EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000044/2022

Held in Glasgow on 10, 17, 20-24 November 2023; 5 February 2024, 11-15 March 2024; and 8 April 2024 [In Chambers]

Employment Judge P O'Donnell
Members Mr I Ashraf and Mr D McFarlane

Mr H Hassan	**Claimant** **In Person**
Department for Work and Pensions	**Respondent** **Represented by:** **Ms E Campbell - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Employment Tribunal is that the claimant's claims of direct discrimination, harassment and victimisation under the Equality Act 2010 are not well-founded and are hereby dismissed.

REASONS

Introduction

1. The claimant has brought a claim against respondent under the Equality Act 2010. The claim consists of 39 allegations of unlawful conduct by the respondent involving a mixture of allegations of direct discrimination (based on the protected characteristics of race and religion/belief), harassment (based on the same protected characteristics) and victimisation.

2. The 39 allegations are set out in a "Scott Schedule" at pp40-66 of the joint bundle. The respondent resists all the complaints.

Case Management

3. There was a considerable amount of case management in the first diet of the hearing on 10, 17, 20-24 November 2023.

4. Directions had been made in advance of the final hearing for evidence-in-chief to be given by way of witness statements. However, on reading the claimant's witness statement, the Tribunal was concerned that it was deficient in two regards:

    a. There was no cross-referencing of documents mentioned in the statement with the bundles lodged by the parties contrary to the Presidential Guidance on the use of witness statements.

    b. The statement only made reference to 11 out of the 39 allegations of discrimination.

5. Although the Tribunal could have let the claimant's witness statement stand as his evidence-in-chief without any intervention, the Tribunal did not consider that this would be in keeping with the overriding objective nor in the interests of justice. The claimant was a party litigant who may not have understood the consequences of an incomplete statement or that the Tribunal requires documents to be spoken to in evidence (rather than the Tribunal reading the bundles from cover-to-cover).

6. In these circumstances, the Tribunal directed that the claimant would be permitted to give oral evidence to supplement his witness statement in the following terms:

    a. The claimant would review his existing witness statement and, in respect of documents referred to therein, identify the page number in either his bundle or the joint bundle where each document can be found.

    b. The claimant would be permitted to lead oral evidence-in-chief in respect of the allegations in his Scott Schedule which are not presently addressed in his witness statement but only in respect of these matters

and not in respect of matters which are already addressed in his witness statement.

7. There were issues raised by the respondent dealt with on 10 November; they were permitted to call one of their witnesses to give evidence remotely due to a change in circumstances which had disrupted the arrangements the witness had made to attend the hearing in person; the respondent was also permitted to lead supplementary oral evidence from their witnesses in respect of, and only in respect of, the documents in the claimant's bundle (although, in the event, the respondent did not feel the need to do so).

8. In order to ensure that the evidence could be heard in the remaining time, the Tribunal exercised its power under Rule 45 to timetable the examination of the witnesses. The timetable was confirmed to parties in correspondence sent during the break between 10 and 17 November 2023.

9. To allow the claimant time to prepare his supplementary evidence, the Tribunal adjourned the hearing to 17 November 2023.

10. At the start of the hearing on 17 November 2023, the claimant made an application to postpone the hearing. The application was based on a comment in the witness statement of one of the respondent's witnesses which the claimant wanted "investigated" (although it was not clear whom he intended to carry out any investigation) and what the claimant described as evidence being withheld.

11. In relation to the latter issue, this was a reference to documents in the joint bundle which the claimant had not seen before rather than a failure by the respondent to properly comply with an Order for disclosure made by the Tribunal. The Tribunal did not consider that this was grounds to postpone the hearing.

12. In relation to the comment, the Tribunal was not prepared to postpone the hearing as a whole but asked the respondent's agent to take instructions as to whether the comment in question was something fundamental to their defence or whether the witness statement (which had not yet been adopted

into evidence) could be amended to withdraw the comment. It was agreed by the respondent, albeit with reluctance, that the comment in question would be withdrawn and not entered into evidence.

13. Whilst the respondent's agent was taking these instructions, the claimant made three case management applications arising from the issue with the comment. The final hearing listed to continue on 20 November was converted to a case management hearing before the Judge sitting alone to determine these applications. A Note of that hearing has been issued separately and the Tribunal does not intend to repeat it here.

14. The final hearing was to resume on 21 November 2023 to hear the claimant's evidence. However, the claimant made a fourth case management application arising from the issue with the comment. Directions were made for this application to be set out in writing by the claimant and 22 November was converted to a case management hearing before the full Tribunal to determine this application. A Note of that hearing has been issued separately and the Tribunal does not intend to repeat it here.

15. On 24 November 2023, the claimant made a further case management application. At this stage, he had concluded his supplementary oral evidence-in-chief and was partway through being cross-examined by the respondent's agent.

16. The claimant's application arose from the fact that it had become clear during the course of his evidence that he had not included a number of documents on which he sought to rely in either the joint bundle or his own bundle. He was asking to now add those documents to the bundle. He submitted that parties were not on an equal footing, that key documents were missing and that he had assumed that the respondent would include all of these documents in the bundle.

17. The Tribunal refused this application for the following reasons:

    a. The claimant had had more than ample opportunity to include any documents in the joint bundle or his own bundle.

b. Even if it had been reasonable for the claimant to assume the respondent would include all the documents which the claimant sought to rely on (the Tribunal did not consider this was a reasonable assumption) he had had the joint bundle for a number of weeks and could have identified the issue previously.

c. The claimant had already given his evidence-in-chief and what had been sought would have effectively given him a "second bite of the cherry". The Tribunal did not consider that this was in the interests of justice or in keeping with the Overriding Objective.

d. Granting the application would have meant that the claimant's evidence would not conclude at the present hearing diet and would require a longer continued hearing.

e. The Tribunal considered that parties had been on an equal footing; both parties had had the same opportunity to include documents in a bundle and lead evidence about those. Any deficiencies in the claimant's evidence are as a result of him not producing such evidence rather than any actions of the respondent or the Tribunal.

18. The issue of absent documents arose on a number of occasions during the continued hearing in March 2024. The claimant sought to put the content of a number of emails and other documents to the respondent's witnesses in his cross-examination but, when asked by the Tribunal to take the witness (and the Tribunal) to the document in question, the claimant confirmed that the document in question was in neither the joint bundle nor his bundle.

19. The claimant sought to blame the respondent for not including these documents in the joint bundle but it was confirmed that the claimant had not asked for these documents to be added. The claimant had produced his own bundle and had not included these documents. The claimant clearly knew of the existence of the documents in question (a number of them having been provided to him by the respondent in reply to a Subject Access Request under data protection legislation) and had made no effort to ensure these documents were put before the Tribunal. It was his responsibility to ensure that he

presented the evidence which he believed supported his case and it was not the responsibility of the respondent to guess at what documents the claimant wished to put in evidence.

Evidence

20. The Tribunal heard evidence from the following witnesses called by the claimant:

    a. The claimant.

    b. Mohammed Shafiq (MS), the claimant's trade union representative.

21. The Tribunal also heard evidence from the following witnesses called by the respondent:

    a. Jane Bedborough (JB) – a Grade 7 cluster manager.

    b. Jon Best (JB2) – a decision maker who was also co-chair of the Work Health & Decision Making Directorate (WHDM) Diversity & Inclusion (DI) group along with the claimant.

    c. Ben Payton (BP) – JB2's temporary line manager at the time JB2 had been co-chair of the D&I group.

    d. Pauline Smith (PS) – Grade 7 operations leader at the site where the claimant is based.

    e. Nathan Bateman (NB) – a senior executive officer who was part of the claimant's line management structure.

    f. Hannah Barnard (HB) – a higher executive officer who became the claimant's line manager for a short period in May 2022.

    g. Jacqueline Bowman (JB3) – the WHDM service delivery lead for Scotland and Leeds.

    h. Michael Wood (MW) – a decision maker on the same team as the claimant.

i. Paula Holland (PH) – deputy director in WHDM.

j. Luke Hargreaves (LH) – a decision maker in the same team as the claimant who provided temporary management cover when the team manager was on holiday.

k. Lisa Batterby (LB) – a HR consultant within the Civil Service.

l. Erica Allaby – the claimant's line manager in 2021 and then again from June to October 2022.

m. James Nolan (JN) – an HR business partner within the respondent.

n. Beverley Warmington (BW) – Director for Disability Services, Decisions & Working Age at the time of the events giving rise to the claim.

22. There was one other person who will feature in the findings in fact but who was not called to give evidence. This was Haider Ali (HA) who was the claimant's line manager at the time of the initial events giving rise to the claim until May 2022.

23. There had been directions for a joint bundle to be prepared for the final hearing and the respondent produced what the Tribunal will describe as "the joint bundle" although it emerged during the course of the hearing that the claimant had made little or no contribution to this bundle. If there are references to page numbers in the judgment then these are a reference to a page in the joint bundle. The claimant also produced his own bundle and a reference to a page in his bundle will be preceded by the letter "C".

24. The Tribunal did not consider the claimant to be a credible or reliable witness. The vast majority of his answers to questions put to him in cross-examination were evasive and he was unwilling to accept even the simplest proposition being put to him in cross-examination.

25. In particular, he refused to accept that a number of emails or other documents said what they plainly bore to say. For example, one of his complaints of discrimination related to an alleged refusal by the respondent to change the

terms of a mediation agreement which, the claimant said, precluded him from bringing Employment Tribunal proceedings. The claimant was taken to a document in the joint bundle which the respondent said was the standard mediation agreement used by them. The claimant initially refused to accept this was the same agreement he was asked to sign on the basis that the logo on the document in the bundle had not appeared on the agreement presented to him. When pressed by the Tribunal, he eventually accepted that the content of the documents were the same. Even then he continued to insist that the document would have prevented him bringing a claim in the Tribunal despite the fact that nothing to this effect was included in the agreement. All that was being asked was that participants should keep matters discussed in the mediation confidential.

26. Further, the Tribunal considers that the claimant sought to present a misleading position in some of the evidence he gave. For example, it was put to him in cross-examination that he had had issues with all of his managers over the period of his employment and he responded that it was only certain managers. The Tribunal had only heard evidence that three people had managed the claimant (and these were the people whom he was being asked about having had issues) and so sought clarification of who else managed him. He made reference to there being deputy managers but the question had been about managers and so the claimant was asked to clarify who else managed him. After some hesitation, he admitted that only the three people in question had ever been his line manager (albeit one of them managed him on two separate occasions).

27. In these circumstances, where there is a dispute of fact between the claimant and any of the respondent's witnesses or between the claimant and the plain reading of any document then the Tribunal prefers the evidence of the respondent's witnesses and accepts the plain reading of any document in preference to the claimant's interpretation.

28. The Tribunal found MS to be a reliable and credible witness but that his evidence was of very limited relevance or assistance in making findings of fact. He was not a direct witness to any of the alleged acts of discrimination

and only became involved after the event when the claimant sought assistance from the trade union. As he accepted in cross-examination, he was, therefore, only able to describe what the claimant had told him rather than being able to give evidence of what he personally witnessed. Even then, his evidence of what the claimant was describing was in broad terms (that is, the claimant reporting that he had experienced discrimination on the grounds of race or religion) rather than any detail of the conduct said to amount to discrimination.

29. The Tribunal considered that the respondent's witnesses were all credible and reliable witnesses. They gave evidence consistent with the documentary evidence and were willing to accept matters put to them in cross-examination with little hesitation even where it was unfavourable to the respondent's case.

30. There were some instances where the respondent's witnesses could not recall the precise detail of certain events but the Tribunal considers that this is not surprising given the passage of time since those events and the case being heard.

31. In his submissions, the claimant makes reference to certain of the respondent's witnesses "lying" in their witness statements or "falsifying" those statements. This is a reference to some of the respondent's witnesses correcting what was said in their statements when being cross-examined by the claimant. The Tribunal does not consider that there is any basis on which it can conclude that these witnesses intentionally sought to mislead the Tribunal when drafting their witness statements. In particular, the witnesses in question were very willing to accept that their statements were inaccurate and quickly corrected the position when the claimant pointed out any inaccuracies. This is to their credit and, rather than undermining them as witnesses, the Tribunal considers that it demonstrates that these witnesses were making their best efforts to present a truthful account of events.

