perceived this conversation as Mr Tremble suggesting he had committed some sort of crime by raising a grievance about discrimination, as he said in his statement at paragraph 185. We also find that he also perceived it as a threat that if he didn't withdraw parts of his grievance then it could adversely affect his career.

252. We are not however persuaded that Mr Tremble deliberately set out to commit any victimisation of the Claimant. We believe him when he said he was effectively trying to communicate the culture within the Respondent and the wider automotive industry, namely, that they do not take kindly to people who raise grievances.

253. It also seems clear that he had an emotional reaction to the discrimination allegations made by the Claimant and he impulsively acted upon that emotional reaction.

The exclusions from meetings on 4 October 2022

254. It was not in dispute that Mr Cooper had asked the Claimant in front of his colleagues not to attend the last few team meetings that would take place during his notice period and that he should not come into work on 11 October 2022, his last but one day of work.

255. Mr Cooper's reasons for asking the Claimant not to attend team meetings anymore were because the next few meetings would discuss strategic issues. The reason this was an issue was said to be because the Claimant was being cagey about where his next job role was and Mr. Cooper was concerned that the Claimant would be commencing employment with a competitor. It was also explained by Mr Cooper that the reason the Claimant had not been put on garden leave when he handed his notice in was because he was still working on projects and it was helpful to have his input to try to get those projects completed before he left his employment.

256. When questioned about garden leave, Mr. Cooper was asked how many other people had been excluded from meetings in their notice period and he said none to his knowledge, but also that people who were definitely going to competitors were usually put on garden leave. With the Claimant, he didn't know but had a suspicion. This explanation differs slightly from paragraph 77 of his statement where he said he knew the Claimant was going to a competitor.

257. Mr. Cooper explained that the Claimant was asked not to attend work on 11 October 2022 because it was a strategic away day so for similar reasons to the team meetings.

258. The Claimant claims that he was excluded from these meetings because he put in his grievance for discrimination. He claims that no other employee was excluded and the reasons given by Mr. Cooper did not make sense because Mr. Cooper then discussed the content of the team meeting on 4 October 2022 with him separately and there was a transcript to prove it at page 2 of the additional transcripts the parties agreed could be admitted into evidence.

259. The transcript is short and says as follows where significant:

"04 Oct 2022

220. Alex- Any items you want to discuss with me?

221. Abhinav- No. Nothing really. Not at this point. I think it was just the handover that I just wanted to clarify, like, how you want the pack and everything. I think it's it's pretty much either it's all done or, you know, sort of if you want to go to the handover that way, so it'd be okay.

222. Alex- Yeah. So I'm I'm trying to give you as much time as I can rather than sort of there's a lot of stuff going on and then I'll just wait too.

223. Abhinav- Right.

224. Alex- And once you finish your hand over pack, you're more than welcome to be involved. But I think the number one priority is making sure the work which we agreed will be finished in time is done.

225. Abhinav- Mhmm.

226. Alex- So as soon as that's done, we can then sort of involve you in some of the other stuff as well.

227. Abhinav- Okay.

228. Alex- Do you get what I mean? I am more than happy. Like, this is what we're doing at the moment. We're doing, like, a whole process, like, with the SIPOC.

229. Abhinav- No. It's fine.

230. Alex- So if you if you get if you get time, you can go through this.

…

234. Alex- But it's one of those where we've agreed to finish certain things. We need to make sure it's done. So I'm trying to make sure we prioritize that. I'm not trying to be mean or anything. I'm just trying to make sure that what we agreed will be done is done.

235. Abhinav- hmm

236. Alex- Just trying to make sure you've got the time to do it. Because I appreciate it. There's a there's a lot to do.

…

239. Abhinav- Yeah.

240. Alex- yeah. There's that. So you remember the team board? The wave 2 stuff? So I'll show you where it is.

241. Alex- See the there's too many things on the team board now.

242. Abhinav- Yeah.

243. Alex- So this is on the team that This is what we're doing. This is what we've been doing. It doesn't actually work. So, all we've done is populate this. Populate what FPAs we're doing when so the video, FPA, damage models and so on. So, what we've done is map out till Christmas. We've actually made this a bit clearer. Because if you remember on the day, we sort of said we need to fill this out."

260. This is good evidence, confirming one of the reasons Mr. Cooper gave namely that he wanted the Claimant to complete agreed projects before he left. The transcript is also very non-specific. The Claimant alleges that Mr. Cooper was sat with him with his laptop open showing him all the strategic items they discussed. However, the transcript seems very generic to us and doesn't support the Claimant's contention.

261. It also struck us that it was weeks after the resignation and grievance were submitted, that these decisions were made. If Mr. Cooper really wanted to exclude him because he had raised a grievance alleging discrimination, then on balance we find he would have taken that opportunity much sooner.

262. We are therefore persuaded the Claimant was asked by Mr. Cooper not to attend team meetings and not to attend work on 11 October 2022, because of the strategic nature of what was being discussed when he was possibly going to a competitor as Mr. Cooper said.

The grievance process

263. Once the Grievance was received, Mr. Cooper immediately raised an HR ticket through the generic HR services team.

264. On 26 September 2022, Ms Johal emailed the Claimant to let him know that she had picked up the grievance and requested the Claimant confirmed whether he still wished to pursue it given he was leaving. The Claimant confirmed that he did.

265. One of the allegations raised by the Claimant was against an LL4 manager. This meant that an HR decision as taken to have an LL3 director level colleague investigate the grievance.

266. Ms Johal explained that it often took some time to find a director level manager to investigate issues because there aren't many of them in the organisation. Mr Becker who is an LL3 manager said there were only 65 LL3 directors globally.

267. Ms Johal explained that by 5 October 2022, they had still not identified an LL3 manager who could undertake the investigation. Ms Quelch was the person trying to organise this and she was struggling so she updated the Claimant by email at page 766 in the bundle. There are then further updates on

approximately monthly intervals to 30 January 2023.

268. On 30 January 2023, Mr. Becker was identified by another HRBP Ms Lucy Davies as being able to do it and the Claimant was notified of this by Ms Johal by email.

269. On 20 February 2023, Mr Becker met with Ms Johal to take advice about the process.

270. Ms Johal also explained that when an employee had left the Respondent's employment and raised a grievance upon leaving, it was the Respondent's process not to invite ex-employees to grievance meetings once they had left employment. She accepted this appeared to be in breach of the Respondent's grievance procedure, but believed the rest of the procedure was carried out. Ms Johal also stated that the Company wouldn't offer ex-employees an appeal either and that was also standard practice.

271. In addition, in her email to the Claimant from the time, she explained to him that his grievance was very detailed and therefore a meeting would not be necessary at page 766.

272. Ms Johal was a straightforward witness and we believe her evidence. She accepted that the delay was regrettable.

273. The Respondent therefore agreed that allegations at paragraph 48a – b took place.

274. It was also not disputed by Mr. Becker who conducted the investigation, that neither Carl White nor Ben Faulkner were interviewed as part of the process.

275. Mr. Becker admitted that he was informed that Mr. White had left the Respondent in November 2022 and therefore by the time Mr Becker had agreed to take on the investigation, he could not be interviewed.

276. Mr. Becker also admitted that he was told by HR at the time he was conducting the investigation, that Ben Faulkner had left the Respondent. However, that information was inaccurate and Mr. Faulkner could therefore have been interviewed and wasn't.

277. Again, Mr. Becker was a straightforward witness who was not from the Claimant's department and appeared to us to be independent. There was insufficient evidence suggesting otherwise.

278. The Claimant tried to persuade us that Mr. Becker somehow knew Mr. Tremble from previous employment and inferred this meant Mr Becker was not independent, but we are not persuaded this was the case. Mr Becker's and Mr Tremble's last encounter occurred some 8 years before these events and was too remote to have any impact, in our judgment.

279. Mr. Becker also accepted he did not interview the Claimant during the

grievance investigation.

280. He said he did not interview the Claimant because he followed HR's advice that they don't do that if the person has left employment.

281. He also said at paragraph 7 in his statement that he felt the grievance was sufficiently detailed that he did not need to interview the Claimant. We believe him because that advice is corroborated by Ms Johal.

282. Mr Becker also accepted that the Claimant was not offered an appeal when he requested one. That request was made on 24 April 2023. He said again this was because Ms Johal had advised him that it was normal practice when a person had left that no appeal was offered. He said he followed that advice. Again, Ms Johal corroborates this. Both witnesses were straightforward witnesses and we believe them. Indeed, their evidence is supported by a contemporaneous email from Ms Johal to the Claimant at page 826 in the bundle.

283. A summary of the grievance points and who was involved was provided to Mr Becker by Ms Davies, which he said he used to decide who to interview and what to investigate.

284. As a result of that plan, Mr Becker interviewed Mr Bhardwaj, Mr. Cooper and Mr. Tremble whose meeting notes are in the bundle.

285. Mr. Becker was assisted to write the grievance outcome letter he sent to the Claimant by Ms Johal. He accepted that it is his letter despite the assistance he received and he approved the letter. A copy of the letter is in the bundle at pages 813 – 825.

286. In our view, Mr. Becker responded to all the Claimant's grievances and did not uphold them. He says that some of the allegations were so historic that it was not appropriate to look into them. Indeed, some of the allegations dated back to 2017 some 5 years before the grievance was submitted.

287. Mr. Becker spoke to most of the relevant witnesses except those who had left the organisation or about whom he had been erroneously informed had left the organisation.

288. One of the allegations the Claimant made was that Mr Becker ignored evidence he had put forward as part of the grievance. There is insufficient evidence that evidence was ignored. We are persuaded that Mr. Becker looked at all the evidence available and he simply didn't form the same view as the Claimant and rejected the grievance.

289. Yes, there are parts of the grievance that could have been looked at in more detail by Mr. Becker. However, we believe him when he said he was effectively informed that the Respondent does not look into grievances from employees who had left the organisation in as much detail as they would a person who was still employed.

290. Either way, the reason why there are factual inaccuracies in the outcome letter and why all the items at paragraph 48 a – d and f to h happened was not because the Claimant raised a grievance about discrimination, but because Mr. Becker was following advice about the procedure or made decisions based on the information he had in front of him as he understood it. He accepted that there were mistakes in the letter now he had been provided with more information as part of these proceedings.

291. The Claimant claimed that the fact he was not interviewed and the callous way he was treated jeopardised the grievance investigation at paragraph 48 e of the amended Grounds of Claim.

292. However, there is insufficient evidence that either Mr Becker, Ms Johal or anyone else involved in conducting or advising about the Claimant's grievance procedure behaved callously towards the Claimant or that the fact he was not interviewed jeopardised the grievance procedure.

The Law

Burden of proof

293. Section 136 of the Act provides as follows:

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

294. Direct evidence of discrimination is rare and Tribunals frequently have to consider whether it is possible to infer unlawful conduct from all the material facts. This has led to the adoption of a two-stage test, the workings of which were described in the annex to the Court of Appeal's judgment in **Wong v Igen Ltd (formerly Leeds Careers Guidance) [2005] ICR 931**, updating and modifying the guidance that had been given by the Employment Appeal Tribunal in **Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205.**

295. The Claimant bears the initial burden of proof.

296. At the first stage, the Tribunal does not have to reach a definitive determination that there are facts which would lead it to the conclusion that there was an unlawful act. Instead, it is looking at the primary facts to see what inferences of secondary fact could be drawn from them.

297. As was held in **Madarassy v Nomura International plc [2007] IRLR 246**, "could conclude" refers to what a reasonable Tribunal could properly conclude from all of the evidence before it, including evidence as to whether the acts complained of occurred at all. In considering what inferences or conclusions can thus be drawn, the Tribunal must assume that there is no adequate explanation for those facts.

298. Unreasonable behaviour of itself is not evidence of discrimination – **Bahl v The Law Society [2004] IRLR 799** – though the Court of Appeal said in **Anya v University of Oxford and anor [2001] ICR 847** that it may be evidence supporting an inference of discrimination if there is nothing else to explain it.

299. In a harassment case, the first stage of the burden of proof is particularly relevant to establishing that the unwanted conduct was related to the protected characteristic.

300. If the burden of proof moves to the Respondent, it is then for it to prove that it did not commit, or as the case may be, is not to be treated as having committed, the allegedly discriminatory act.

301. To discharge that burden, it is necessary for the Respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the prohibited ground. That would require that the explanation is adequate to discharge the burden of proof on the balance of probabilities, for which a Tribunal would normally expect cogent evidence.

302. All of the above having been said, the courts have warned Tribunals against getting bogged down in issues related to the burden of proof – **Hewage v Grampian Health Board [2012] ICR 1054**.

303. In some cases, it may be appropriate for the Tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, in the absence of a satisfactory explanation, would have been capable of amounting to a prima facie case of discrimination **Laing v Manchester City Council UKEAT/0128/06/DA**. Here Elias P as he then was said this at paragraphs 75 and 76:

"75. The focus of the Tribunal's analysis must at all times be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a Tribunal to say, in effect, "there is a nice question as to whether or not the burden has shifted, but we are satisfied here that even if it has, the Employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race

76. Whilst, as we have emphasised, it will often be desirable for a Tribunal to go through the two stages suggested in Igen, it is not necessarily an error of

law to fail to do so. There is no purpose in compelling Tribunals in every case to go through each stage. They are not answering an examination question, and nor should the purpose of the law be to set hurdles designed to trip them up. The reason for the two stage approach is that there may be circumstances where it would be to the detriment of the employee if there were a prima facie case and no burden was placed on the employer, because they may be imposing a burden on the employee which he cannot fairly be expected to have discharged and which should evidentially have shifted to the Employer. But where the Tribunal has effectively acted at least on the assumption that the burden may have shifted and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever."

Harassment

304. Section 40 of the Act renders harassment of an employee unlawful. Section 26 defines harassment as follows:

"(1) A person (A) harasses another (B) if –

(a) A engages in unwanted conduct related to a relevant protected characteristic; and

(b) the conduct has the purpose or effect of:

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

…
…

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account:

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect".

305. The Tribunal is therefore required to reach conclusions on whether the conduct complained of was unwanted and, if so, whether it had the necessary purpose or effect and, if it did, whether it was related to the protected characteristic.

306. If the Claimant proves any of the conduct they complain about, it was unwanted. There is no need to say anything further about that. However, it must have lasting effects rather than being transitory.

307. It is clear that the requirement for the conduct to be "related to" the protected characteristic needs a broader enquiry than whether conduct is "because of the

protected characteristic" like direct discrimination **Bakkali v Greater Manchester Buses (South) Limited UKEAT/0176/17**.

308. What is needed is a link between the treatment and the protected characteristic, though comparisons with how others were or would have been treated may still be instructive. In assessing whether it was related to the protected characteristic, the form of the conduct in question is more important than why the Respondent engaged in it or even how either party perceived it.

309. A mere failure to investigate a complaint of harassment will not in and of itself be an unlawful action. **Home Office v Coyne [2000] IRLR 838.**

310. It is clear that the inaction of an employer can be unwanted conduct. However, if that decision is taken on grounds unrelated to the protected characteristic, then it will not be harassment **Conteh v Parking Partners Limited [2011] ICR 341.**

311. The question of whether the Respondent had either of the prohibited purposes – to violate the Claimant's dignity or create the requisite environment – requires consideration of each alleged perpetrator's mental processes, and thus the drawing of inferences from the evidence before the Tribunal **GMB v Henderson [2016] EWCA Civ 1049.**

312. As to whether the conduct had the requisite effect, there are clearly subjective considerations – the Claimant's perception of the impact on her (they must actually have felt or perceived the alleged impact) – but also objective considerations including whether it was reasonable for it to have the effect on this particular Claimant, the purpose of the remark, and all the surrounding contexts. That much is clear from section 26 and was confirmed by the Employment Appeal Tribunal in **Richmond Pharmacology Ltd v Dhaliwal [2009] ICR 724.** The words of section 26(1)(b) must be carefully considered. Conduct which is trivial or transitory is unlikely to be sufficient.

313. Mr. Justice Underhill, as he then was, said in that case:

"A Respondent should not be held liable merely because his conduct has had the effect of producing a proscribed consequence: it should be reasonable that that consequence has occurred. That…creates an objective standard … whether it was reasonable for a Claimant to have felt her dignity to be violated is quintessentially a matter for the factual assessment of the Tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question. One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt …"

and

"…We accept that not every racially slanted adverse comment or conduct may

constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and Tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase…"

314. Similarly in the case of **HM Land registry v Grant [2011] EWCA Civ 769**, Elias LJ as he became said, when discussing the descriptive language of subparagraph 1:

"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

315. It is for the Claimant to establish the necessary facts which go to satisfying the first stage of the burden of proof. If they do, then it is plain that the Respondent could have harassed them even if it was not its purpose to do so, though if something was done innocently that may be relevant to the question of reasonableness under section 26(4)(c).

316. Violating and intimidating are strong words, which will usually require evidence of serious and marked effects. An environment can be created by a one-off comment, but the effects must be lasting. Who makes the comments, and whether others hear, can be relevant, as can whether an employee complained, though it must be recognised that is not always easy to do so. Where there are several instances of alleged harassment, the Tribunal can take a cumulative approach in determining whether the statutory test is met **Driskel v Peninsula Business Services Ltd. [2000] IRLR 151.**

Direct discrimination

317. The Equality Act 2010 defines direct discrimination as:

"13. Direct discrimination

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

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4)…

(5)…

(6)…

(7)…

(8)…

318. The Employment Appeal Tribunal summarised the proper approach to the facts in cases under the Act in **Talbot v Costain Oil, Gas & Process Ltd and others [2017] I.C.R. D11:**

"(1) It is very unusual to find direct evidence of discrimination;

(2) Normally the Tribunal's decision will depend on what inference it is proper to draw from all the relevant surrounding circumstances, which will often include conduct by the alleged discriminator before and after the unfavourable treatment in question;

(3) It is essential that the Tribunal makes findings about any "primary facts" which are in issue so that it can take them into account as part of the relevant circumstances;

(4) The Tribunal's assessment of the parties and their witnesses when they give evidence forms an important part of the process of inference;

(5) Assessing the evidence of the alleged discriminator when giving an explanation for any treatment involves an assessment not only of credibility but also reliability, and involves testing the evidence by reference to objective facts and documents, possible motives and the overall probabilities; and, where there are a number of allegations of discrimination involving one personality, conclusions about that personality are obviously going to be relevant in relation to all the allegations;

(6) The Tribunal must have regard to the totality of the relevant circumstances and give proper consideration to factors which point towards discrimination in deciding what inference to draw in relation to any particular unfavourable treatment;

(7) If it is necessary to resort to the burden of proof in this context, section 136 of the Equality Act 2010 provides in effect that where it would be proper to draw an inference of discrimination in the absence of "any other explanation" the burden lies on the alleged discriminator to prove there was no discrimination."