32. There was one particular issue raised by the claimant regarding the evidence of JB2. During the course of cross-examination and in submissions, the claimant sought to suggest that JB2 was suffering from paranoia due to his

medical condition as an explanation for the difficulties JB2 experienced with the claimant's conduct. This was not based on any actual medical evidence but rather a short article which the claimant had found on the respondent's intranet written by JB2 describing the symptoms he experienced in the early days of his condition. This article describes symptoms experienced by JB2 many years ago and did not reflect either the effects he experienced at the time of the events giving rise to the claim or when he gave evidence to the Tribunal. The Tribunal considers that there is no basis whatsoever for it to conclude that JB2 was experiencing any form of paranoia at the relevant time and it considers that the claimant's attempt to discredit JB2 by this means to be somewhat distasteful.

Findings in fact

33. The Tribunal made the following relevant findings in fact. As will be set out in more detail below, the claimant did not lead evidence about a significant number of the allegations of discrimination. The Tribunal considers that it is not in a position to make any findings of fact about matters which were not led in evidence and so its findings in fact will only be in respect of those matters about which it heard evidence.

34. The respondent is the government department which administers state benefits. The claimant commenced working for them on 11 January 2021, initially on a 12 month fixed term contract which became permanent in 2022. He remains employed by the respondent.

35. He was employed in the role of decision maker and during the period of time relevant to his claim he was employed in the respondent's Work and Health Decision Making directorate (WHDM). WHDM is based in Glasgow but also operates at an office in Leeds where the claimant was based (although during the period relevant to this claim, the claimant was predominantly working from home due to the covid pandemic).

36. The claimant was line managed by HA from 3 August 2021 until 23 March 2022, he was then line managed by HB until 14 June 2022 when EA took over as his line manager. EA had been the claimant's line manager prior to HA.

37. The claimant describes himself as Asian British and is a Muslim.

38. In addition to their substantive roles, staff within the respondent can become involved in various groups that operate within the organisation. These are voluntary roles which do not attract additional payments or allowances. Some of these groups are national groups and others are specific to individual directorates or local offices. Some members of staff can be involved in more than one of these groups.

39. The group relevant to the case is the National People Group for the WHDM directorate. As its name suggests it deals with activities related to the people working for the respondent in that directorate such as performance, wellbeing and engagement. The area of work for the group relevant to this case was diversity and inclusion and there was sub-group which dealt with this known as the DI People Group.

40. The claimant has an interest in diversity and inclusion issues. He had been involved in a diversity and inclusion group for the Leeds office. He had spoken to PH about such issues and expressed an interest in getting more involved in diversity and inclusion, particularly at a national level. PH spoke to JB3 in late 2021, who was the lead for the National People Group at the time, about getting the claimant involved in the DI People Group.

41. Around this time, the chair of the DI People Group had left this role and JB2 had stepped into the role, previously being an unofficial deputy chair. JB3 spoke to the claimant and explained this to him. She also spoke to JB2 who was keen to stay in the role of chair of the DI group. JB3 suggested that a co-chair arrangement between the claimant and JB2 could be tried. This was not something which had been tried in this group or any of the other sub-groups. JB3 thought this was something which might work as they had different interests within diversity (the claimant being interested in race issues and JB2 did a lot of work relating to disability) and could bring different strengths to the role.

42. It was agreed that the co-chair arrangement would be tried and this commenced around the start of December 2021. However, the relationship between the claimant and JB2 was difficult from the outset.

43. They had an initial telephone conversation about how they would work together on 6 December 2021. During this conversation, the claimant informed JB2 that he had been subject to bullying at work and described some teams in the respondent as "toxic". The respondent have what are described as Ambassadors for Fair Treatment (AFT) who are staff members that can assist other staff if they feel that they are being subject to some form of unfair treatment. JB2 is an AFT and suggested to the claimant that he may wish to approach his local AFT for help in dealing with any bullying. The claimant replied that he had no confidence in the AFTs and did not find them very useful but did not elaborate on this.

44. JB2 followed up this conversation by an email of 9 December 2021 (p261) setting out some of his thoughts about areas of work the DI Group could undertake. The claimant replied on 10 December 2021 (p260-261). JB2 was concerned at some of the things being said by the claimant in his reply; he repeated his comments about AFTs; he indicated that he was not interested in awareness building or days celebrating particular groups until *"bullying, harassment and discrimination are utterly obliterated and destroyed";* the claimant stated that he was busy working on planning rather than announcing his appointment but did not share with JB2 (at any time) what was he was planning.

45. JB2 was concerned about how some of what the claimant was saying would be received by other staff and expressed this to the claimant (p267). He also alerted JB3 to his concerns, forwarding the email exchange of 9 & 10 December 2021.

46. On 11 January 2022, JB2 was emailed by a communications manager, Sophie Colquhoun, asking what plans the DI Group had for LGBTQ History Month (p269). The claimant was not copied into this email. JB2 replied the same day (p269), copying in the claimant, and saying there did not seem to

be a plan. He stated that he was a member of the LGBTQ+ Staff Network and had seen no plans from them either.

47. The claimant replied to this later the same day (p268). He commented that he had been having discussions with Janet O'Connor about LGBT History Month as well as the Chair of the LGBT+ Network. He complains that JB2 should have explained to Ms Colquhoun that the claimant was the co-chair of the DI Group.

48. On 19 January 2022, the claimant and JB2 had a telephone conversation. JB2 asked the claimant to be careful how he represents the opinions of others. They discussed an article that JB2 had prepared about LGBT+ issues in sport; the claimant felt that this did not meet the theme of the history month which was Politics in Art and that the claimant had an article that better fitted the theme. JB2 thought there was no reason both articles could not be promoted and asked to see the claimant's article. The claimant replied that a colleague was working on it and would share it. In the event, the claimant did not produce any such article.

49. The claimant also complained to JB2 that JB3 was inviting him to senior leadership meetings and not the claimant. JB2 explained that these invitations related to his role as an AFT. There was some discussion about the claimant attending these meetings with the claimant suggesting that he do a presentation on the respondent's induction pack (which includes a section on the DI Group). JB2 explained that a presentation on the induction pack had already been done and that it may be better if the claimant observe the meeting to see what is discussed. The claimant emailed JB3 later on 19 January 2022 (p271) saying that JB2 had thought it would be a "great idea" for them to attend the senior leadership meeting and share points about the DI Group's work. JB2 felt that this misrepresented what had been discussed.

50. The DI Group had a Teams page which staff could access. On the page was a biography of JB2 and the Group's terms of reference. On or before 25 January 2022, JB2 noticed that the claimant had changed both JB2's biography and the terms of reference (to expand the Group's scope beyond

WHDM to the whole of the respondent). This had been done by the claimant without any permission or consultation with JB2 or anyone else. JB2 raised this with the claimant by email dated 25 January 2022 (pp277-278).

51. In that same email, JB2 suggested that they send out a request to DI Leads in the directorate for information about what times suited them best to attend meetings of the Group. He suggested that if anyone who did not reply then it would be best if he chased them up rather than the claimant as he had met them before. He considered that, if there was some sensitive matter which affected anyone's availability, they would be more comfortable opening up to someone they knew. He was also concerned about comments made by the claimant that he only wanted to work with people he trusted and had wanted to know who had not attended previous meetings. He was concerned that the claimant may upset people when chasing responses.

52. On 26 January 2022, the claimant contacted JB2's line manager at the time, BP. They had a long telephone conversation about the claimant's relationship with JB2. BP recorded his recollection of this in an email he sent to the claimant's line manager, HA, on 28 January 2022 (pp303-304).

53. During the course of this conversation, the claimant told BP that he and JB2 had clashed over plans for LGBT+ History Month and that this caused the claimant to question JB2's integrity but did not give any more detail of what this had involved. The issue of the claimant changing JB2's biography was discussed and BP informed the claimant that this had upset JB2.

54. BP felt that the claimant was trying to get him to take sides and he was careful not to do so at this time. The claimant raised the issue of JB2 suggesting that the claimant not contact DI Leads and BP suggested he follow JB2's advice for the moment.

55. JB2 had a number of roles within the respondent and belonged to other groups as well as the DI Group. As part of his involvement with a different group, he had been invited to attend a meeting of what was known as the United Network. He informed the claimant about this as a matter of courtesy in his email of 25 January 2022. The claimant, in an email reply the same

day (pp276-277), asked who he should contact to join the United Network meeting. JB2 replied by email on 26 January 2022 (p276) that he was only a guest and could not decide who should join such meetings. He explained that he did not have a contact name and that it was no appropriate for him to encourage others to attend.

56. On 26 January 2022, JB2 received an email from Jefferson Welsby (p288-289) which copied in the claimant. The email gives a brief summary of what the United Network is and does explaining that it does not currently invite directorate level DI Groups. The email goes on to ask both the claimant and JB2 to pause their attendance as guests until there has been a discussion about who will be invited to attend future meetings.

57. From JB2's perspective, this email came out of the blue and apropos of nothing. He had not been invited in his role with the WHDM DI Group. He wanted to understand what had happened and, in particular, what contact the claimant had made with Mr Welsby that prompted the withdrawal of his invitation. JB2 emailed the claimant on 27 January 2022 (p293) asking him to share his request to Mr Welsby so that JB2 could address whatever issue this had caused.

58. The claimant replied the same day (p292) saying that he had not been given any more information about why the invitation had been withdrawn than what was said in the email from Mr Welsby. JB2 did not consider that this answered his request which was for what the claimant sent to Mr Welsby and so repeated his request in a further email on 27 January 2022 (p291). The claimant replied the same day (p291) with the same response that he could not give any further information that what had been said by Mr Welsby.

59. JB2 felt that the difficulties with the claimant was adversely affecting his health. He has a long-standing medical condition and he felt that the effects of this condition were being worsened by the stress he was experiencing in his dealings with the claimant.

60. On 27 January 2022, JB2 sent an email to HA, copied to JB3 and BP (p298) raising his concerns about how the claimant's conduct was affecting him and enclosing a time limit of events (p299).

61. There was a suggestion made by BP that mediation may be a way to resolve the issues between the claimant and JB2. There was a suggestion that JB act as a mediator but JB2 expressed a preference for someone from the respondent's mediation service.

62. Both the claimant and JB2 agreed to mediation and a mediator was appointed. The respondent has a standard confidentiality statement which it asks all staff engaging in mediation to sign (p192-193). This includes a clause that states that all discussions during the mediation will be held on a "without prejudice" and "privileged" basis meaning that anything said in those discussions cannot be used as evidence in any future internal grievance or Employment Tribunal proceedings.

63. The claimant had formed the view (mistaken in the Tribunal's view) that this clause would mean he was giving up his right to pursue a claim in the Employment Tribunal at all rather than just keeping what was discussed in the mediation confidential. He asked for this clause to be removed before he would proceed with mediation. The respondent was not prepared to vary the confidentiality statement; it was in terms used across the Civil Service and the confidentiality was there for an important purpose.

64. As a result of the discussions around the variation of the confidentiality statement, the mediation planned for 1 March 2022 did not proceed. In fact, the mediation did not proceed at all; JB2 withdrew from this because of the delays being caused by the claimant being unwilling to sign the confidentiality statement.

65. Whilst the efforts to arrange mediation were ongoing other matters arose about which the claimant has raised allegations of unlawful discrimination.

66. Around the start of February 2022, it came to the attention of PS that the claimant had issued an expression of interest (EOI) to staff in the Leeds office

to get involved in the local DI Group (this is a different group from the one which the claimant co-chaired with JB2). She was concerned that the EOI had not been issued by the correct procedure; it had been drafted by the claimant without any consultation; it had not been put on the relevant section of the respondent's intranet; it asked for any replies to come to the claimant but the respondent's process for EOIs is that these should be sifted by two people who had undergone training on this. PS did not consider that the claimant should be deciding which EOI responses should be accepted and that this should be done by team leaders.

67. PS was informed of the EOI by HA and she asked him to explain the correct process to the claimant. HA informed PS that the claimant wanted to speak to her directly and she did so. The claimant agreed to follow the correct process in the future.

68. On 16 February 2022, JB2 emailed JB3 (p319). He alleges that the claimant had told the DI Group that JB2 had stopped him (the claimant) from contacting them. He also informed her of links that the claimant had posted in Teams to two articles from the London Mayor, Sadiq Khan. He was concerned that they had been posted without any comment or explanation of what point the claimant was seeking to make and so could be misinterpreted.

69. With the mediation no longer going ahead, JB3 wanted to explore other options for resolving the issues between the claimant and JB2. She emailed BP and HA on 3 March 2022 (pp347-348) asking them to discuss this further. They set out their views in an exchange of emails on 4 March 2023 (pp346-347); they were both of the view that the current situation could not continue; BP was of the view that the fault lay with the claimant; HA did not express a view either way other than to say that the claimant disputed certain of the matters raised by JB2; they suggested that the role of chair for the DI Group should be the subject of a formal EOI for which both the claimant and JB2 could apply.