319. The comparison in direct discrimination cases must be a comparison focussing on the individual claiming to have been discriminated against. Therefore, in **Her Majesty's Chief Inspector of Education, Children's Services and skills v Interim Executive Board of C School [2017] EWCA Civ 1426** where an Islamic faith school segregated boys and girls the comparison was not whether girls as a group had been treated less favourably because of their sex, it should

be whether an individual girl who wanted to socialise with boys had been treated less favourably because of her sex. The Court of appeal said at paragraph 50 of the judgment:

"…The starting point is that EA 2010 s.13 specifies what is direct discrimination by reference to a "person". There is no reference to "group" discrimination or comparison. Each girl pupil and each boy pupil is entitled to freedom from direct discrimination looking at the matter from her or his individual perspective."

320. There are two aspects to direct discrimination that must be considered by the Tribunal. One is less favourable treatment and the other is the reason for the treatment complained about with the associated causal link between the two.

321. Unreasonable behaviour should not give rise to an inference of discrimination **Strathclyde Regional Council v. Zafar [1997] UKHL 54** it is usually an irrelevant factor. However, it has been held by the EAT that unreasonable behaviour can go to the credibility of a witness who is trying to argue that their motives were not motivated by the characteristic in question **Law Society v Bahl [2003] IRLR 640 EAT.**

322. In the same way that less favourable treatment does not mean unreasonable treatment, it also does not mean detrimental treatment or unfavourable treatment **T-System Ltd v Lewis UKEAT/0042/15 (22 May 2015, unreported)** or simply different treatment **Shmidt v Austicks Bookshops Limited [1977] IRLR 360 EAT.** There must be a comparison either actually or hypothetically that shows less favourable treatment.

323. It is the treatment rather than the consequences of the treatment that are the subject of the comparison **Balgobin v Tower Hamlets London Borough Council [1987] ICR 829.**

324. Whether less favourable treatment is proven requires a comparison to a suitable comparator. There is a general requirement that there be no material difference between the people being compared either actually or hypothetically.

325. Section 23 of the 2010 Act says:

"23 Comparison by reference to circumstances

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

(2)…

(a)…
(b)…

(3)…
(4)…

326. The comparators need not be identical **Hewage v Grampian Health Board [2012] UKSC 37** because if every single aspect of a comparator was the same between the complainant and comparator, then the less favourable treatment could only be because of the protected characteristic, which would make it almost impossible to defend a direct discrimination claim.

327. Following the case of **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11**, it will often be appropriate to consider the reason for the treatment first and then decide whether that reason meant the treatment was less favourable. Therefore, if the reason for the treatment was because of the protected characteristic, then it might be that the finding of less favourable treatment is inevitable.

328. Whether something is less favourable treatment is an objective test **Burrett v West Birmingham Health Authority [1994] IRLR 7 EAT**, but if a subjective view is being put forward as showing why the complainant says the treatment was less favourable, then such a view can be upheld as evidencing less favourable treatment so long as the view held was reasonable **Birmingham City Council v Equal Opportunities Commission [1989] IRLR 173 HL.**

329. When considering hypothetical comparators, it is necessary for evidence to be put forward about how actual comparators who are in different but not wholly dissimilar situations have been treated to build the neighbourhood from which it can be determined how a hypothetical comparator in the same or similar circumstances would have been treated **Vento v The Chief Constable of West Yorkshire [2001] IRLR 124 EAT.**

330. In all cases, it is irrelevant whether the alleged discriminator has the same protected characteristic as the complainant as per s24 of the 2010 Act.

331. Where there is more than one reason put forward for why the alleged discriminator treated the Complainant how they allegedly did, following the case of **Barton v Investec Henderson Crosthwaite Securities limited [2003] IRLR 332,** the characteristic should not play any part in the reason(s) for the treatment complained of, but if it does, it must be a significant factor in being more than trivial and following **R v Commission for Racial Equality, ex parte, Westminster City Council [1984] IRLR 230**, the characteristic needs to be a substantial or effective cause of the discriminatory treatment, but doesn't need to be the sole or intended cause of it.

332. In addition, there is no legal causal link as such. Instead, the Tribunal should focus on the "real reason" why the alleged discriminator subjected the complainant to the treatment they allege was direct discrimination **Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48**, which is a subjective rather than legal test looking at the mental processes of the alleged discriminator.

333. We have also reminded ourselves that it is open to the Tribunal, when considering the real reason why something was done or not done, to find our

own reason for why something was done, based of course on the evidence before us, regardless of whether that reason has been put forward by either the Claimant or Respondent. We are not bound to find the reasons for something taking place are either as the Claimant submitted or as the Respondent submitted. What the evidence tells us the actual real reason is, is what matters.

334. Following **R v The Governing Body of JFS and the Admissions Appeal Panel [2009] UKSC 15**, the following approach should be taken:

    334.1. Where it is self-evident that discrimination is taking place because there is reference made to the protected characteristic, it is not necessary to analyse the motives of the discriminator, they are irrelevant;

    334.2. Where discrimination is not obvious, it is necessary to analyse the motivation of the alleged discriminator but only for determining whether the characteristic played any part in the alleged discriminatory behaviour;

    334.3. In all other circumstances, motivation is irrelevant to a direct discrimination claim.

335. Unintentional direct discrimination done with or without good intention is therefore just as unlawful as intentional direct discrimination for example see **Khan v Royal Mail Group [2014] EWCA Civ 1082** and **Ahmed v Amnesty International [2009] IRLR 884.**

336. To sum up the current situation about causation in direct discrimination cases, Underhill LJ said in the case of **CLFIS (UK) Limited [2015] IRLR 562:**

    “As regards direct discrimination, it is now well-established that a person may be less favourably treated "on the grounds of" a protected characteristic either if the act complained of is inherently discriminatory (e.g. the imposition of an age limit) or if the characteristic in question influenced the "mental processes" of the putative discriminator, whether consciously or unconsciously, to any significant extent…”

Victimisation

337. Section 27 of the 2010 Act states where relevant:

    “27 Victimisation

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

        (a)B does a protected act, or

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

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

(a)bringing proceedings under this Act;

(b)giving evidence or information in connection with proceedings under this Act;

(c)doing any other thing for the purposes of or in connection with this Act;

(d)making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule."

338. For the burden of proof to shift in a victimisation case, there must not only be evidence of detrimental treatment and a protected act, but there must also be evidence of facts actual or inferred suggesting a causal link between the two after **Chief Constable of Greater Manchester Police v Bailey [2017] EWCA Civ 425.**

339. The employee must be subjected to a detriment. The concept of detrimental treatment has long been said to include and/or be interchangeable with being placed at a disadvantage after **Ministry of Defence v Jeremiah [1979] 3 All ER 833 and Jesudason v Alder Hey Children's NHS Foundation Trust [2020] IRLR 374** albeit that whether something is a detriment or not is to be taken from the subjective view of the alleged victim subject to the test of reasonableness.

340. Similarly, it has been said that unfavourable treatment is analogous with detriment. In a discrimination arising in consequence of disability case, as to what constitutes "unfavourable treatment", the Supreme Court **in Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230** held that little was likely to be gained by differentiating unfavourable treatment from analogous concepts such as "detriment" found elsewhere in the Act, referring to a relatively low threshold of disadvantage being needed. One could answer the question by asking whether the Claimant was in as good a position as others.

341. Less favourable treatment arguments are not in accordance with the correct statutory wording of s27. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: **Shamoon v Chief Constable of the Royal Ulster**

Constabulary [2003] ICR 337 HL. Therefore, for detriment to be proven, it is for the Claimant to show that they were or would have been, in their subjective view, placed at a disadvantage and that it was objectively reasonable for them to have held that view.

342. The same causation test set out in **Khan,** applies to victimisation claims. It is pretty much the same test as for direct discrimination. The Tribunal must decide what was the real reason why the alleged discriminator committed the detrimental treatment. If it was because of the protected act, the Claim prohibited conduct is made out.

343. We also note what was said by Lord Nicholls in **Khan** at paragraph 16 namely *"the primary object of the victimisation provisions… is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory rights or are intending to do so."* This holds true under the 2010 Act.

344. In determining if the real reason was because of the protected act, the Tribunal must analyse the mental process of the person to decide whether consciously or subconsciously, the detrimental treatment was because of the protected act in whole or in part and, if in part, whether that was an effective or substantial cause for the detrimental treatment. Conscious motivation to discriminate is not required **Nagarajan v London Regional Transport [1999] IRLR 572**.

345. What counts as being a substantial or effective cause of the treatment is discussed in **Imperial College Healthcare NHS Trust v Matar [2023] IRLR 264,** as referred to in **Szucs v Greensquare Group Limited [2024] EAT 160,** the causation test for victimisation continues to vex lawyers. In **Matar,** Eady P preferred the *In no sense whatsoever"* test for causation.

346. In **Suczs,** HHJ Auerbach provides the correct test at paragraph 40 when discussing the influence of the protected act on alleged detrimental treatment in victimisation claims: *"… It must be an element which has no influence, is not material or operative on the reason why a decision was made or an employee was treated to their detriment. If that were not the case, the phrase "in no way whatsoever" would have no real force. That phrase is one that tends to sum up all other phrases that have been used in the case law. "In no way whatsoever" implies that the protected act is a material influence or an operative part of the reason why a decision is made."*

347. The correct causation test is therefore that the detrimental treatment must in no way whatsoever be influenced by the protected act.

348. Then there is the case of **Martin v Devonshires Solicitors [2011] UKEAT/0086/10.** This has been cited, by the Respondent, as authority that for a person to victimise another they must have knowledge of the protected act and the protected act must also be sufficiently specific for the Respondent to understand its implications.

349. However, **Martin** is not authority for that proposition as **Szucs** above supports. It is authority only for the fact that detrimental treatment done for a reason

which is properly separable from the protected act itself, such as for example the manner the protected act was done or perhaps an improper way in which information has been gathered to support the allegations made in the protected act, is not done because of the protected act itself.

350. Another example is **Woods v Pasab Limited (t/a Jones Pharmacy) [2012] EWCA Civ 1578.** Here the Claimant had said that the Company had a *Little Sikh club that only look after Sikhs".* The Claimant was dismissed because the manager dismissing her had the view that this was a racist comment by the Claimant not because the comment was in fact an allegation of race discrimination against the Respondent. That dismissal was upheld as not being victimisation because the allegation was not made against the dismissing manager and the motivating factor behind the decision was the genuine belief the Claimant was being racist.

351. Knowledge of the protected act must still be present as per **IPC Media Limited Millar IRLR [2013] 707**. However, it is sufficient in our view that the alleged perpetrator simply knew of the protected act being done and the protected act was about discrimination. Consequently, if a person would have treated someone in a certain way for any grievance, rather than a discrimination grievance, that does not prove victimisation because the issue influencing the treatment is the grievance but not the fact it is a grievance alleging discrimination. It is the fact that the grievance had discrimination in it that must have caused the discriminator to behave as they did in whole or part. This was decided in a number of cases such as **Cornelius v University of Swansea [1987] IRLR 141** and **Khan** above.

352. We also refer to paragraphs 9.8 to 9.9 of the EHRC Code of practice for employment, which says:

"9.8 'Detriment' in the context of victimisation is not defined by the Act and could take many forms. Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards.

9.9 A detriment might also include a threat made to the complainant which they take seriously and it is reasonable for them to take it seriously. There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment."

Time limits

353. Section 123 of the Equality Act 2010 provides, so far as relevant:

"123 Time limits
(1) Subject to sections 140A and section 140B, proceedings on a complaint

within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment Tribunal thinks just and equitable.

…

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

… "

Conduct extending over a period

354. It is well established that there is a difference between a continuing act for the purposes of s.123(3) and an act that has continuing consequences. An act is considered as extending over a period, and so treated as done at the end of that period, if an employer maintains and keeps in force a discriminatory regime, rule, practice or principle which has had a clear and adverse effect on the complainant.

355. The Court of Appeal has cautioned the Tribunal against applying the concepts of "*policy, rule, practice, scheme or regime*" too literally, particularly in the context of an alleged continuing act consisting of numerous incidents occurring over a lengthy period per **Hendricks v Metropolitan Police Commissioner (2002) EWCA Civ 1686.**

356. To establish a continuing act, the Claimant must establish:

356.1. the incidents are linked to each other;
356.2. they are discriminatory; and
356.3. the employer is responsible for a continuing state of affairs.

357. There is no general principle that it will be just and equitable to extend the time limit where the Claimant was seeking redress through the employer's grievance procedure before embarking on legal proceedings. A delay caused by a Claimant awaiting completion of an internal procedure may justify extension of the time limit but it is only one factor to be considered in any particular case **(Apelogun-Gabriels v Lambeth London Borough Council and another 2002 ICR 713).**

358. **In Parr v MSR Partners LLP [2022],** this case distinguished between a one-off act with lasting effects and a continuing act. The Court of Appeal concluded that a demotion, although it might have ongoing consequences, is a one-time event. This means that the time limit for bringing a claim starts from the date of that event rather than from any subsequent impacts.

359. The case of **Lyons v DWP Jobcentre Plus [2014] UKEAT/0346/13/BA** involved claims of disability discrimination and harassment, where Mr. Lyons alleged that a series of incidents by his employer amounted to a continuing act of discrimination under Section 123 of the Equality Act 2010. The Employment Appeal Tribunal had to determine whether these incidents could be classified as isolated acts or a continuing course of conduct, which would affect the time limits for bringing the claim. The EAT clarified that, for incidents to be considered a continuing act, they must demonstrate a clear connection or common discriminatory purpose. Without such a link, incidents are more likely to be treated as separate acts with individual time limits, rather than as part of a single ongoing act.

360. In ***Lyons,*** the EAT emphasised that a continuing act requires a common thread of discrimination, showing a broader pattern rather than disconnected complaints over time. The EAT found that Mr. Lyons' allegations did not demonstrate a cohesive discriminatory motive or policy, and the acts were therefore treated as distinct events. This decision is significant in employment law as it reinforces the principle that, unless multiple incidents are linked by a unified discriminatory purpose, each act will have its own time limit, rather than extending the time limit based on an alleged continuing course of conduct.

361. **Royal Mail Group Ltd v Jhuti [2018]**: In this case, the EAT allowed a claim of discrimination to proceed, ruling that a series of discriminatory acts can form a continuing act when each act is connected in a way that creates a prolonged pattern of discriminatory treatment, rather than separate incidents. This case established that ongoing harassment, or bullying behaviours could form a continuous act if linked by context or intent.

Just and Equitable Test

362. The Tribunal has a broad discretion in deciding whether it is just and equitable to extend time under s.123(1)(b) **(Southwark London Borough v Afolabi [2003] IRLR 220).**

363. The Tribunal should consider all of the circumstances, and the prejudice faced by either party when considering whether to extend time.

364. The burden is on the Claimant to persuade the Tribunal to exercise its discretion to extend time, this is a burden of persuasion rather than evidence. In **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA 21,** the Court of Appeal described the best approach is to assess all the factors it considers relevant, including in particular "*the length of, and the reasons for, the delay*".

365. In **Kumari v Greater Manchester Mental Health NHS Foundation Trust,** the EAT affirmed the Tribunal's decision to deny an extension, indicating that the perceived strength or weakness of a claim can factor into whether a time extension is appropriate. If a claim is deemed speculative or likely added as an afterthought rather than based on a genuine initial grievance, it can weigh against extending the limitation period. This case underscores that extensions

should not accommodate claims that emerge as strategic adjustments rather than original, timely concerns.

Discussion and conclusions

366. In coming to our conclusions we have considered all the evidence, even if specific evidential matters have not been specifically referred to. We have also considered the ECHR Code where relevant.

367. We have also considered all of the submissions made in writing and orally by both sides and any cases mentioned within those submissions whether specifically referred to in this judgment or not.

Direct race, age and sex discrimination

368. We first turn to the allegations of direct discrimination which are alleged to be because of race, sex, age or a combination of the three noting that no issues are alleged to be because of all three characteristics and some of the allegations are alleged to be because of only one characteristic.

369. We consider each of the allegations in the order within which they appeared in the agreed list of issues.

370. **2.2.1 (race discrimination only) In September 2021, the Claimant's salary was changed to mirror the salary of his Indian colleague Bhuvnesh Bhardwaj (see §21);**

    370.1. We are not persuaded that the Claimant's salary was changed to mirror Mr Bhardwaj's salary. This salary change was applied by the Respondent to all the graduate engineers equally as was their practice at the time.

    370.2. Consequently, following **Igen**, the Claimant has failed to prove facts from which we could conclude that discrimination has taken place because of his race.

    370.3. In addition, following **C School,** the Claimant argued that a group comparison was needed here and that cannot be permitted when considering direct discrimination. The Claimant was instructing a solicitor when he pleaded his case and when the list of issues was being drafted as he confirmed whilst being questioned. We see no reason therefore to go behind the list of issues.

    370.4. Consequently, there was no less favourable treatment compared to people who were not of Indian Heritage and this claim is dismissed.

371. **2.2.2 (race discrimination only) On 7 April 2022, Alex Cooper disclosed the Claimant's salary review request to Bhuvnesh Bhardwaj without the Claimant's consent (see §21);**

371.1. This claim was dismissed on the facts earlier.

372. **2.2.3 and 4.2.1 (race and sex discrimination) On 26 April 2022, in a discussion about the Lead Engineer – Reliability & Damage role, Alex Cooper attempted to intimidate the Claimant and deter him from applying for the role by saying, "there will be more opportunities later", "I will warn you there is likely a lot of competition for this and there is still some development we need to work on (which we've discussed)", and telling the Claimant had had a potential candidate for the role who had a PhD (see §24);**

372.1. We have already found that the behaviour of Mr. Cooper on this occasion was not intimidatory or designed to deter the Claimant from applying, which leaves whether the fact Mr. Cooper had a preferred candidate who had a PhD was race and/or sex discrimination.

372.2. First, we consider the comparison. The person mentioned who had the PhD and was at that time the preferred candidate, was Dr Anthonykutty who was both male and of Indian heritage. It is therefore quite plain when applying **Khan** that the reason why Dr Anthonykutty was the preferred candidate was because of his PhD, not because of any protected characteristic.

372.3. Therefore, even if we assume that Claimant has shifted the burden of proof as in **Hewage and Laing,** we are satisfied that there was a non-discriminatory reason for why Mr Cooper had a preferred candidate in his mind.

372.4. These claims are therefore dismissed.

373. **2.2.4 and 4.2.2 (race and sex discrimination) On 5 May 2022, Alex Cooper told the Claimant he should make sure he had the essential and desirable items within his CV and that his application could be screened out, and refused to answer the Claimant's question asking what he could have highlighted that was not in his CV (see §25);**

373.1. When considering this claim, applying **Hewage and Laing** assuming the burden of proof has shifted, and when looking at mental processes as in **Khan,** we are persuaded that Mr. Cooper had non discriminatory reasons for behaving as he did. Those real reasons were that points were not in enough detail in his CV and Mr Cooper refused to answer the Claimant's query about the CV because he did not want to appear to be favouring the Claimant too much.