70. JB3 considered this and discussed matters with PS and NB. It was agreed amongst them that the claimant would be asked to step back from the role of

co-chair. JB3 had considered whether JB2 should be asked to do this but decided against it for a number of reasons; JB2 had held the role before the claimant; it was the claimant who had stymied the attempts at mediation; JB2 had links to a wider national group that gave access to information on diversity and inclusion matters.

71. It was intended that HA should ask the claimant to step back but he was nervous about this due to previous issues with the claimant. It was therefore agreed that NB, as HA's manager, would speak to the claimant.

72. NB contacted the claimant via Teams on 11 March 2022. They had not met before and so NB introduced himself to the claimant. He told the claimant that his parents had both worked for the respondent as did his partner. He said that he never wanted to work for the respondent because his family spoke about it all the time. He described it as the "family business".

73. NB went on to explain to the claimant that he was being asked to step back from the role of co-chair as this was considered to be in the best interest of the DI Group.

74. At 12.07 on 11 March 2023, the claimant emailed NB copying in JB3 and PH (pp353-354). The email informs NB that he had spoken to HA who, the claimant says, had told him that JB3 had not advised him (HA) of any decision being made about the claimant. The email goes on to ask JB3 for her "urgent" help in relation to NB having told him not the attend the DI Group meetings. He states that he had explained to NB that he felt he had been treated in an unfair and prejudicial manner.

75. JB3 replies to this email at 13.49 explaining that the issues between him and JB2 required to be resolved. She suggests that the claimant has further discussions with HA and NB to see if the matter can be resolved. She also states that if the claimant does feel unfairly treated then he should follow the correct process and this can be addressed.

76. There is a further exchange of emails that same day between the claimant and JB3 during which the claimant states that he will continue with his DI Lead

role to ensure "PSED" (a reference to the public sector equality duty) and "EA2010" (a reference to the Equality Act 2010) compliance (p352). The email says nothing more than that in terms of how the claimant continuing in the role would achieve compliance with these matters.

77. It is not in dispute that the claimant's involvement in the DI Group as co-chair ceased from this time onwards.

78. On 15 March 2023 at 9.23, the claimant emailed NB (p676) with the subject line *"Breach of Equality Act 2010".* The email refers to their telephone conversation of 11 March 2022 as a *"horribly distressing incident of bullying, harassment and discrimination".* The claimant states that he has received no apology for this and that it was *"highly disturbing"* that the conversation occurred only three days into NB's temporary promotion to SEO. NB replied at 17.38 (p675) that he was sorry that the claimant had been distressed and this was not his intention. He offers to have a further discussion with the claimant about his concerns later that week.

79. The email exchange between the claimant and NB continues on 17 March 2022 (pp673-674) in which NB continues to offer to discuss the claimant's concerns by telephone. NB forwards the whole exchange to JB3 on 18 March 2022 at 10.07 (p673).

80. On 15 March 2022 at 10.46, JB3 emails JN about an email sent by the claimant earlier that day to the DI Group asking him if he agreed with her that this was not appropriate. The email made reference to issues surrounding refugees from Ukraine being treated differently depending on whether they were white or people of colour. It also made reference to news reports about an incident in America involving the film director, Ryan Coogler being mistaken for a bank robber when trying to withdraw money from his own account.

81. JN replied at 10.59 the same day, saying that he felt that the email was *"cack handed in tone"* but not a breach of any standards of behaviour. He did question the audience as he considered that the DI Group would be already engaged in such discussions so it was unclear that the claimant's purpose

had been in sending this email. No further action was taken about the claimant's email.

82. On 18 March 2022, the claimant engages in an exchange of emails with BW. In an email he sends to her at 17.38 (p393) he alleges that his co-chair (without naming JB2) was utterly duplicitous, lied to Grade 6 managers in an email about LGBT+ matters and told the claimant they will not do anything to him even if they found out. There is no more detail of these allegations given by the claimant to BW than what is described in this paragraph.

83. On 25 March 2022, the claimant emailed JB3 (p650) stating his trade union and the Race Network within the respondent were concerned at his removal from the DI Group. He states that he is intending to pursue complaints under the Equality Act.

84. JB3 replies the same day (p649) setting out the reasons why he was asked to step back from his role (that is, the inability to resolve the issues between him and JB2). She encourages the claimant to formalise any complaint of bullying, harassment and discrimination and assures him these will be dealt with by way of the correct process. She concludes the email by saying that she would be willing to continue with the co-chair arrangement if it could work in a professional manner without impact on the claimant, JB2 or anyone else in the group. If that cannot happen then she did not see any alternative other than to return to the single chair structure which applied in other groups. There was no response from the claimant to this email.

85. HA was leaving his role as the manager of the team in which the claimant worked at the end of April 2022. HA was a very popular manager with his team; he had assisted a number of them in securing permanent jobs with the respondent. Staff within the team were sad to see HA moving to another role.

86. On 27 April 2022, MW shared an image of HA with the team which he had edited to add a crown, sunglasses, earrings and a chain round his neck. These appeared as if drawn by hand rather than pictures of the various items.

The image was accompanied with the message *"will be a sad say. What a baller!"* (p619/C34).

87. After the claimant had contacted her in March 2022, BW asked JN to provide direct support to the claimant. JN was HR support for the WHDM directorate at the time. JN had contact with the claimant throughout April, May, June and July 2022 to provide him with support.

88. One of the issues which was discussed was a move for the claimant from WHDM to another directorate. This is something which the claimant had been looking to explore. JN explained the process for such a move and that there was no guarantee that a move could be secured. One area where the claimant expressed an interest in a move was to Customer Experience and JN contacted a counterpart in that directorate who was going to look into what vacancies existed in that directorate.

89. However, there was a new leader in Customer Experience who was reviewing their structure and had paused any recruitment whilst this was ongoing.

90. During a discussion on 15 May 2022, the claimant talked to JN about what he described as a *"racist"* image of HA. He gave no specific about this and JN stated that it was the claimant's decision whether to share it. JN explained that if he considered that it breached the respondent's values then he would have to take it forward. The claimant did not share the image.

91. The respondent operates what is described as the "priority managed move register". This is intended for people who needed a job move due a health condition or because they were at risk of redundancy. It is not in dispute that the claimant was not placed on this register.

92. In May 2022, JN moved to a new role outside the WHDM directorate. Normally this would mean that he would cease to provide the claimant with support but he continued with this in order to provide consistency and seek a resolution for the claimant.

93. In June 2022, EA became the claimant's line manager. She had been his manager previously when he first started with the respondent. It was

explained to the claimant by JN that EA would be dealing with the day-to-day management of his work and that JN would not get involved in this. EA also explained this to the claimant and asked him to contact her, and not HR, about day-to-day work issues.

94. On 23 June 2022, team leaders including EA were asked to attend an urgent meeting. At this meeting, they were advised that they would be moving to dealing claims under the EU Settlement Scheme (EUSS) with immediate effect. There would be a short amount of training on these the next day.

95. EA returned to her team and advised them of this. She also put it on the Teams chat for anyone who had already left for the day as well as sending an email detailing the training schedule.

96. The next day, EA was contacted by JN to inform her that the claimant had contacted him about the move to the EUSS claims and that the claimant did not want to move to these as it would be too much for him. EA was angry about this because the claimant had contacted JN without any attempt to speak to her first.

97. EA phoned the claimant the same day and stated that she was disappointed that he had gone to JN without discussing anything with her. She accepts that she called the claimant *"discourteous"* and that she raised her voice. When the claimant said that she was shouting during the call, she accepted this at the time and apologised. She stated to the claimant that she was annoyed and that he would be as well in the same situation.

98. On 29 June 2022, the claimant and JN discussed the conversation with EA of 23 June 2022. During this conversation, JN stated that he could understand why EA would consider that the claimant had been discourteous to her by contacting him about the change to EUSS claims rather than speaking to her first.

99. On 29 June 2022, PH and JN exchange chat messages over Teams regarding the claimant (p492). The discussion related to the claimant potentially moving to a different role or a different directorate. PH states to

JN that she had discussed it with BW and that they were both concerned about *"pushing a problem to someone else".* The chat messages saying nothing more about what is meant by "a problem". PH's evidence at the Tribunal was this was a badly worded reference to the fact that the claimant had made reference to being unhappy about how he had been treated and that this had never been resolved. She was concerned that he would take this view to another role and it could negatively impact on his view of the respondent generally.

100. It is not in dispute that on 28 July 2022, the claimant sent JN an email with the subject line *"Breach of Equality Act 2010".* No evidence was led as to the content of the email and so no findings of fact have been made about this.

101. On the same day, JN informed the claimant that he would no longer be providing support to him. He confirmed this in an email to the claimant copied to EA of the same date (p582-583). The email explained that JN had considered for a while that he was not helping the situation and was causing confusion. He explained that he had moved roles and found it difficult to devote the time needed to support the claimant. He was no longer working in the WHDM directorate so was less aware of what was happening in the area of the organisation which ran the risk of giving incorrect advice. The email confirmed to the claimant that there was a mentor in place to support him in moving role.

102. JN had been considering moving away from supporting the claimant for some time. This could have happened when JN moved roles and ceased to be involved in HR support for the WHDM directorate but he had continued because he had built up a rapport with the claimant and felt that some consistency would be helpful in trying to resolve the claimant's issues. However, over time JN had become concerned that no progress was being made and that his continued involvement was actually hindering matters.

103. One particular concern was the fact that the claimant would invoke his support from JN to try to avoid engaging in work that he did not want to do. The issue of the move to EUSS work was one example of this but there were other

instances where the claimant sought to involve JN in his day-to-day work. For example, in May 2022 the claimant involved JN in his efforts to have the number of decisions he was expected to make each day reduced. There were also instances when HB had line managed the claimant where the claimant sought to involve JN in issues such as how many observations of his work HB would carry out (pp473-474) and an occasion when she asked him to confirm how many hours he was planning to work on a particular day (p463).

104. JN was also concerned at the fact that the claimant did not appear to want to take steps to formally resolve his concerns. JN had tried to get the claimant to engage with the respondent's grievance processes but he did not do so. He would not provide detail of his complaints or take steps to process these. JN felt that the claimant was not listening to him.

105. In July 2022, LH was covering for EA whilst she was on holiday. On 14 July 2022, LH sent the claimant a chat message on Teams (p560) asking the claimant to undertake what are described as "full and fast decisions". The reason for this was that another team member was off sick and LH needed to reallocate work amongst the team; he asked both the claimant and another team member to move to a different type of decision.

106. The claimant replied (p560) to say that he was updating his flexitime plans for the next day, visiting the office for part of the day and then using flexi time for the rest of that day. He made no mention of LH's request to move to "full and fast decisions".

107. On checking, LH identified that the claimant did no "full and fast decisions" on 14 July. He informed EA of this by email dated 18 July 2022 (p560).

108. EA had become increasingly concerned about the working relationship with the claimant. She felt that he would not comply with reasonable management instructions such as LH's request on 14 July and EA's attempts to arrange one-to-one meetings with him as she did for other members of the team (pp569-571). She was also concerned about his performance which she felt was below that of the other members of the team.

109. On 26 July 2022, EA contacted HR support by way of an online portal (pp572-573) asking whether these were matters which could amount to disciplinary action. EA received a response on 27 July 2022 (pp575-576) which set out a range of options for trying to resolve the issues she had with the claimant. No disciplinary action against the claimant was pursued at that time.

110. EA took a two week holiday in August 2022. She informed staff of this in advance and who would be deputising for her. All of the team have her personal mobile number and she had previously indicated that staff could contact her when she was on leave.

111. On 21 September 2022, EA received an occupational health report in relation to the claimant. She had, for some time, sought to have him seek assistance when he complained about stress or other health issues but he had not taken up these options.

112. EA forwarded this to the claimant and phoned him later to discuss it. The claimant stated that he had not read it because he was busy completing EOIs. EA explained to the claimant that it was her understanding that staff should not be completing job applications during working time but that she would look into this. EA spoke to a grade 7 manager, Brian Fleming, who confirmed that she was correct. She confirmed this to the claimant.

113. In their ET3, the respondent raised an issue about whether the claim should have been accepted by the Tribunal in circumstances where the ET1 form did not contain the claimant's full name. A hearing was listed to determine this issue but, on further consideration, the respondent decided not to pursue this point and it was dropped.

114. On 24 February 2023, the claimant sent an email to the respondent's solicitor indicating that he wanted to pursue a grievance based on what was contained in his Scott Schedule prepared for the purposes of these proceedings (p655).

115. This was forward to LB who then passed it to NB. NB forwarded the grievance to the respondent's HR Mediation and Investigation Service. This service asked the claimant to complete the respondent's standard grievance

form G1 (pp150-154) as required by the respondent's grievance policy (p173). The reason for this is that the email from the claimant and the Scott Schedule did not set out the information which is required under the policy, for example, it does not set out the resolution sought by the claimant.

116. The claimant was asked to complete a G1 form in respect of each matter about which he complained. The reason for this is so that those who are the subject of any grievance can see what the complaint against them was said to be. This is the respondent's standard practice where an employee seeks to grieve about more than one matter.

117. The investigation of the grievance was ongoing at the start of these proceedings.

Submissions

118. Both parties lodged written submissions and had the opportunity to lodge written comments on each other's submissions. The Tribunal has noted these but, for the sake of brevity, it does not intend to set these out in detail. It will refer to any relevant elements of the submissions in its decision below.

119. In particular, the claimant's submissions were, for the most part, a transcript of the questions and answers asked in his cross-examination of the respondent's witnesses. The Tribunal has made its findings of fact as set out above based on its note of the evidence.

120. The claimant did make reference to a previous Employment Tribunal judgment against the respondent from 2018. The case in question involved wholly different people and a wholly different factual matrix. It was a first instance decision of another Tribunal which is not binding on this Tribunal nor did this Tribunal consider that it was in any way persuasive or relevant to the issues to be determined in this case.

Relevant Law

121. The Equality Act 2010 protects individuals from discrimination on the grounds of various protected characteristics. These include, for the purposes of this case, race.

122. The definition of direct discrimination in the 2010 Act is as follows:

> ***13 Direct discrimination***
>
> *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.*

123. These provisions do not stand on their own and any discrimination must be in the context of the provisions of the Act which makes it unlawful to discriminate in particular circumstances. The relevant provision in this case is s39 of the Act which deals with discrimination by employers to employees.

124. The burden of proof in claims under the 2010 Act is set out in s136:

> ***136 Burden of proof***
>
> *(1) This section applies to any proceedings relating to a contravention of this Act.*
>
> *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

125. The burden of proving the facts referred to in s136(2) lies with the claimant. If this subsection is satisfied, however, then the burden shifts to the respondent to satisfy subsection 3.

126. Although the test for direct discrimination forms a single question, the caselaw indicates that it is often helpful to separate this into two elements; the less favourable treatment and the reason for that less favourable treatment.

127. In order for there to be less favourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a detriment requires the Tribunal to determine whether "by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work" (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 HL).

128. A claimant can rely on an actual or hypothetical comparator for the purposes of establishing less favourable treatment. There must be no material difference in the circumstances of the claimant and comparator (s23 of the Equality Act 2010). In deciding how a hypothetical comparator would have been treated, the Tribunal is entitled to have regard to the treatment of real individuals (see, for example, *Chief Constable of West Yorkshire Police v Vento* [2001 IRLR 124).

129. However, a difference in treatment and a difference in protected characteristic is not enough to establish that the difference in treatment was caused by the difference in protected characteristic; "something more" is required (*Madarassy v Nomura International* [2007] IRLR 246). The Tribunal needs evidence from which it could draw an inference that race was the reason for the difference in treatment.

130. It is important to remember that unreasonable or unfair behaviour is not enough to allow for an inference of direct discrimination (*Bahl v The Law Society* [2004] IRLR 799).

131. It is a well-established principle that Tribunals are entitled to draw an inference of discrimination from the facts of the case. The position is set out by the Court of Appeal in *Igen v Wong* [2005] ICR 931 (as approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] IRLR 870):

> *"(1) Pursuant to s 63A of the SDA 1975[now s136 of the Equality Act 2010], it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the*

respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

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

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

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

(5) It is important to note the word 'could' in SDA 1975 s 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

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

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s 74(2)(b) of the SDA 1975 from an evasive or equivocal reply to a questionnaire or any other questions that fall within s 74(2) of the SDA 1975.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in

determining, such facts pursuant to s 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

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

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

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

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

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

132. The *Igen* case was decided before the Equality Act was in force but the guidance remains authoritative, particularly in light of the *Hewage* case.

133. *Hewage* emphasised that a Tribunal should not take an overly technical approach to the burden of proof provisions per Lord Hope:

"32. … it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they

have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

134. Similar views were expressed in *Laing v Manchester City Council* [2006] ICR 1519, EAT where Elias P (as he then was) observed:

"76… 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.

77. Indeed, it is important to emphasise that it is not the employee who will be disadvantaged if the tribunal focuses only on the second stage. Rather the risk is to an employer who may be found not to have discharged a burden which the tribunal ought not to have placed on him in the first place. That is something which tribunals will have to bear in mind if they miss out the first stage. Moreover, if the employer's evidence strongly suggests that he was in fact discriminating on grounds of race, that evidence could surely be relied on by the tribunal to reach a finding of discrimination even if the prima facie case had not been established. The tribunal cannot ignore damning evidence from the employer as to the explanation for his conduct simply because the employee has not raised a sufficiently strong case at the first stage. That would be to let form rule over substance."

135. Harassment is defined in s26 of the Equality Act 2010:

26 Harassment

(1) A person (A) harasses another (B) if—

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

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

(i) violating B's dignity, or

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

(2) …

(3) …

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

(a) the perception of B;

(b) the other circumstances of the case;

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

(5) The relevant protected characteristics are—

…

race;

religion or belief

…

136. In *Hartley v Foreign and Commonwealth Office* UKEAT/0033/15 (27 May 2016, unreported) it was held that the question whether there is harassment must be considered in the light of all the circumstances of the case. Where the claim is based on things said it is not enough only to look at what the speaker may or may not have meant by the wording.

137. However, even where certain elements of the test for harassment are met (for example, unwanted conduct and the violation of the claimant's dignity), the

Tribunal must still consider the *"related to"* question and make clear findings as to why any conduct is related to a protected characteristic (*UNITE the Union v Nailard* [2018] IRLR 730; *Tees, Esk and Wear Valleys NHS Foundation Trust v Aslam* [2020] IRLR 495, EAT).

138. The test for victimisation is set out in s27 of the Equality Act 2010:-

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.

139. It is important to distinguish between cases where the alleged detriment has a connection to the protected act but is not *"because"* of it from those cases where the detriment is directly because of the protected act.

140. For example, in *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, it was held that a refusal of a reference did not amount to victimisation on the basis that it was not refused because of the fact that the claimant had brought a race discrimination but because of the imminence of the hearing in the case and the respondent's desire to protect their position in the litigation.

141. In *St Helens Borough Council v Derbyshire* [2007] IRLR 540, the House of Lords considered the issue of victimisation in the context of communications sent to claimants by their employer seeking to persuade them to settle their equal pay claims. Although the Lords decided the communications in that case were an act of victimisation, they made the following comments in relation to what would be a "detriment" in such a scenario (Lord Neuberger at para 68):

"In my judgment, a more satisfactory conclusion, which in practice would almost always involve identical considerations, and produce a result identical, to that in Khan, involves focusing on the word 'detriment' rather than on the words 'by reason that'. If, in the course of equal pay proceedings, the employer's solicitor were to write to the employee's solicitor setting out, in appropriately measured and accurate terms, the financial or employment consequences of the claim succeeding, or the risks to the employee if the claim fails, or terms of settlement which are unattractive to the employee, I do not see how any distress thereby induced in the employee could be said to constitute 'detriment' for the purposes of ss.4 and 6 of the 1975 Act, as it would not satisfy the test as formulated by Brightman LJ in Jeremiah, as considered and approved in your Lordships' House. An alleged victim cannot establish 'detriment' merely by showing that she had suffered mental distress: before she could succeed, it would have to be objectively reasonable in all the circumstances. The bringing of an equal pay claim, however strong the claim may be, carries with it, like any other litigation, inevitable distress and worry. Distress and worry which may be induced by the employer's honest and reasonable conduct in the course of his defence or in the conduct of any settlement negotiations, cannot (save, possibly, in the most unusual circumstances) constitute 'detriment' for the purposes of ss.4 and 6 of the 1975 Act."

142. The provisions relating to the burden of proof set out above apply equally to a victimisation claim as they do to a claim for direct discrimination.

Decision - introduction

143. The Tribunal intends to break its decision down into three main parts. First, it will address certain issues which apply across all of the allegations made by the claimant. Second, it will set out its decision in respect of each of the 39 allegations made by the claimant. Third, conscious of the fact that the evidence has to be considered as a whole, the Tribunal will deal with the case in the round and, in particular, whether any adverse inferences of discrimination can be drawn from the evidence as a whole.

Decision – issues of general application

144. The first issue of general application relates to the question of whether the claimant carried out any protected acts in terms of s27 EqA. This is important as the claimant alleges victimisation in relation to almost all of the 39 allegations and so it is important to identify what protected acts he did (if any) and whether those were done before the alleged act of victimisation.

145. The claimant relies on four broad protected acts which are broken down further in his Scott Schedule as follows:

a. Carrying out his role as a Diversity & Inclusion National Lead.

i. He alleges that he sent an email to JB3, PH and NB on 11 March 2022 that he would continue in his role.

ii. He alleges that he sent an email to Diversity & Inclusion colleagues on 15 March 2022 about his own lived experience of racism.

iii. He alleges he sent an email to JB2 on 17 March 2022 stating that he intended to continue carrying out his role in an Equality Act compliant manner.

iv. He alleges he sent an email to JB3 and PH on 25 March 2022 stating that he would continue in his role.

b. Reporting LGBT+ concerns.

i. He alleges that he informed BP during a telephone conversation on 26 January 2022 that JB2 had admitted lying to senior managers about plans for LGBT+ History Month.

ii. He alleges that he informed NB about the same matter during a telephone conversation on 11 March 2022.

iii. He alleges that he sent an email to BW on 18 March 2022 making the same allegation.

c. Sending emails with the subject line "Breach of Equality Act 2010".

i. One email was sent to NB on 15 March 2022.

ii. A second email was sent to JN on 27 July 2022.

d. The bringing of the present proceedings.

146. The respondent concedes that the third and fourth matters are protected acts for the purpose of the Equality Act. These protected acts can only, as a matter of logic, be relevant to alleged acts of victimisation which occurred after these protected acts were done.

147. The respondent does dispute that the first two matters amount to protected acts and so the Tribunal does require to determine whether these meet the definition in s27(2).

148. In relation to the first matter, the Tribunal does not consider that simply holding a diversity and inclusion role within an organisation is a protected act. It clearly does not fall within s27(2)(a), (b) or (d). The claimant asserts that this falls within s27(2)(c) but presented no legal authority for this proposition and the Tribunal is unaware of any caselaw supporting the claimant's position.

149. The Tribunal considers that holding such a role in and of itself does not fall with s27(2)(c) as it is not an "act" in the sense of something being done. If the Tribunal was to accept the claimant's position, it would, in effect, be creating a new protected characteristic of holding a diversity and inclusion

role. The Tribunal considers that if Parliament had intended for such roles to be protected then it would have expressly said so.

150. Of course, it could well be the case that someone in such a role could, as part of that role, do things which amount to protected acts and so the Tribunal had considered whether the individual emails on which the claimant relies could be protected acts.

151. In relation to the emails of 15, 17 and 25 March 2022, the claimant led no evidence whatsoever about these. They are not mentioned at all in his witness statement, his supplementary oral evidence or either bundle. Further, nothing was put to any of the respondent's witnesses in cross-examination about these emails.

152. In these circumstances, the Tribunal considers that the claimant has failed to discharge the burden of proving that he did these purported acts at all, let alone that they amounted to a protected act as defined in s27(2).

153. The position is different for the email of 11 March 2022; in his witness statement, the claimant makes reference to sending an email to the people in question on this date. However, the statement says nothing more than that an email was sent with no description of its content and no reference to any document in either bundle.

154. The statement of JB3 makes reference to an exchange of email correspondence on 11 March 2022 between her and the claimant (with NB and PH copied in) which is at pp351-354. It is not clear if this includes the email on which the claimant relies but there is an email within the exchange from the claimant at 14.05 (p352) where he suggests that he continues in his diversity and inclusion role whilst having discussions with NB and HA to try to resolve the issues which had arisen between him and JB2.

155. On the assumption that this is the email relied on by the claimant then the Tribunal does not consider that this amounts to a protected act. It clearly does not fall within s27(2)(a), (b) or (d). In terms of s27(2)(c), the Tribunal does not consider that the mere fact that the claimant mentions the Equality Act in

this email is sufficient to say that the email was sent for the purposes of the Act or in connection with it. Rather, the purpose of the email is simply to make the suggestion that the claimant continue in the diversity and inclusion role.