373.2. Consequently, these claims are dismissed.

374. **2.2.5 and 4.2.3 (race and sex discrimination) On or around 10 May 2022, Alex Cooper sought to intimidate the Claimant by saying the interview for the Lead Engineer – Reliability & Damage role would be tough and said, "my jaw will drop if you gave the right answer to our questions" (see §28);**

374.1. These claims were dismissed on the facts earlier.

375. **2.2.7 and 3.2.1 (race and age discrimination) On or around 10 May 2022, Alex Cooper boasted about the fact that he was the same age as the Claimant and two grades above him at LL6. Alex Cooper said the normal progression of staff would be five years from one grade to the next but James Twist had progressed much more quickly than that (see §27);**

375.1. First, we are not persuaded that Mr Cooper boasted about his grade because of the Claimant's age or age group. We do not believe he boasted at all.

375.2. Secondly, we are not persuaded that Mr Cooper said that the usual time period for being promoted to D-Grade was 5 years because of the Claimant's particular age or age group. The full conversation was that time periods could be overcome by skill, experience and good performance. In our judgment, Mr. Cooper would have said this to any graduate engineer regardless of age who was concerned that they weren't progressing quickly enough.

375.3. Thirdly, James Twist was not a correct comparator for the Claimant here because his circumstances were materially different to the Claimant's and there was insufficient evidence put forward that hypothetical non-Indian colleagues, of a different age group to the Claimant, who were concerned about similar issues to him would have been treated any more favourably by Mr. Cooper. There was evidence that unfair nepotism and favouritism, unrelated to any protected characteristics, was widespread in the Respondent and unfair and different treatment is not enough to infer discrimination after **T-System and Schmidt.**

375.4. Finally, there is insufficient evidence put forward by the Claimant that his race had anything to do with this conversation and he has failed to shift the burden of proof to the Respondent after **Igen.**

375.5. These claims are therefore dismissed.

376. **2.2.8 and 4.2.5 (race and sex discrimination) On 11 May 2022, the Claimant was invited to an interview for the Lead Engineer – Reliability & Damage on his birthday despite the Claimant on 10 May telling Alex Cooper that his birthday was on 16 May (see §31);**

376.1. Applying **Hewage and Laing,** we are persuaded that Mr. Cooper had a non discriminatory reason for why the interview was scheduled on the Claimant's birthday, and that real reason after **Khan** was that the situation had been discussed with the Claimant, he had said it was ok to have the interview on his birthday because it was a normal working day and he wasn't celebrating it that day and because Mr. Albrecht and Mr. Jackson were available for the Claimant's interview that day.

376.2. In any case, the Claimant would not have shifted the burden of proof about it, because there was very little evidence that race or sex had anything to do with the decision.

376.3. These claims are therefore dismissed.

377. **2.2.10 (race discrimination only) On 16 May 2022, the Claimant was interviewed by John Jackson and Matthew Albrecht, neither of whom were in the VM&R team (see §29);**

377.1. Following **Khan,** we are persuaded that even if the burden of proof had shifted to the Respondent, Mr Albrecht was asked to be on the interview panel by Mr. Cooper so that a façade of fairness could be maintained when the real reason was to give Mr Cooper and management a chance at defending complaints he predicted would be made about the recruitment decisions, if the Claimant did not get the job.

377.2. Mr. Jackson was asked to be on all the interview panels because of his technical expertise.

377.3. Neither of these reasons is a discriminatory reason even though the reason why Mr. Albrecht was asked to be on the panel was a questionable one.

377.4. Consequently, this claim is dismissed.

378. **2.2.11 and 4.2.8 (race and sex discrimination) On 19 May 2022, Alex Cooper gave the Claimant feedback for his interview, that was inaccurate and inconsistent with previous feedback given to the Claimant by his previous manager (see §33);**

378.1. These claims were dismissed on the facts earlier.

379. **2.2.12 (race and sex discrimination) In or around May 2022, Eugenia Puccio was offered the job of Lead Engineer – Reliability & Damage role instead of the Claimant in circumstances where the Claimant had more relevant knowledge, work experience and training compared to Eugenia Puccio (see §34 and 37);**

379.1. It is clear on an objective view after **Burrett,** that Dr Puccio being non-Indian and female got the job and the Claimant did not.

379.2. It is correct that to some extent the Claimant had more on the job knowledge, experience and training in the particular subject areas of the job role than Dr Puccio did. Dr Puccio did not have some of the essential criteria for the job role, where as the Claimant did, but hadn't demonstrated this well enough in his CV.

379.3. Both were applying for the same role. However, Dr Puccio was not in the same circumstances as the Claimant. Hers are materially different because she had a PHD qualification in particle physics when the Claimant did not and she was an external candidate.

379.4. Consequently, there is insufficient evidence from which we could conclude that Dr Puccio got the job over the Claimant because of her race or sex.

379.5. Regardless, even if we assume the burden of proof has shifted as compared to a hypothetical comparator in circumstances not materially different to the Claimant, namely that they were non-Indian, female, applied of the job as an internal candidate and had submitted a CV that was not detailed enough and she was perceived to be a complainer following past grievances and informal concerns being raised, we believe she would have been treated the same as the Claimant. There is insufficient evidence to suggest otherwise.

379.6. The Claimant has not shifted the burden of proof as per **Igen,** and even if he had, there is a non-discriminatory reason as to why Dr Puccio was offered the job and that was because of her qualifications.

379.7. Consequently, these claims are dismissed.

380. **2.2.13 (race discrimination only) In or around May 2022, in a team meeting Magdalena Badescu called the Claimant 'Bhuv', short for the Claimant's colleague Bhuvnesh Bhardwaj (see §22);**

380.1. With this allegation, unlike all the others, there was no witness brought by the Respondent to prove its version of events.

380.2. No good reason was proven for why Ms Badescu was not called by the Respondent. There is not even a written but unsworn statement provided to explain why she got the names of the Claimant and Mr Bhardwaj mixed up.

380.3. Mr Cooper tried to explain Ms Badescu's behaviour, but his evidence was speculatory and contradictory. We find it not credible.

380.4. Applying **Talbot,** we have therefore taken into account behaviour of the Respondent both before, during and after the alleged incident and have drawn an adverse inference from the lack of Ms Badescu to give evidence, the unsatisfactory attempt by Mr Cooper to explain this incident away and there being no good reason why Ms Badescu could not attend or provide a statement about this issue even though she is still in the Respondent's employment.

380.5. The adverse inference we find is that the treatment alleged was because of the Claimant's race and was unlikely to have taken place with the Claimant's white colleagues.

380.6. In our view applying **Burrett,** it is reasonable for the Claimant to consider the name mix up was less favourable treatment and we infer both that it was because of his race and, on balance, would not have happened with non-Indian colleagues.

380.7. The Claimant has therefore shifted the burden of proof to the Respondent after **Igen.**

380.8. The Respondent has failed to prove a non-discriminatory reason for this conduct and therefore this direct discrimination claim succeeds as being prohibited conduct.

380.9. We must then consider whether this was detrimental treatment under section 39 of the 2010 Act, taking into account the guidance in **Jeramiah, Jesadusan, Williams** and **Shamoon,** namely, that detriment is proven if a reasonable worker would consider the treatment to be to their detriment taking into account that detriment is analogous with unfavourable treatment and disadvantage.

380.10. We conclude that it was reasonable for the Claimant to believe this was unfavourable treatment and therefore detrimental treatment given the broad and low threshold for the test. Those from minority heritages whose names are often confused with others from the same heritage, which as a matter of industrial experience can make them feel hurt, offended or that they have been lumped together as a group rather than treated individually. This is precisely how the Claimant has argued his case.

380.11. We do not know what was actually in the mind of Ms Badescu when she addressed the Claimant by the wrong name, because she was not here to explain herself.

380.12. The findings made here are not the end of the matter though. Even though his case would ordinarily succeed, it has been submitted late and, unless it forms part of a continuing course of discriminatory conduct, then we may not have jurisdiction.

380.13. We come onto that later.

381. **2.2.14 and 4.2.10 (race and sex discrimination) On 28 July 2022, the Claimant was not invited to the discussion regarding a proposed collaboration with Kingston University and was not invited to represent damage modelling (see §38).**

381.1. When considering these allegations, the Claimant's case that he was not asked to attend the discussion about the Kingston University collaboration, is significantly undermined by the fact that his colleague Aparna, who is female and of Indian Heritage was asked to attend and so was Mr. Bhardwaj who is male and of Indian Heritage.

381.2. The list of attendees for that meeting were from multiple different races, backgrounds and both main genders.

381.3. Consequently, the Claimant has failed to prove facts from which we could conclude that discrimination has taken place meaning the burden of proof has not shifted in accordance with **Igen.**

381.4. These claims are therefore dismissed.

Harassment

382. We now turn to harassment and again go through the remaining claims as they appear in the list of issues.

383. **5.1.1 (Age related harassment) On or around 10 May 2022, in a 1:1 meeting with the Claimant, Alex Cooper boasted about the fact that he was the same age as the Claimant and two grades above him at LL6. Alex Cooper said the normal progression of staff would be five years from one grade to the next but James Twist had progressed much more quickly than that (see §27);**

383.1. Clearly, this was unwanted conduct hence the Claimant's complaint.

383.2. The conduct was clearly related to age, because age was being discussed by both parties to the conversation. Age was inherent to the conversation.

383.3. We are not persuaded that Mr. Cooper had in his mind harassing the Claimant because of age as his purpose after **Henderson.** What he had in his mind was to try to explain that age was not the reason for why the Claimant might have a perception of not progressing because Mr Cooper himself was a very similar age and he was two grades higher.