156. For these reasons, the Tribunal does not consider that the first matter is a protected act.

157. Turning to the second matter relied on by the claimant, the same issue regarding a lack of evidence arises in respect of the alleged conversation with NB and the email to BW. Neither of these matters are mentioned in the claimant's witness statement or his oral evidence.

158. Again, neither of these matters were put to the witnesses in cross-examination. This is important as NB stated in his statement that he had no recollection of the claimant saying anything about LGBT issues during their conversation on 11 March 2022 and the claimant did not challenge this.

159. Although the claimant makes no reference in his evidence about the email to BW, she does, in her statement, refer to an email exchange on 18 March 2022 which includes an email at p393 in which the claimant alleges that JB2 *"lied to Grade 6 manager in an email about LGBT+ matters".*

160. The claimant does make reference in his statement to the conversation with BP (although it should be noted that he says very little about this other than that BP did not want to comment on JB2's "duplicity" about LGBT issue) and BP accepts in his statement that there was a discussion about LGBT issues but could not recall the detail of this. In a contemporaneous email sent by BP to HA on 28 January 2022 (pp303-304), he records that the claimant spoke about JB2 and him clashing over the theme for LGBT History Month.

161. In these circumstances, the Tribunal finds that the claimant has not discharged the burden of proof in respect of the conversation with NB and there is no evidential basis on which the Tribunal could conclude that this occurred as alleged.

162. The Tribunal does find that the claimant did discuss an issue around a dispute with JB2 in relation to the theme for LGBT History Month with BP on 26

January 2022 and made an allegation that JB2 had lied about such issues to BW in an email of 18 March 2022.

163. However, the Tribunal does not consider that these amount to protected acts. They are not allegations against JB2 of unlawful discrimination and rather refer to an email exchange at pp268-269 in which JB2 stated that there did not seem to be a plan for LGBT+ History Month in the national group and the claimant correcting him to say that the claimant had been engaged in discussions about this (which had not involved JB2). Putting aside the fact that this does not, on the face of it, suggest the JB2 was lying or being duplicitous but was simply unaware of the claimant's actions, nothing in this involves anything which would fall within the definition of protected act in s27(2) EqA.

164. Taken at its highest, what was said by the claimant on 26 January and in his email of 18 March 2022 was a complaint that JB2 had misled a manager about there being no plans for LGBT+ History Month. This comes nowhere close to an allegation that JB2 had contravened the Equality Act.

165. For these reasons, the Tribunal does not consider that the second matter relied on by the claimant amounts to a protected act.

166. One consequence of the Tribunal's findings that the first two matters are not protected acts is that allegations 1-17 cannot amount to victimisation at all. The claims of victimisation in respect of these allegations solely rely on the first two matters as protected acts and so cannot be victimisation if those matters are not protected acts.

167. The claimant also sets out a protected act which did not fall within the four broad headings above. He alleges that he informed JN of a racist image of HA during a Teams call on 18 May 2022; this is referenced in the claimant's witness statement and JN accepted that the claimant informed him of such a photograph but chose not to share it with him at the time.

168. However, although this matter is listed as a protected act at the end of the claimant's Scott Schedule, it is not mentioned at all in the substantive part of

the Schedule. There is no reference to this matter at all in respect of any of the 39 allegations and so it is not part of the claimant's case that this matter was the cause of any of the alleged victimisation.

169. In these circumstances, the Tribunal considers that, regardless of whether or not this matter amounts to a protected act, it is not relevant to the issues to be determined because the claimant does not rely on it as causing any of the alleged victimisation.

170. The second issue of general application relates to the knowledge of the alleged discriminators of the protected acts and the claimant's protected characteristic.

171. The claimant did not establish with any of the respondent's witnesses that they were aware of any of the matters relied on by him as protected acts in his victimisation claims. This is the case for both those matters which the respondent has conceded are protected acts and the matters which the Tribunal has found not to be protected acts.

172. In these circumstances, the Tribunal has no evidence to conclude that anyone, other than those who were the recipients of the relevant emails or involved in the relevant conversations, were aware of the alleged protected acts. It is axiomatic that if someone was unaware of a protected act then this cannot be a matter which bore on their subsequent actions.

173. This is particularly important in respect of the emails of 15 March and 27 July 2022. The only people for whom the Tribunal has evidence that they were aware of the 15 March email was NB, the recipient, as well as JN and PH who NB discussed the email with at the time as set out in a timeline document he prepared which appears at p285. In relation to the 27 July email, the evidence before the Tribunal as to who was aware of this was JN, the recipient, and no-one else.

174. For these reasons, the Tribunal concludes that where anyone else (for example, EA or LH) is alleged to have victimised the claimant because he

sent the March and July emails then these claims are not well-founded because those people had no knowledge of those emails.

175. The same issue arises in respect of the protected characteristic of religion/belief. The claimant did not establish with any witness that they were aware of the claimant's religion, either expressly or by inference. None of the respondent's witnesses gave any evidence in their statements that they were aware of the claimant's religion or had made any assumptions about this. A number of the respondent's witnesses expressly denied knowing the claimant's religion in their statement (for example, JN, PH, PS and BW) and the claimant did not challenge this in cross-examination.

176. The Tribunal considers that the absence of any evidence that the alleged discriminators expressly knew the claimant's religion or from which the Tribunal could infer that they had a particular perception of the religion to which he may belong weighs heavily against drawing any inference that any actions by the alleged discrimination were on the grounds of religion or related to religion.

177. This is important in case such as this where there is no direct evidence that any of the alleged discrimination was on the grounds of, or related to, religion and the claimant is asking the Tribunal to draw adverse inferences that what may otherwise be "innocent" acts are unlawful discrimination. The Tribunal will address this further below.

178. There is a similar issue with the protected characteristic of race and, in particular, the element of the definition of "race" in s9 of the Equality Act relied on by the claimant. In his ET1 at paragraph f) of the paper apart, the claimant sets out that, for the purposes of race, he relies on his nationality of Asian/British.

179. Again, none of the respondent's witness statements say anything about the witnesses knowledge of the claimant's race or nationality being Asian/British and a number of them deny any knowledge of the claimant's race having never met in person and noting that he would have his camera switched off in video meetings. The claimant did not challenge any of this in cross-

examination by putting to the witnesses that they had express knowledge of his race or that such knowledge could be inferred in some way.

180. The Tribunal is not prepared to draw any inferences about what knowledge or perception any of the witnesses may have had about the claimant's race (and, specifically, what is relied on in his ET1) in the absence of evidence from which it could draw such inferences. To do so would involve the Tribunal in making stereotypical and unevidenced assumptions about what those witnesses may have concluded about the claimant.

181. This is, again, something which weighs heavily against drawing any adverse inferences about any alleged discrimination being on the grounds of, or related to, race.

182. Having dealt with these two issues of general application, the Tribunal will now address each allegation.

Decision – allegation 1

183. The claimant alleges that, during their conversation on 26 January 2022, BP refused to take action about JB2's LGBT discrimination and instead instructed the claimant not to contact other diversity and inclusion leads. He alleges that this amounts to harassment on the grounds of race/religion and victimisation.

184. Based on the evidence before it, the Tribunal does not consider that the claimant raised any issue of discrimination by JB2 during this conversation but, rather, discussed a clash between the two of them about the theme for LGBT+ History Month. This is what is recorded in BP's contemporaneous email to HA at p303 and the Tribunal prefers this evidence to that of the claimant.

185. This is not a matter which required BP to take any action and so the Tribunal is not surprised that he took no action. Further, there is no connection between this matter and BP's subsequent suggestion to the claimant that he follow JB2's advice regarding contacting other diversity and inclusion leads. They were part of the same conversation which BP described as being an

hour in length and which covered a range of topics about the claimant's interactions with JB2. There is nothing in the evidence before the Tribunal which suggests that one was a consequence of the other.

186. The evidence of both the claimant and BP was that BP suggested the claimant follow JB2's advice and not that BP instructed the claimant to not contact other diversity leads as alleged in the Scott Schedule. The Tribunal accepts the evidence of BP that he was seeking to avoid inflaming issues whilst efforts were being made to resolve things between the claimant and JB2 as the reason why he suggested that the claimant following JB2's advice for the moment.

187. There is certainly no evidence from which the Tribunal could draw any inference that BP's suggestion to the claimant was related to the claimant's race or religion. The claimant suggests that other members of the diversity and inclusion group were not treated in the same way. This confuses the test for direct discrimination (where a comparator is needed) with that for harassment (where no comparator is needed but the treatment of others may be relevant evidence). In any event, there was no evidence led by the claimant about anyone else being treated differently in the same or similar circumstances.

188. This is one of the allegations of victimisation that relies on matters which the Tribunal has held are not protected acts and so that claim fails in respect of this allegation for that reason.

Allegations 2 & 3

189. These allegations can be addressed together as they both relate to the contents of a complaint made by JB2 to HA, JB3 and BP on 27 January 2024. The contents of the complaint are said to only amount to victimisation and this claim relies on matters which the Tribunal has held are not protected acts. The claim of victimisation in respect of these allegations fails for this reason.

Allegation 4

190. This allegation relates to the email exchange between JB2 and the claimant at pp291-293 in which JB2 sought information about the contact the claimant had made with the United Network group within the respondent. The claimant alleges that the email correspondence amounts to harassment and victimisation.

191. The Tribunal can well understand why JB2 was asking the claimant for this information. From his perspective, his invitation to attend a meeting of the United Network was withdrawn out of the blue and for no obvious reason. The email withdrawing his invitation (pp288-289) was copied to the claimant who had not been invited to the meeting as the invitation did not relate to their co-chair role but another role which JB2 held. In these circumstances, the Tribunal considers that it was not unreasonable of JB2 to ask the claimant what contact he had made with the group in order to ascertain what prompted his invitation to be withdrawn.

192. This is, on the face of the evidence, the clear reason why JB2 initiated the email exchange and has nothing to do with the claimant's race or religion.

193. It is correct that JB2 sent a second email seeking the same information after the claimant replied to his initial email. However, the clear reason for this is that the claimant did not provide the information requested; JB2 had asked the claimant to clarify what contact the claimant had made with the group and the claimant replied that he did not know why the invitation was withdrawn. This may be correct but it is not what JB2 asked.

194. The claimant's response was, at best, obtuse if not outright evasive and the Tribunal can well understand why JB2 repeated his request for information. The repeated request was clearly made because the claimant did not answer the question posed in the original email rather than the claimant's race or religion.

195. Again, this is an allegation where the victimisation claim relies on matters the Tribunal has found do not amount to protected acts.

Decision – allegation 5

196. This allegation relates to a telephone call between the claimant and PS on 2 February 2022 in which it is said that she was micro-managing the claimant and acting unreasonably by asking him to follow the respondent's procedures.

197. The allegation relates to an expression of interest (EOI) which the claimant had issued to staff at the Leeds office to become involved in the local diversity and inclusion group at that office. PS was concerned, not with the EOI itself, but with the fact that it was drafted by the claimant without any consultation with others and had not been posted on the respondent's intranet. She was also concerned that the claimant had asked for the EOIs to be returned to him and that this was not the proper procedure; anyone sifting EOIs had to have training for this and that there should be two people carrying out the sift with one person of a higher grade.

198. PS spoke to the claimant to explain these issues to the claimant and ask him to ensure that the proper process is followed. The Tribunal does not consider that this amounts to an unreasonable management instruction and does not amount to micro-management. Ensuring staff follow proper procedures in their work is clearly something that falls within the scope of management discretion.

199. Further, the evidence of PS, which was not disputed by the claimant, was that she spoke to him at his request. It was the claimant's line manager at the time, HA, who initially spoke to him about the concerns which PS had and she only contacted the claimant directly when he asked to speak to her. Contact from PS was not, therefore, "unwanted conduct" in terms of the test for harassment.

200. There are clear reasons why PS spoke to the claimant about these matters (that is, her concerns about procedure not being followed and the claimant asking to speak to her) which are wholly unrelated to the claimant's race or religion. Indeed, PS gave evidence (unchallenged by the claimant) that she was wholly unaware of his race or religion and had never spoken to him previously.

201. The claimant makes reference to other staff not being treated in the same way. Again, this confuses the test for direct discrimination with that for harassment but, in any event, the claimant led no evidence that other staff were issuing EOIs in a way that did not comply with procedure and had not been spoken to about that.

202. Again, this is an allegation where the victimisation claim relies on matters the Tribunal has found do not amount to protected acts.

Decision - Allegation 6

203. This allegation relates to an email which the claimant says BP and JB2 sent on 9 February 2022 to JB3 presenting a diversity and inclusion project of their own.

204. The claimant gave oral evidence about this email but he did not include it in the bundle. He described it as being sent by JB2 to JB3 copying in BP and the claimant. It was sent before People Group meeting at 11am that day. He did not describe the content.

205. Neither JB2, BP nor JB3 made reference to this email in their witness statements and the claimant did not put anything about it to them in cross-examination.

206. The Tribunal considers that the claimant has not discharged the burden of proof in establishing a case that, on the face of it, this email amounted to harassment in the grounds of race or religion.

207. The mere sending of an email by JB2 is not a detriment to the claimant without more evidence about the contents and context of the email. The claimant has led no evidence about this and so the Tribunal can make no findings that there was anything about the email which violated his dignity or created an unlawful environment for him.

208. There is certainly no evidence that this email was related to the claimant's race or religion.

209. Again, this is an allegation where the victimisation claim relies on matters the Tribunal has found do not amount to protected acts.

Decision – Allegation 7

210. This relates to an email sent by JB2 to JB3 on 16 February 2022 (p319) in which he advises her that the claimant had told the diversity and inclusion team that JB2 had prevented him from contacting them. He also draws her attention to links to a newspaper article and a YouTube video posted by the claimant in a group chat without comment about which he had concerns.

211. The Tribunal accepts the evidence of JB2 that he had genuine concerns about these being posted without the claimant explaining the point he was trying to make because this could lead to misinterpretation.

212. This email also has to be considered in the context of the difficulties in the working relationship between JB2 and the claimant which had developed by that point. JB2 had raised a number of issues about the claimant and the claimant had raised issues about JB2. The Tribunal considers that there was clearly a difficult working relationship by this point but that this was wholly unconnected with the claimant's protected characteristics and those of JB2.

213. There is certainly nothing in the email and the surrounding circumstances that provides any evidence that this was related to the claimant's race or religion.

214. Again, this is an allegation where the victimisation claim relies on matters the Tribunal has found do not amount to protected acts.

Decision – Allegation 8

215. This relates to a purported email exchange between JN and JB3 on 17 February 2022 in which it is said that they discuss the email from JB2 at p319 and agree that the claimant should face disciplinary action.

216. The claimant did not reference this in his witness statement and gave very brief oral evidence about this, stating that there was criticism of his diversity and inclusion work and that he should face disciplinary action for posting the

links referred to at p319. The email exchange in question was not produced in either of the bundles.

217. Neither JB3 nor JN made any reference to this email exchange in their evidence. The claimant did not put anything to either of them about this matter in cross-examination.

218. When the claimant was cross-examined, he was asked if JB3 & JN had suggested disciplinary action for posting these links and he answered no. This contradicts what is pled by the claimant.

219. Given the paucity of evidence about this issue and the concerns about the credibility and reliability of the claimant (particularly given the contradiction between his pled case and his limited evidence on this point), the Tribunal is not prepared to make any finding that this email exchange occurred as described. The Tribunal has no basis to reach any conclusion about what, if anything, was said by JB3 or JN in this exchange nor the context in which it was said.

220. There was certainly nothing from which the Tribunal could conclude that there was something related to the claimant's race or religion in the email exchange.

221. In these circumstances, the claimant has failed to discharge the burden of proof in respect of this allegation.

222. This is a further instance of an allegation where the victimisation claim relies on matters the Tribunal has found do not amount to protected acts.

Decision – Allegation 9

223. The claimant alleges that he was victimised when the respondent refused to alter their standard mediation agreement to remove a clause which he says would prevent him bringing a claim to the Employment Tribunal.

224. The Tribunal is satisfied that the terms of the mediation agreement (p192-193) did not preclude the claimant from bringing Employment Tribunal proceedings. The most that it requires is that parties keep what is discussed during the mediation confidential (something which, in the Tribunal's judicial

knowledge, is a standard requirement in mediation) and that anything said at the mediation is treated as "without prejudice" meaning it cannot be used as evidence at any Tribunal proceedings. This did not preclude the claimant from bringing such proceedings.

225. In these circumstances, there was no need for the agreement to be altered. It is also worth noting that JB2 was being asked to agree to the same terms.

226. In any event, this allegation is only advanced as victimisation and relies on matters which the Tribunal has held are not protected acts. The claim of victimisation in respect of these allegations fails for this reason alone.

Decision – Allegation 10

227. This allegation relates to an email purportedly sent by BP on 11 March 2023. The claimant led no evidence about this allegation at all. It did not feature in his statement and, although he referred to it in his oral evidence, he said no more than confirming that the email in question was not in either bundle. Further, nothing was put to BP about this in cross-examination.

228. The claimant has failed to discharge the burden of proof in respect of this allegation. In the absence of any evidence about the allegation, the Tribunal is not prepared to find that it occurred as alleged or at all. The claims made in respect of this allegation are wholly unfounded.

Decision – Allegations 11 & 12

229. The Tribunal will consider these allegations together as they both relate to a telephone call between the claimant and NB on 11 March 2022. In this conversation, NB conveyed the discussion between him, JB3 and PS about the difficulties in the working relationship of the claimant and JB2 which resulted in the decision to ask the claimant to step down from his role as co-chair of the Diversity & Inclusion group.

230. The claimant alleges that being asked to step down amount to harassment on the grounds of race or religion and an act of victimisation.

231. He also alleges that a comment made by NB about his parents and partner having also worked for the respondent and describing it as "the family business" amounts to direct discrimination on the grounds of race or religion, harassment on the same grounds and victimisation.

232. In respect of the request for the claimant to step down from his role as co-chair, the Tribunal is satisfied that this was done for reasons wholly unrelated to the claimant's race or religion. The decision clearly arose from the breakdown of the relationship between the claimant and JB2.

233. In terms of the decision to ask the claimant to step back rather than JB2, the Tribunal accepts the evidence of JB3 that the reasons for this related to the fact that JB2 had been involved in the group for a longer period and that the issues which had arisen stemmed from the claimant's behaviour rather than that of JB2. Further, it had been the claimant who had stymied attempts to resolve these difficulties by way of mediation.

234. There is no evidence at all from which the Tribunal could draw the inference that the decision to ask the claimant to step down from the role was in any way related to his race or religion.

235. In relation to the comment by NB, the Tribunal accepts his evidence that this was a comment made at the start of the conversation when he and the claimant were getting to know each other. It is the sort of comment that would be unsurprising in a first conversation between a manager and a member of staff when they were getting to know each other. In the Tribunal's view, the claimant has exaggerated the importance of this comment and sought to imply some sinister and threatening overtone which simply did not exist.

236. In any event, there was no evidence at all this comment was made on the grounds of the claimant's race or religion or was related to those characteristics. The claimant alleges that NB did not make the same comment to people of a different race or religion to the claimant but led no evidence to support this assertion.

237. These are further allegations where the victimisation claim relies on matters the Tribunal has found do not amount to protected acts.

Decision – Allegation 13

238. The claimant alleges that NB's failure reply to an email he sent to him at 12.07 on 11 March 2022 (pp353-354) after their telephone conversation of the same day amounts to harassment on the grounds of race or religion as well as victimisation.

239. It is true that NB did not reply to that initial email. However, it is quite clear from the whole email exchange on that day (pp351-354) that JB3 replied to the claimant's email to NB (she had been copied into the email and the claimant specifically sought her engagement in his initial email) and then engaged in further email correspondence that same day. Given that JB3 is a more senior manager than NB, the Tribunal cannot see how the claimant had been disadvantaged by the lack of a reply from NB or how this violated his dignity or created an unlawful environment for the claimant.

240. The Tribunal accepts the evidence of NB that the reason why he did not respond directly was that JB3 had replied. This is a reason wholly unrelated to race or religion.

241. This is a further instance of an allegation where the victimisation claim relies on matters the Tribunal has found do not amount to protected acts.

Decision – Allegations 14 – 22

242. The claimant led no evidence at all regarding these allegations. They were not mentioned in his witness statement and he did not give any oral evidence when the Tribunal allowed him to supplement his witness statement. A number of the allegations refer to email correspondence (either between the claimant and others or between others about the claimant), most of which do not appear in either of the bundles. There are two exceptions which the Tribunal will address below.

243. The Tribunal considers that the claimant has failed to discharge the burden of proof in respect of these allegations. He has wholly failed to present evidence which substantiated that the matters giving rise to these allegations occurred as described, let alone evidence from which the Tribunal could draw an inference that these matters amounted to unlawful discrimination.

244. There was some evidence from the respondent's witnesses in respect of certain of the allegations which the Tribunal will address:

a. JN's witness statement refers to the email exchange between him and JB3 that forms the basis of allegations 14 & 15 with the emails appearing at pp665-666. The Tribunal considers that this is nothing more than a manager (JB3) seeking advice from an HR adviser (JN) about the content of an email from a member of staff about which she is concerned. JN then provides advice that the email is not a breach of standards but was "cack-handed" in tone and unclear as to its purpose. It is worth noting that the claimant was not copied into this exchange at the time and only became aware of it some months later when he received a response to a subject access request. There is nothing in the evidence before the Tribunal from which it could conclude that this exchange was related to the claimant's race or religion. It was quite clearly prompted by JB3's concerns about the claimant's email.

b. JB3's witness statement refers to an email which she sent to the claimant on 25 March 2022 (p649) which forms the basis of allegation 22. The claimant states that he was victimised in this email because JB3 refused to reinstate him to the co-chair role. However, this is not how the email is couched; JB3 sets out conditions which she considers are required for the co-chair arrangement to continue and that if these are not met then a single chair arrangement (which exists in other strands of the People Group) would be in place. This is very different from refusing to reinstate the claimant and the Tribunal considers that, when read as a whole, the email is encouraging the claimant to find a way to resolve the issues with JB2. There is no evidence of any

response from the claimant at all, let alone a response in which he engages with the conditions set out by JB3 for continuing the co-chair arrangement. There is certainly nothing on the face of the email or in the evidence about it in JB3's statement which suggests that the terms in which it was worded was, in any way, because the claimant had sent the email to NB with the subject line "Breach of Equality Act" (which is the only matter relied on as a protected act which meets the statutory definition).

245. The Tribunal also notes that allegations 18-20 relate to matters which arose in consequence of the decision for him to step away from the co-chair role (for example, the claimant receiving cancellation notifications for meetings of the diversity and inclusion group). The Tribunal does not consider that these are separate acts of victimisation but, rather, are the consequence of the earlier decision which forms the basis of allegation 11.

246. The Tribunal has set out above the reasons why it does not consider that allegation 11 amounts to harassment and victimisation. For those same reasons, even if the claimant had led some evidence about allegations 18-20, it would have concluded that these allegations are also not well founded.

Decision – Allegation 23

247. This allegation relates to an image of HA shared by MW on 27 April 2022 with the rest of the team managed by HA (including the claimant). The image appears at p619 and the original post appears at C34. The image of HA has been altered to add a crown, sunglasses and jewellery. It is accompanied by the text *"will be a sad say. What a baller!".* The claimant alleges that this image amounts to harassment on the grounds of race or religion.

248. The Tribunal considers that the context in which the image is sent is important. HA was leaving his role as team leader at this time. The Tribunal accepts the evidence of MW (not disputed by the claimant) that HA was a popular manager with his team, having done a lot to assist many of them in securing permanent employment with the respondent and that the team was sad to see him leave.

249. The Tribunal also accepts the evidence of MW that the image was sent in tribute to HA to acknowledge his departure and how the team felt about him. This is supported by the words used in the post accompanying the image.

250. In these circumstances, the Tribunal does not consider that there is any basis to conclude that the image was shared for the purpose of violating the claimant's dignity or creating the type of environment prohibited by s26 of the Equality Act.

251. Regardless of the purpose, the Tribunal has to consider whether the sharing of the image had the relevant effect in terms of s26. The Tribunal notes that the claimant did describe the image as "racist" to JN during a conversation on 18 May 2022. However, on his own evidence, he did not suggest to JN that this had violated his dignity or created a prohibited environment. Further, he declined to share the image with JN and raised no formal grievance about the image at the time.

252. Indeed, no-one else (including HA) raised any complaint or grievance about the image at the time or since.

253. The context in which the image was sent is also important in terms of its effect. It was clearly not being sent to denigrate or insult HA but, rather, was intended to praise him and reflect the feelings of the team about his departure.

254. Taking all of these matters into account, the Tribunal does not consider that it was reasonable for the sharing of the image to have the prohibited effect required for the claim of harassment to succeed.