383.4. Clearly, it appears the Claimant was offended by the comment Mr. Cooper made about his age and grading.

383.5. We must then consider whether this effect was reasonable in the circumstances taking into account the guidance in **Dhaliwal** and that transitory or trivial conduct is unlikely to be sufficient.

383.6. We find that it is not reasonable for the Claimant to have been offended by this conversation. We say this because, in all the circumstances, offence was not intended by Mr. Cooper, he was responding to concerns the Claimant had raised about his progression and age and the Claimant was actively involved in that conversation. Age was not discussed in a negative way. In fact, Mr Cooper explained that skill, experience and performance would mean faster progression saying age wasn't the issue not that the Claimant was too young for promotion or progression. This was also a private conversation between a line manager and his team member having a normal conversation about an

issue informally being raised.

383.7. Consequently, this claim is dismissed.

384. **6.1.1 (race related harassment) On or around 11 March 2022, Paul Tremble at a team training session said the "Indian IT" were "being annoying" (see §20);**

384.1. When considering this allegation, clearly mentioning "Indian IT" in a negative context was unwanted conduct.

384.2. However, when appraising the mental process of Mr. Tremble when he said it, we are not persuaded that the reason he made this comment was for reasons related to India or the fact that the team was Indian.

384.3. We are content that Mr. Tremble said what he thought was a factually accurate description of the IT team in India using common place English parlance and it was simply that the IT team had annoyed him and they happened to be geographically located in India.

384.4. Even if we are wrong in that, he certainly did not have as his purpose to offend anyone including the Claimant because of his race and to the extent it had the effect of annoying the Claimant at the time, we are unanimous on our view that this was a transitory matter that has never been repeated and therefore was insufficient create the proscribed work environment. There is insufficient evidence put forward by the Claimant to suggest otherwise.

384.5. We also have in mind **Grant** and, in our view, without more to this incident we believe this incident falls within the description quoted from Elias LJ above.

384.6. This claim is therefore dismissed.

385. **6.1.2 (race related harassment) In or around May 2022, in a team meeting Magdalena Badescu called the Claimant 'Bhuv', short for the Claimant's colleague Bhuvnesh Bhardwaj (see §22).**

385.1. Under the 2010 Act, an act or omission cannot be both a detriment and harassment.

385.2. Consequently, as we have found that this incident was detrimental direct discrimination, the alternative harassment claim fails.

Victimisation

386. We now turn to victimisation and again go through each allegation in turn as they appear in the list of issues.

387. **7.3.1 On 12 September 2022, Paul Tremble sought to deter the Claimant**

from pursuing his grievance and made the comments set out at §40-41;

387.1. This claim has already been dismissed on the facts.

388. **7.3.2 On 13 September 2022, Paul Tremble sought to deter the Claimant from pursuing his grievance and made the comments set out at §43-45;**

388.1. Applying the guidance about detriment in **Jeremiah, Jesadusan, Shamoon and Williams,** the conversation Mr. Tremble had with the Claimant about his grievance allegations all of which were alleged to be discrimination was in our view an obvious case of victimisation.

388.2. The conversation was at least partly meant with good intention, in our view, but effectively after **Amnesty International,** although that case dealt with direct discrimination rather than victimisation, we believe the principle is the same. Good motives and not intending to discriminate are usually irrelevant. All that is required to succeed is detrimental treatment because of the protected act. In our view, the discrimination allegations in the grievance significantly influenced the way Mr. Tremble behaved because he was shocked and upset by them.

388.3. It was reasonable for the Claimant to believe that the conversation was detrimental or unfavourable to him when looking at what a reasonable worker would think. After all, he was basically accused of looking for problems, having a tantrum about issues after the teddy comment and told that if he didn't deal with his grievances in another way, the senior management at JLR could make life difficult for him in his future career and the grievance might come to nothing anyway because he was leaving the Respondent's employment.

388.4. The Claimant reasonably perceived this as threatening behaviour to his disadvantage. The fact he was robust enough to then continue with his grievance despite Mr. Tremble's comments, does not mean that he was not subjected to a detriment because of the protected act or that he wasn't subjected to behaviour as a deterrent. You can still commit behaviour to deter a person without it having that desired result.

388.5. The conversation was inherently because of the grievance. Mr Tremble refers to numerous specific points within the grievance. It was also inherently because of the race discrimination allegations because Mr. Tremble also makes specific reference to these.

388.6. Whilst being questioned, Mr. Tremble referred to a lot of the allegations as being unsubstantiated. To say that, he must have first understood what they were.

388.7. When asked what investigation he had conducted into them before forming this view he answered that he had done none and might have therefore made assumptions. In our view, this was further evidence supporting detrimental treatment because of the conceded protected

act of the Claimant making allegations of discrimination in his grievance.

388.8. We are not persuaded by the Respondent's submissions.

388.9. The submissions appear to us to be focussed on there needing to be a causal link to the type of protected characteristic referred to in the protected act. This is not correct. It matters not what type of discrimination is mentioned in the protected act, simply that detrimental treatment was because of the protected act itself.

388.10. In any case, because all the allegations in the grievance are alleged to be race and age discrimination as proven by the front cover title to it, Mr Tremble accepting in questioning that he had read at least the front sheet to the grievance so knew the allegations made in the grievance and/or the appendices were effectively all allegations of discrimination. We must therefore consider the documents and conversation as a whole rather than hive bits of the grievance or appendices off as being about one characteristic or another.

388.11. We are not persuaded that Mr Tremble didn't read the grievance and only read the appendices. We believe he read the whole grievance and appendices but did not appreciate the outcomes the Claimant wanted from it.

388.12. We reject the submission that for victimisation to be made out there must be proof that Mr. Tremble's comments were motivated by a desire to punish him for making a protected act and the burden of proving this is with the Claimant. If that was the test, the statute would have said so and the case law would say so. They do not as per **Nagarajan** for example.

388.13. A detriment is what a reasonable worker would reasonably consider to be to his detriment and that is analogous with unfavourable treatment after **Williams**.

388.14. There need not be any desire to punish, for that test to be made out. There must simply be detrimental treatment because of the protected act.

388.15. It is therefore possible to subconsciously victimise someone or unintentionally victimise someone in the same way as you can unintentionally directly discriminate against or harass someone. The need to prove desire to punish would fundamentally undermine the protections provided against victimisation in the 2010 Act.

388.16. Consequently, after **Igen,** facts from which we could conclude that detrimental treatment because of the conceded protected act took place at the hands of Mr. Tremble are proven and therefore the Claimant has shifted the burden to the Respondent to provide a non-

discriminatory reason for the treatment

388.17. No such non discriminatory explanation has been proven by the Respondent.

388.18. Mr. Tremble cannot deny he made the remarks he did because they have been clearly audio recorded. He cannot deny they are because of the grievance and its content because he refers to specific allegations made in the grievance, the grievance clearly influenced him having the conversation with the Claimant because Mr. Tremble was shocked and upset by the grievance and the detrimental treatment is about what he said to the Claimant in response to specific allegations of discrimination within the grievance and its appendices.

388.19. Having in mind **Millar, Khan and Cornelius**, Mr. Tremble knew the allegations were discrimination allegations because the front sheet of the grievance, because he read the grievance and appendices before the meeting and he admitted he read them. He was clearly influenced by the fact this was a grievance against him alleging discrimination , at least in part.

388.20. Finally, the explanation put forward that Mr. Tremble was simply trying to explain some commercial truths to the Claimant and therefore wasn't meaning to victimise the Claimant is only part of the picture.

388.21. Clearly Mr. Tremble had the conversation with the Claimant and said the things he did for a combination of reasons, one was because he was shocked and upset by the allegations, one was to inform the Claimant about what Mr. Tremble perceived the commercial realities of putting in a grievance like the Claimant's were, and the other was to try to get the Claimant to withdraw at least some of the allegations of discrimination in part motivated by Mr Tremble's reaction at being accused of discrimination.

388.22. Ultimately, applying **Barton** and **Westminster CC,** at least a significant part of the reasoning behind Mr. Tremble's meeting the Claimant and making the comments that he did was because of the race discrimination allegations in the grievance making the protected act itself a substantial and effective cause of Mr. Tremble's behaviour. Those allegations cannot be said to be separable from the protected act, in accordance with **Martin,** because they are at the core of it.

388.23. After **Matar** and **Suczs,** the Respondent has therefore failed to prove that the way Mr. Tremble behaved was in no sense whatsoever because of the protected act.

388.24. Consequently, this claim succeeds.

389. **7.3.3 On 4 October 2022, Alex Cooper told the Claimant in front of the entire team that he could not be part of the team meetings anymore (see**

§47);

389.1. Mr. Cooper admits he did this.

389.2. Following the relevant cases, we conclude it was reasonable for the Claimant to believe this was detrimental treatment following the conversation he had with Mr. Tremble on 13 September. He perceived Mr Cooper was trying to exclude him.

389.3. However, we are not persuaded that Mr. Cooper stopped the Claimant from attending team meetings because of the protected act. We believe Mr. Cooper when he said he made this decision because of the meetings discussing issues of strategy and he couldn't risk discussing these in front of the Claimant because he might be going to a competitor.

389.4. Consequently, the Respondent had proven non-discriminatory reasons for making this decision and in any case, the Claimant had not proven sufficient facts from which we could conclude that this decision was because of the protected act.

389.5. The claim is therefore dismissed.

390. **7.3.4 On 4 October 2022, Alex Cooper told the Claimant he should not come into the office on 11 October (see §47);**

390.1. For the same reasons as we have dismissed 7.3.3, we dismiss 7.3.4. Mr. Cooper made this decision because strategy would be discussed at the away day on 11 October 2022, not because of the Claimant's protected act.