Decision – Allegation 24

255. The claimant alleges that JN had promised him a job move to another directorate such as Customer Experience throughout April to June but did not provide the claimant with such a job move. The claimant alleges that this amounts to victimisation with the relevant protected act being the claimant's email to NB of March 2022. The Tribunal does not consider that the email to JN of July 2022 can be relevant to this allegation because it was sent after the period over which the claimant alleges he was victimised.

256. The difficulty for the claimant is that he does not give any evidence that JN promised the claimant a job move. None of the evidence about his conversations with JN set out in his witness statement record JN making such a promise. The evidence from the claimant was that there was discussion about a move to a different job and what types of job might be suitable but nothing that comes close to a promise by JN that the claimant would be found a job move. The closest discussion was JN explaining to the claimant that there were processes in place for job moves and so such moves were possible but the Tribunal does not consider that this was a promise to move the claimant.

257. There was also evidence of discussions between the claimant and JN about the difficulties in securing a job move at the time including what vacancies existed at the time (including the fact that some vacancies were at a lower grade and that higher graded jobs required an open and competitive recruitment process), redeployment occurring elsewhere in the respondent's organisation which had to be resolved before it was clear what vacancies might exist and a recruitment freeze in the Customer Experience directorate.

258. This accords with the evidence of JN who describes similar discussions about what roles the claimant might be interested in and looking into whether there were any suitable vacancies but that there were none at the time. Nothing was put by the claimant to JN in cross-examination that JN promised a job move.

259. In these circumstances, there is no evidence from which the Tribunal could conclude that JN had made such a promise. However, conscious of the requirement to avoid undue technicality, the Tribunal has proceeded on the basis that the crux of this allegation is that JN did not secure a job move for the claimant regardless of whether or not that was promised.

260. The difficulty for the claimant is that he has led no evidence that there was any job vacancy at the time into which he could have been moved. As a result, there is nothing before the Tribunal to show that there was a job or jobs to which he could have been moved. If there was no job into which he could

be moved then this is clearly the reason why there was no job move rather than the email he sent to NB in March 2022.

261. This is supported by the evidence of JN which the Tribunal accepts. He describes the difficulties in finding a suitable vacancy in both his witness statement and in his oral evidence given during cross-examination. The Tribunal notes that what JN describes in his evidence accords with the claimant's own evidence of what was said at the time.

262. For these reasons, the Tribunal considers there is no basis to conclude that the reason why the claimant was not found a job move in the period April to June 2022 was because he carried out a protected act as alleged.

Decision – Allegation 25

263. The claimant alleges that, during a conversation on 18 May 2022, JN refused to view the image of HA which forms the basis of allegation 23. The claimant asserts that this amounts to direct discrimination and harassment on the grounds of race or religion.

264. JN disputes the claimant's version of events. It is his evidence that the claimant mentioned an inappropriate image of HA but would not provide any specifics. JN states that he informed that the claimant that it was the claimant's decision if he wished to share the image and that, if he did and JN considered it breached the respondent's values, he will have to take it forward. It was JN's position that the claimant chose not to share the image rather than him refusing to view it.

265. The Tribunal has set out above its reasons for preferring the evidence of the respondent's witnesses over that of the claimant and, for those same reasons, the Tribunal prefer JN's version of events.

266. Further, this version of events describes behaviour by the claimant which is consistent with the evidence of other witnesses who describe the claimant as raising issues in vague terms, not providing specifics and not taking matters forward. For example, JB2 describes the claimant talking about "toxic teams" but not giving any detail of what he meant by this. Similarly, EA describes the

claimant telling her that he heard things said at team meetings that were not right and made him feel uncomfortable but refused to give her any details.

267. In the light of the Tribunal's finding that JN did not refuse to view the image and it was the claimant who declined to provide it, the Tribunal does not consider that the claimant was treated less favourably or subject to unwanted conduct by JN. The claims for direct discrimination and harassment fail as a result.

Decision – Allegations 26 - 27

268. These are further allegations about which the claimant led no evidence at all. They were not mentioned in his witness statement and he did not give any oral evidence when the Tribunal allowed him to supplement his witness statement. They refer to email correspondence which does not appear in either bundle.

269. Neither of the respondent's witnesses who were alleged to have sent the emails giving rise to these allegations gave any evidence about these matters in their witness statements. Further, the claimant put nothing about these allegations to the witnesses in cross-examination.

270. The Tribunal considers that the claimant has failed to discharge the burden of proof in respect of these allegations and they are dismissed as a result. He has wholly failed to present evidence which substantiated the matters giving rise to these allegations occurred as described, let alone evidence from which the Tribunal could draw an inference that these matters amounted to unlawful discrimination.

Decision – Allegation 28

271. This is an allegation that JN informed the claimant on 9 June 2022 that he had not added the claimant to the "priority managed move register". The claimant alleges that this amounts to victimisation on the grounds that he sent the March 2022 to NB.

272. There is a lack of evidence about this allegation. The claimant's witness statement simply says that, on 9 June 2022, JN said that he could put the claimant on the priority managed move register. Whilst this implies that the claimant had not previously been put on the register, there was no evidence from the claimant that this had been discussed previously and it had been agreed that he would be put on this register.

273. It was the evidence of JN, which the Tribunal accepted, that the priority move register was for people who needed a job move due a health condition or because they were at risk of redundancy. The claimant did not seek to challenge this in cross-examination. Neither of these criteria applied to the claimant and so he would not have been entitled to be put on the register.

274. The Tribunal considers that this is the reason why he had not been put on the priority managed move register and not because he had sent the March 2022 email to NB.

Decision – Allegation 29

275. This allegation relates to the telephone call between the claimant and EA on 23 June 2022 in which she had expressed anger and frustration at the claimant contacting JN in relation to an instruction she had issued to her team (including the claimant) that they would be moving to dealing with claims under the EU Settlement Scheme. It is alleged that this is victimisation relying on the March 2022 email to NB (this being the only protected act which had occurred before this alleged act of victimisation).

276. The difficulty for the claimant is that there is no evidence at all that EA knew of the March 2022 email. She says nothing in her witness statement from which the Tribunal could draw any inference that she knew about the email. The claimant put nothing to her in cross-examination about her knowledge of this email.

277. It is axiomatic that EA cannot have behaved in the manner described because of an email about which she did not know. For that reason alone, the claim of victimisation in respect of this allegation must fail.

278. In any event, there is a clear and obvious reason why EA acted the way in which she did. She had issued a reasonable management instruction to her team (which had come to her from more senior management) and the claimant was seeking to avoid complying this. The Tribunal can well understand why a manager would be frustrated by this especially where there had been previous discussions with the claimant about the demarcation between JN's support to the claimant and EA's role as his manager.

279. It may well be the case that EA's frustration got the better of her on the day in question (something which she very candidly accepted) but that does not take away from the fact that it was the claimant's refusal to comply with the instruction and efforts to involve JN that were the reasons for this and not an email sent to someone else several months previously about which she had no knowledge.

Decision – Allegation 30

280. The claimant alleges that JN victimised him during a telephone call on 29 June 2022 by refusing to comment on EA's conduct which forms the basis of allegation 29 and saying that he could see why EA considered the claimant's actions to be discourteous. Given the timing of events, the only relevant protected act was the March 2022 email to NB.

281. The claimant says that the detriment to him was the effect on his reputation with other staff of saying he had been discourteous. The Tribunal has some difficulty in seeing how a private conversation between JN and the claimant could have any effect on his reputation with other staff. There was certainly no evidence that the terms of this conversation were discussed with anyone else.

282. The Tribunal considers that the opinion expressed by JN was one which he was entitled to hold in all the circumstances of the case. The claimant had been given a reasonable instruction from his manager (which was being given to the whole team) and sought to avoid complying with it by invoking his involvement with JN. This was done in circumstances where it had already been explained to the claimant that EA would deal with day-to-day

management issues. The Tribunal can well understand why JN would have concluded that this was discourteous to EA.

283. In any event, there was no evidence whatsoever that the email sent to NB in March 2022 had any influence on JN's view about the claimant's conduct in this instance.

Decision – Allegation 31

284. The claimant led no evidence at all about this allegation. It was not mentioned in his witness statement and he did not give any oral evidence when the Tribunal allowed him to supplement his witness statement.

285. There was, however, evidence about this given by the respondent's witnesses.

286. It refers to chat messages between PH, JN and BW (p492) in which PH says that she had spoken to BW about the claimant moving job and they were *"not keen on pushing a problem to someone else".* The claimant alleges that this amounts to victimisation, again with the only relevant protected act being the email to NB in March 2022.

287. The Tribunal accepts that the evidence of PH in her witness statement that this was badly worded and referred to not wanting to move the claimant to another job without having resolved the allegations he had raised about being bullied. She considered that the problem would still exist from the claimant's perspective and needed to be resolved. She very candidly accepted that the wording used was clumsy.

288. BW's evidence was that she could not recall any conversation with PH when she had said something of the nature alleged.

289. Nothing was put to either of these witnesses in cross-examination regarding this allegation. In particular, PH's explanation of what she meant by the chat message was not challenged by the claimant.

290. The Tribunal does consider that the wording was clumsy and certainly raises the question of what was meant by "the problem". However, the Tribunal is prepared, on the basis of the evidence before it, to accept PH's explanation.

291. In these circumstances, the Tribunal does not consider that this allegation is well-founded as there is a non-discriminatory reason for the comment that was made.

Decision – Allegations 32 & 33

292. The Tribunal will deal with these together as they both relate to the same matter which was JN ceasing to provide HR support to the claimant (allegation 32) and confirming that by email (allegation 33). The claimant alleges that these amount to unlawful victimisation.

293. The Tribunal is conscious that JN informed the claimant that he was withdrawing from providing HR support on the same day that the claimant had sent him an email which amounts to a protected act. There is, therefore, a very close proximity between the protected act and the alleged victimisation.

294. However, the Tribunal was presented with no evidence about the contents of the email in question. It did not appear in either bundle, JN made no reference to it in his witness statement and the claimant simply states that he sent an email described as a *"protected act EA2010 email".*

295. There was no dispute that the email was sent but the Tribunal considers that the contents are important. If it contained new allegations directed solely at JN then this would be a factor which might weigh in the claimant's favour. On the other hand, if it was simply a repeat of the earlier email to NB in March 2022 then this is, at best, neutral given that the issues raised in that email had been known to JN for sometime.

296. The Tribunal has been left in the unsatisfactory position of knowing an email was sent which is conceded to be a protected act but not knowing what it says. The Tribunal bears in mind that the initial burden of proving facts from which an adverse inference could be drawn lies on the claimant and that this email was generated by him and so would be in his possession.

297. There are a number of relevant facts which the Tribunal has taken into account in considering whether to draw any adverse inference in relation to these allegations:

    a. JN had moved to a different job in a different directorate and had only continued supporting the claimant to provide a degree of consistency.

    b. There was a mentor in place to assist the claimant in trying to secure a job move and so the support which JN was providing had not been wholly withdrawn.

    c. The Tribunal accepts the evidence of JN that he felt that he was devoting a large amount of his time to trying to assist the claimant but nothing was being achieved in terms of resolving the issues.

    d. The Tribunal also accepts the evidence of JN that he was concerned about the claimant using his name to avoid dealing with issues in his day-to-day work. He gives examples of this involving different managers (EA and HB) and the claimant did not dispute what was said about this in JN's witness statement.

298. The claimant alleges that JN said that he was unhappy to have received the email alleging a breach of the Equality Act. JN's evidence was that he did not recall saying that. As noted above, the Tribunal has preferred the evidence of the respondent's witnesses where there is a dispute between them and the claimant. The Tribunal, therefore, finds that JN did not say what is alleged by the claimant.

299. Taking account of all of the relevant facts, there is nothing, except the timing of events, which provides any basis on which the Tribunal could draw any inference that JN had stepped away from supporting the claimant because the claimant had sent the email of 27 July 2022.

300. The timing of events can be a very important factor in drawing any adverse inferences but, in this case, the Tribunal considers that it is more than outweighed by the other factors outlined above. In particular, there is an explanation, which the Tribunal accepts, why JN decided to step back from

supporting the claimant that is non-discriminatory and alternative arrangements had been put in place for someone else to support the claimant in seeking a job move.

301. For these reasons, the Tribunal does not consider there is any basis on which it can draw any adverse inference that JN withdrew from his role supporting the claimant because the claimant had sent either the March or July emails.

Decision – Allegation 34

302. The claimant alleges that he was victimised by EA when she took a 2-week holiday on 19 August 2022 without informing him.

303. As has been set out above, there was no evidence that EA was aware of the March 2022 email to NB which formed one of the protected acts relied on by the claimant. Similarly, there was no evidence that EA was aware of the July email to JN; she makes no mention of it in her witness statement and the claimant did not put anything to her in cross-examination which sought to establish that she had knowledge of his email to JN.

304. For the reasons set out above, the Tribunal is of the view that EA cannot have acted in the manner alleged because of something about which she has no knowledge.

305. The Tribunal should also say that it did not consider that EA did anything wrong in taking a holiday. She is entitled to a holiday and there is no evidence that this timed in such a way as to disadvantage the claimant. In any event, someone was deputising for her in her absence and she had also provided her personal mobile number to the team with an invitation to contact her if needed. The Tribunal cannot see how the claimant was disadvantaged in these circumstances.

Decision – Allegation 35 - 37

306. These are further allegations about which the claimant led no evidence at all. They were not mentioned in his witness statement and he did not give any oral evidence when the Tribunal allowed him to supplement his witness

statement. They refer to email correspondence which does not appear in either bundle.

307. The allegations are all allegations of victimisation by EA. As outlined above in terms of allegations 29 and 34, there is no evidence that EA had any knowledge of the protected acts relied upon and so, for the reasons already given in respect of allegations 29 and 34, the Tribunal considers that the claims of victimisation in relation to these allegations, insofar as they relate to EA, have no merit.

308. Allegation 35 also alleges that LH victimised the claimant. As with EA, there was no evidence that LH was aware of the protected acts relied upon and so, for the same reasons already given the Tribunal considers that the claims of victimisation in relation to this allegation, insofar as it relates to LH, has no merit.

309. Again, the Tribunal wish to be clear that it does not consider that EA and LH did anything wrong in respect of these allegations. These relate to efforts by them to manage the claimant in circumstances where, based on the evidence before the Tribunal, the claimant was refusing to obey reasonable management instructions and seeking to avoid doing the actual work that he was paid to do. In the industrial experience of the Tribunal, the actions of EA and LH are entirely unsurprising where an employee is behaving in the way in which the claimant was behaving.

310. Allegation 36 as set out in the Scott Schedule describes JN and NB as being the alleged discriminators along with EA. They obviously do have knowledge of the emails in question, being the recipients. However, the substance of the allegation is that EA was “secretly” reporting the claimant for violating the Civil Service Code. There is no actual allegation of wrongdoing by either JN or NB.

311. Further, the lack of any evidence from the claimant about this matter meant that there was nothing before the Tribunal suggesting any wrongdoing by either JN or NB.

312. The Tribunal, therefore, considers that the claimant has failed to discharge the burden of proof in respect of this allegation insofar as it relates to JN or NB. He has wholly failed to present any evidence that they had subjected him to any detriment, let alone evidence from which the Tribunal could draw an inference that this was because of his protected acts.

Decision – Allegation 38

313. This allegation relates to the respondent's conduct of the present proceedings and, in particular, an application for the claim to be struck-out due to a defect on the ET1 form which was ultimately not pursued.

314. This is another allegation about which the claimant led no evidence. Evidence about the reasons why the respondent made the application was given by LB in her witness statement.

315. The respondent relies on judicial proceedings immunity as their primary defence to this allegation. The claimant made no submissions as to why it might be said that this immunity would not apply.

316. Judicial proceedings immunity is the principle that legal action cannot be founded on actions taken in the course of legal proceedings. This principle applies to the proceedings in this Tribunal (Heath v Commissioner of Police of the Metropolis 2005 ICR 329, CA). It applies to evidence given at a hearing, the content of witness statements and correspondence in the course of proceedings.

317. The Tribunal is satisfied that respondent's conduct of the proceedings is subject to judicial proceedings immunity and this allegation is dismissed for that reason.

Decision – Allegation 39

318. This is an allegation that the claimant was subject to direct discrimination on the grounds of race or religion and/or victimised (relying on the present claim as the protected act) in respect of his grievance about the matters giving rise

to these proceedings. He alleges that has been a failure to progress his grievance.

319. This is a further allegation about which the claimant led no evidence at all, either in his statement or in his oral evidence. For example, there is no evidence from the claimant as to when he says he lodged any grievance, the contents of it or what had occurred in terms of the process.

320. The Tribunal did have evidence LB about the grievance process that had been followed. The claimant did not dispute the sequence of events set out by LB and the Tribunal has accepted her evidence as an accurate description of the grievance process.

321. A consequence of this is that the Tribunal only has evidence of a grievance being raised on 24 February 2023 via the respondent's solicitor. The claimant alleges that he had sought to raise a grievance throughout 2022 but there is no evidence of the claimant seeking to raise a grievance at any earlier stage.

322. Whilst he sent various emails outlining issues about which he was unhappy, none of these were expressly said to be a grievance nor does the Tribunal consider that they could be reasonably read as being an attempt to raise a grievance. The Tribunal notes that, as far back as 25 March 2022, JB had encouraged the claimant to formalise any complaints he had and that these would be dealt with through the correct processes (p649) but he did not do so.

323. The Tribunal does note that there is a pattern of the claimant making vague allegations of wrongdoing but not advancing these on any formal basis. For example, mentioning "toxic teams" with JB2 but being unwilling to elaborate, saying to EA that things had been said at team meetings which made him uncomfortable but refusing to say what these were or who said them and declining to show JN the image of HA which was said to be racist.

324. The only point at which the claimant clearly seeks to raise a grievance is in an email to the respondent's solicitor dated 24 February 2023 (p655).

325. The Tribunal accepts the explanation given by LB as to why there has been a delay in progressing that grievance. Specifically there were concerns that the email in question did not comply with the respondent's grievance process in a number of respects:

a. He had sought to raise a grievance via the respondent's solicitor in these proceedings rather than following the normal process of going through his line manager.

b. He had submitted his Scott Schedule (prepared for the purposes of these proceedings) as the grievance document rather than completing the respondent's grievance form. This meant that the issues were framed in very legalistic terms and did not include information about what resolution was sought.

c. The respondent's normal practice was to require staff raising multiple issues to complete a grievance form in respect of each issue being raised. The reason for this was so that it was clear to the person against the grievance was being raised what it was said they had done wrong.

326. In relation to the direct discrimination claim, the claimant led no evidence that someone of a different race or religion would have been treated differently in the same or similar circumstances. He relies on JB2 as a comparator but JB2 never sought to raise a formal grievance; the respondent sought to resolve those informally and the formal grievance process was never engaged.

327. There was no evidence from which the Tribunal could draw any inference that anyone else seeking to raise a grievance would not have had to follow the respondent's normal process. This is fundamental to the direct discrimination claim as it means that there is no evidence that an actual or hypothetical comparator would have been treated any differently.

328. Although the victimisation claim does not involve a comparison exercise, the lack of any evidence that the claimant was being treated any differently to

other employees seeking to raise a grievance is highly relevant to the victimisation claim. If someone who carried out a protected act is treated the same way in the same or similar circumstances as those who had not done so then this weighs heavily against drawing any inference that the protected act was the reason for any alleged detriment.

329. In all the circumstances of the case, there is no evidence from which the Tribunal could draw any inference that the handling of the claimant's grievance was because he had carried out any protected act or on the grounds of race and/or religion.

Decision – The case as a whole

330. The Tribunal is very conscious that it is not just the case that it looks at each incident in isolation and has to look at these as a whole. Whilst individual incidents, taken on their own, may not be considered as unlawful discrimination, it is possible that, when looked at together, there is a basis to draw an adverse inference.

331. However, when the evidence is looked at as a whole, the picture that emerges is not that the claimant has been discriminated against or harassed because of his race or religion nor that he has been victimised for carrying out a protected act but, rather, that the issues which have arisen from him at work have been wholly caused by his own behaviour.

332. The Tribunal considers that what emerges from the evidence is that the claimant is awkward to work with and difficult to manage with no insight or awareness into the fact that he behaves in a way which causes difficulty for colleagues and managers.

333. For example, he showed no awareness during the course of the hearing that JB2 had genuine and reasonable issues with the way in which the claimant was behaving. The claimant sought to change JB2's biography with no permission from, or even consultation with, JB2. The claimant considered that simply because he used an alternative wording which JB2 had written for other purposes then he had done nothing wrong. This wholly ignores the fact

that the simple act of making the change without any discussion was what JB2 objected to.

334. Similarly, the claimant had no understanding why JB2 would have been concerned about the sudden withdrawal of his invitation to the United Network meeting for no apparent reason (certainly nothing that JB2 had done) and why he was asking the claimant for more information about his involvement to understand what had happened.

335. It was the same with the claimant allegations against EA. The Tribunal considers that EA was doing no more than managing the claimant as she would any other employee. However, the claimant was clearly not willing to be managed in the same way as others in team. In particular, when an instruction had been made by senior management that the whole team was to move dealing with decision under the EU settlement scheme, the claimant sought to avoid this by invoking his involvement with JN when it had been made clear to him that JN was not dealing with day-to-day management issues.

336. The Tribunal considered that there was evidence that the claimant was using his involvement with JN as a "shield" when he was being asked to carry out work or tasks that he did not want to do even though this was not why JN's support was being provided to the claimant. The claimant had no apparent insight or awareness how this was impacting on his colleagues, managers and even JN himself.

337. The various issues which the Tribunal has identified in respect of the individual allegations have to be taken into account when looking at the case as a whole. The fact that certain allegations of victimisation rely on matters which are not protected acts and the lack of knowledge of certain alleged discriminators of any protected act or the claimant's religion/race are all matters which way weigh against drawing any inference of unlawful discrimination or victimisation.

338. Similarly, the claimant's failure to lead evidence about a significant number of the allegations weighs against him. In a number of instances, there was no

evidential basis from which the Tribunal could make findings of fact from which to draw any form of inference.

339. Further, the claimant has, for the most part, not identified matters from which he says the Tribunal could draw any adverse inference. There were a small number of matters which the claimant placed reliance and the Tribunal will address those now.

340. First, he says that he was the only person of colour on the diversity group he co-chaired with JB2 and was then removed. The respondent disputes this but, even taking the claimant's case at its highest, this matter, on its own, is not sufficient for the Tribunal to draw an adverse inference when considered within the factual matrix as a whole. In particular, where it was clear that there were reasons why the claimant was removed from his co-chair which had nothing to do with his race.

341. Second, the claimant placed a lot of weight on a previous Employment Tribunal decision against the respondent from 2018 and an agreement he said was reached between the respondent and the Equality & Human Rights Commission after this judgment. In particular, he challenged various of the respondent's witnesses about their awareness of the case and the agreement.

342. As the Tribunal has set out above, the previous Tribunal decision has no relevance to this case. It involved a different claimant and different factual circumstances. None of the alleged discriminators in this case were said to have any involvement in the previous case. The fact that witnesses in this case had no awareness of that previous decision is not something which gives rise to an adverse inference.

343. The alleged agreement with the ECHR was not produced in evidence and so none of the witnesses had sight of it. Again, the Tribunal does not consider that the fact that they were aware of this is something which gives rise to any adverse inference particularly as the Tribunal, not having heard any evidence about the terms of the agreement, could not make any findings as to what the

agreement addressed and so could not say that it was unreasonable for any particular witness to be unaware of it.

344. Third, the claimant was very focussed in some of his cross-examination on whether certain things done by particular witnesses were allowed by any policy of the respondent. For example, when raising his concerns about the claimant's conduct, JB2 prepared a timeline of events and the claimant asked various witnesses whether this was part of any policy.

345. The Tribunal considers that the claimant has approached this from the wrong perspective; it is not that people can only do something in the course of their work if a policy says that they can but, rather, they cannot do things which any policy prohibits or if a policy sets out a process to be followed in dealing with certain matters (for example, grievance or disciplinary matters) then that policy should be followed as far as possible.

346. In any event, the claimant did not produce any policy in evidence which he says had not been followed or which prohibited anything done by the alleged discriminators. There is, therefore, no basis on which the Tribunal can conclude that any of the alleged discriminators failed to follow any of the respondent's policies.

347. Looking at the case as a whole, there is no evidence from which the Tribunal considers that it can draw any adverse inference that the claimant has been discriminated against, harassed or victimised.

Conclusion

348. For all the reasons set out above, the Tribunal considers that the claimant's claims under the Equality Act 2010 are not well-founded and are hereby dismissed.

349. The respondent has raised a defence of time bar in respect of the claims. The Tribunal has not dealt with this as it considers that its conclusion above renders any time bar issue academic.

P O'Donnell
Employment Judge

30 April 2024
Date of Judgment

Date sent to parties 01 May 2024