391. **7.3.5 The Respondent took no and/or limited action to progress the Claimant's grievance either during his notice period or afterwards (see §48(a) -48(h) of Amended Grounds of Claim);**

7.3.6 The Respondent took 4 months and 18 days to start formal grievance investigation process. By this time, Ben Faulkner and Carl White had left the Respondent's organisation and were excluded from investigation thereby jeopardising the Claimant's formal grievance investigation (see §48(c) -48(e) of Amended Grounds of Claim);

7.3.7 The Respondent did not include the Claimant at any stage of the investigation and denied the Claimant's request to appeal the Respondent's decision to reject the formal grievance (see §48(f) -48(g) of Amended Grounds of Claim);

7.3.8 The Respondent's grievance outcome letter had factual inaccuracies and the Claimant's evidence was ignored (see §48(g) -48(h) of Amended Grounds of Claim). The Claimant says the Respondent's grievance outcome letter stated that Ben Twiney does not work for Respondent at

the time of investigation, hence, Ben Twiney was excluded from investigation. This is false as Ben Twiney is still working for Respondent based on their LinkedIn posts.

391.1. The Respondent's witnesses, with the exception of the allegation at paragraph 48 (e) of the Amended Grounds of Claim, accepted that the above was a fair reflection of what took place factually.

391.2. The difficulty the Claimant has is that there is insufficient evidence that any of the above allegations were done because the Claimant made discrimination allegations in his grievance.

391.3. The grievance he submitted could have simply alleged non-discriminatory unfair treatment and if it had, we are content the Respondent's process, Ms Johal's advice and Mr. Becker's approach to the grievance investigation and findings would have been no different.

391.4. In our judgment the same principles as in **Conteh** and **Coyne** are transferable here, to the effect that failing to investigate a grievance or inaction about a grievance without any evidence that such failures or inaction was because of the Protected Act should not infer unlawful conduct. **Bailey** further supports this. Simply having a protected act in the background of adverse decisions, slow procedures or mistakes is not enough to shift the burden of proof in victimisation claims. There is not "but for" test here.

391.5. Consequently, the Claimant has failed to shift the burden of proof and even if he had, the Respondent behaved how it did for reasons entirely unrelated to the fact his grievance was a protected act.

391.6. These claims are therefore dismissed.

Continuing course of conduct

392. Two claims would therefore be discrimination if they were in time and the Tribunal had jurisdiction to hear them. These are allegations 2.2.13 and 7.3.2.

393. The allegation at 7.3.2 is clearly in time. The incident happened on 13 September 2022, meaning the ordinary time limit expired on 12 December 2022. ACAS conciliation ended on 8 December 2022 and was therefore commenced within the normal time limit to give the Claimant access to the conciliation extensions of time. One of those available is an extension of one month starting with the day after date B. That extension expired on 9 January 2023 and the Claim was presented on 6 January 2023.

394. We must therefore consider if the allegation involving Ms Badescu is linked to the victimisation by Mr Tremble to make it a continuing course of discriminatory conduct by the Respondent.

395. Applying **Hendricks,** the incidents are both discrimination. However, both are

discreet acts separated by 4 months on the Claimant's best case given there is no precise date for the incident. There is no continuing state of affairs and they are not examples of where a policy, rule or practice have been applied. The deciding minds about these allegations are also different.

396. Looking at **Parr** and **Lyons,** these are one off incidents and there is no evidence of a common discriminatory purpose between Ms Badescu and Mr. Tremble.

397. After **Jhuti,** there is no evidence of a prolonged pattern of discriminatory treatment.

398. Consequently, the two acts of discrimination are separate discreet acts.

Just and equitable extension for allegation 2.2.13

399. With this allegation being out of time, we must now consider whether we exercise our discretion to extend time having in mind that this is a broad discretion with no one point being decisive and the fact that we need to take into account all the surrounding circumstances following the guidance in **Afolabi.**

400. After **Adedeji,** we must also take into account the length of and reasons for the delay.

401. Having considered the Claimant's evidence about delay, we are not persuaded that he has good reasons for delaying submitting his claim. He claims he delayed because he was worried about the possibly terminating his employment and affecting his immigration status. However, that evidence is undermined by the fact the Claimant submitted a grievance previously and also was not backward in saying what he thought and how he felt in written correspondence with his managers at all material times during his graduate scheme.

402. The length of the delay in this case is not substantial. It is a few months out of date.

403. When considering the extension at trial, we are in an entirely different position as we would be at a preliminary hearing. We say this because to decide issues such as continuing acts of discrimination, we needed to hear the evidence and submissions about each claim regardless of whether they were in time or not, which changes the possible prejudice that could be caused to each side with the extension decision.

404. For example, because we have heard all the evidence, the Respondent can no longer say that it will put them to additional cost, time and complexity if the claim is allowed in, because we had to hear all the evidence anyway. It cannot argue that witnesses have left because we know the relevant witness for the Respondent was still in employment with the Respondent and they chose not to call her.

405. After **Kummari,** the issue about whether the claim is weak or speculatory has fallen away. We have heard the evidence and can make findings about whether the claim would succeed and, in this case, it would do if the extension was allowed.

406. **Kummari** is distinguishable in any event because it took place when the proceedings were at a preliminary hearing stage and not at final hearing as is the case before us.

407. We must also bear in mind that there is a strong public policy consideration that discrimination should be identified, deterred and if possible, eliminated.

408. We have also considered that, even though we are not persuaded by the Claimant's submitted reasons he gave for the delay at the time he presented his claim, namely he was afraid to speak out in case he jeopardised his immigration status, his concern has been shown to be an accurate one in a less severe way, because of the successful victimisation claim. He submitted a grievance alleging discrimination and was treated detrimentally because of it.

409. Consequently, when taking all the circumstances into account we have decided to exercise our discretion to extend time for this allegation for it fall within our jurisdiction.

410. We have exercised our discretion primarily because the allegation has been found to be an act of discrimination and it would not be just to allow the Respondent to avoid liability for discrimination because the claim was a few months late given the certainty of its success.

411. There is no prejudice to the Respondent when making this decision because all the cost, time and effort in defending the claim has already been incurred. The prejudice to the Claimant is that a claim proven to be discrimination would go without remedy.

412. The balance of prejudice would therefore be firmly with the Claimant if the extension of time was not granted, which in the circumstances of this case would not be just and equitable.

Disposal

413. Consequently, a remedies hearing will be fixed unless the parties can come to an agreement about how the successful claims can be remedied.

414. The parties therefore have a period of 28 days from the date this judgment is sent to the parties, to confirm whether they have been able to come to an agreement about remedy.

415. If no agreement can be reached, the parties are to write to the Tribunal by the last day of the 28 day period above, to inform it of that fact and provide dates of unavailability for attendance at a remedies hearing. A hearing will then be listed

accompanied by any necessary directions.

_____
EMPLOYMENT JUDGE SMART
26 November 2024

APPENDIX 1

AGREED AMENDED LIST OF ISSUES (SUBJECT TO THE CAUSE OF ACTION AMENDMENTS DISCUSSED IN THE ISSUES SECTION OF THIS JUDGMENT ABOVE AND EXCLUDING REMEDY).

1. **Jurisdiction – The Respondent considers that all of the claims, with the exception of the victimisation claim, are out of time**

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 4 August 2022 may not have been brought in time.

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

1.2.1 Was the claim form submitted within 3 months (plus early conciliation extension) of the act to which the complaint relates?

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

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

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

(a) Why were the complaints not made to the Tribunal in time?

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

2. **Direct discrimination – race (Equality Act 2010, section 13)**

2.1 The Claimant describes his ethnicity as Indian, and he compares his treatment with people who are not Indian.

2.2 Did the Respondent do the following things [references to § are to the Claimant's Grounds of Complaint]:

2.2.1 In September 2021, the Claimant's salary was changed to mirror the salary of his Indian colleague Bhuvnesh Bhardwaj (see §21);

2.2.2 On 7 April 2022, Alex Cooper disclosed the Claimant's salary review request to Bhuvnesh Bhardwaj without the Claimant's consent (see §21);

2.2.3 On 26 April 2022, in a discussion about the Lead Engineer – Reliability & Damage role, Alex Cooper attempted to intimidate the Claimant and deter him from applying for the role by saying, "there will be more opportunities later", "I will warn you there is likely a lot of competition for this and there is still some development we need to work on (which we've discussed)", and telling the Claimant had had a potential candidate for the role who had a PhD (see §24);

2.2.4 On 5 May 2022, Alex Cooper told the Claimant he should make sure he had the essential and desirable items within his CV and that his application could be screened out, and refused to answer the Claimant's question asking what he could have highlighted that was not in his CV (see §25);

2.2.5 On or around 10 May 2022, Alex Cooper sought to intimidate the Claimant by saying the interview for the Lead Engineer – Reliability & Damage role would be tough and said, "my jaw will drop if you gave the right answer to our questions" (see §28);

2.2.6 On or around 10 May 2022, Alex Cooper attempted to intimidate the Claimant by telling him there were 16 applicants for the Lead Engineer –

Reliability & Damage role, 15 of which were external, when the LinkedIn advertisement suggested there was only one external candidate (see §28);

2.2.7 On or around 10 May 2022, Alex Cooper boasted about the fact that he was the same age as the Claimant and two grades above him at LL6. Alex Cooper said the normal progression of staff would be five years from one grade to the next but James Twist had progressed much more quickly than that (see §27);

2.2.8 On 11 May 2022, the Claimant was invited to an interview for the Lead Engineer
– Reliability & Damage on his birthday despite the Claimant on 10 May telling Alex Cooper that his birthday was on 16 May (see §31);

2.2.9 On 12 May 2022, the Claimant was given his technical presentation topic, which was a difficult topic (see §32);

2.2.10 On 16 May 2022, the Claimant was interviewed by John Jackson and Matthew
Albrecht, neither of whom were in the VM&R team (see §29);

2.2.11 On 19 May 2022, Alex Cooper gave the Claimant feedback for his interview, that was inaccurate and inconsistent with previous feedback given to the Claimant by his previous manager (see §33);

2.2.12 In or around May 2022, Eugenia Puccio was offered the job of Lead Engineer – Reliability & Damage role instead of the Claimant in circumstances where the Claimant had more relevant knowledge, work experience and training compared to Eugenia Puccio (see §34 and 37);

2.2.13 In or around May 2022, in a team meeting Magdalena Badescu called the Claimant 'Bhuv', short for the Claimant's colleague Bhuvnesh Bhardwaj (see §22); and

2.2.14 On 28 July 2022, the Claimant was not invited to the discussion regarding a proposed collaboration with Kingston University and was not invited to represent damage modelling (see §38).

2.3 Was that less favourable treatment? The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated. The Claimant says that he was treated worse than James Twist, Daniel Cook and Eugenia Puccio, who are white colleagues. In the alternative, the Claimant relies on a hypothetical comparator.

2.4 If so, was it because of race?

2.5 If disputed: did the Respondent's treatment amount to a detriment?

3. **Direct discrimination – age (Equality Act 2010, section 13)**

3.1 The Claimant's age was 29 at the time and he compares his treatment with people in the age group of 27 or less. The Claimant's actual comparator is James Twist,

who is a male colleague two to three years younger than the Claimant. In the alternative the Claimant relies upon a hypothetical comparator.

3.2 Did the Respondent do the following things [references to § are to the Claimant's Grounds of Complaint]:

3.2.1 On or around 10 May 2022, in a 1:1 meeting with the Claimant, Alex Cooper boasted about the fact that he was the same age as the Claimant and two grades above him at LL6. Alex Cooper said the normal progression of staff would be five years from one grade to the next but James Twist had progressed much more quickly than that (see §27); and

3.2.2 On 10 May 2022, when the Claimant mentioned his promotion and salary aspirations, Paul Tremble asked the Claimant how old he was. When the Claimant told him, Paul Tremble said there was a lot more the Claimant needed to see and experience in his work life (see §30).

3.3 Was that less favourable treatment? The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated. The Claimant says he was treated worse than James Twist who is a male colleague two to three years younger than the Claimant. In the alternative, the Claimant relies on a hypothetical comparator.

3.4 If so, was it because of age?

3.5 If disputed: did the Respondent's treatment amount to a detriment?

3.6 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says its aims were: to manage the expectations of the Claimant / staff with regards to career progression and aspirations; to provide for effective management of staff; and/or promoting access to employment and promotion opportunities for younger people.

3.7 The Tribunal will decide in particular:

3.7.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims?;

3.7.2 Could something less discriminatory have been done instead?; and

3.7.3 How should the needs of the Claimant and the Respondent be balanced?

4. **Direct discrimination – Sex (Equality Act 2010, section 13)**

4.1 The Claimant is a man and he compares his treatment with that of a woman. The Claimant relies on an actual comparator of Eugenia Puccia, or in the alternative a hypothetical comparator.

4.2 Did the Respondent do the following things [references to § are to the Claimant's Grounds of Complaint]:

4.2.1 On 26 April 2022, in a discussion about the Lead Engineer – Reliability & Damage role, Alex Cooper attempted to intimidate the Claimant and deter him from applying for the role by saying, “there will be more opportunities later”, “I will warn you there is likely a lot of competition for this and there is still some development we need to work on (which we’ve discussed)”, and telling the Claimant had had a potential candidate for the role who had a PhD (see §24);

4.2.2 On 5 May 2022, Alex Cooper told the Claimant he should make sure he had the essential and desirable items within his CV and that his application could be screened out, and refused to answer the Claimant’s question asking what he could have highlighted that was not in his CV (see §25);

4.2.3 On or around 10 May 2022, Alex Cooper sought to intimidate the Claimant by saying the interview for the Lead Engineer – Reliability & Damage role would be tough and said, “my jaw will drop if you gave the right answer to our questions” (see §28);

4.2.4 On or around 10 May 2022, Alex Cooper attempted to intimidate the Claimant by telling him there were 16 applicants for the Lead Engineer – Reliability & Damage role, 15 of which were external, when the LinkedIn advertisement suggested there was only one external candidate (see §28);

4.2.5 On 11 May 2022, the Claimant was invited to an interview for the Lead Engineer
– Reliability & Damage on his birthday despite the Claimant on 10 May telling Alex Cooper that his birthday was on 16 May (see §31);

4.2.6 On 12 May 2022, the Claimant was given his technical presentation topic, which was a difficult topic (see §32);

4.2.7 On 16 May 2022, the Claimant was interviewed by John Jackson and Matthew
Albrecht, neither of whom were in the VM&R team (see §29);

4.2.8 On 19 May 2022, Alex Cooper gave the Claimant feedback for his interview, that was inaccurate and inconsistent with previous feedback given to the Claimant by his previous manager (see §33);

4.2.9 In or around May 2022, in a team meeting Magdalena Badescu called the Claimant ‘Bhuv’, short for the Claimant’s colleague Bhuvnesh Bhardwaj (see §22); and

4.2.10 On 28 July 2022, the Claimant was not invited to the discussion regarding a proposed collaboration with Kingston University and was not invited to represent damage modelling (see §38).

4.3 Was that less favourable treatment? The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant’s. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated. The Claimant says he was treated worse than Eugenia Puccio.

4.4 If so, was it because of sex?

4.5 If disputed: did the Respondent's treatment amount to a detriment?

5. **Harassment related to age (Equality Act 2010, section 26)**

5.1 Did the Respondent do the following things [references to § are to the Claimant's Grounds of Complaint]:

5.1.1 On or around 10 May 2022, in a 1:1 meeting with the Claimant, Alex Cooper boasted about the fact that he was the same age as the Claimant and two grades above him at LL6. Alex Cooper said the normal progression of staff would be five years from one grade to the next but James Twist had progressed much more quickly than that (see §27); and

5.1.2 On 10 May 2022, when the Claimant mentioned his promotion and salary aspirations, Paul Tremble asked the Claimant how old he was. When the Claimant told him, Paul Tremble said there was a lot more the Claimant needed to see and experience in his work life (see §30).

5.2 If so, was that unwanted conduct?

5.3 Did it relate to age?

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

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

6. **Harassment related to race (Equality Act 2010, section 26)**

6.1 Did the Respondent do the following things [references to § are to the Claimant's Grounds of Complaint]:

6.1.1 On or around 11 March 2022, Paul Tremble at a team training session said the "Indian IT" were "being annoying" (see §20); and

6.1.2 In or around May 2022, in a team meeting Magdalena Badescu called the Claimant 'Bhuv', short for the Claimant's colleague Bhuvnesh Bhardwaj (see §22).

6.2 If so, was that unwanted conduct?

6.3 Did it relate to race?

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

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

7. **Victimisation (Equality Act 2010, section 27)**

7.1 Did the Claimant do a protected act as follows:

7.1.1 On 12 September 2022 the Claimant submitted a grievance which included allegations of discrimination on the grounds of age and race. The Respondent accepts that this is a protected act; and

7.1.2 On 12 September 2022, the Claimant spoke to Paul Tremble about his concerns including complaints of age and race discrimination (no concession is made).

7.2 Did the Respondent believe that the Claimant had done or might do a protected act?

7.3 Did the Respondent do the following things [references to § are to the Claimant's Grounds of Complaint]:

7.3.1 On 12 September 2022, Paul Tremble sought to deter the Claimant from pursuing his grievance and made the comments set out at §40-41;

7.3.2 On 13 September 2022, Paul Tremble sought to deter the Claimant from pursuing his grievance and made the comments set out at §43-45;

7.3.3 On 4 October 2022, Alex Cooper told the Claimant in front of the entire team that he could not be part of the team meetings anymore (see §47);

7.3.4 On 4 October 2022, Alex Cooper told the Claimant he should not come into the office on 11 October (see §47);

7.3.5 The Respondent took no and/or limited action to progress the Claimant's grievance either during his notice period or afterwards (see §48(a) -48(h) of Amended Grounds of Claim);

7.3.6 The Respondent took 4 months and 18 days to start formal grievance investigation process. By this time, Ben Faulkner and Carl White had left the Respondent's organisation and were excluded from investigation thereby jeopardising the Claimant's formal grievance investigation (see §48(c) -48(e) of Amended Grounds of Claim);

7.3.7 The Respondent did not include the Claimant at any stage of the investigation and denied the Claimant's request to appeal the Respondent's decision to reject the formal grievance (see §48(f) -48(g) of Amended Grounds of Claim); and

7.3.8 The Respondent's grievance outcome letter had factual inaccuracies and the Claimant's evidence was ignored (see §48(g) -48(h) of Amended Grounds of Claim). The Claimant says the Respondent's grievance outcome letter stated that Ben Twiney does not work for Respondent at the time of investigation, hence, Ben Twiney was excluded from investigation. This is false as Ben Twiney is still working for Respondent based on their LinkedIn posts.

7.4 By doing so, did it subject the Claimant to a detriment?

7.5 If so, was it because the Claimant did a protected act?

7.6 Was it because the Respondent believed the Claimant had done, or might do, a protected act?

END.