EMPLOYMENT TRIBUNALS

Claimant: Mr Mohammed Tahir Bhatti

Respondent: GMB

Heard at: Watford Employment Tribunal (Hybrid)
On: 7, (8 October reading day) 9-11 & 14-18 October 2024 (deliberations 15 &16 January 2025, 17 January 2025-Judgment given)

Before: Employment Judge Young
Non legal members: Ms J Hancock
Ms A Telfer

Representation
Claimant: Mr Bert Schouwenburg (former union official, friend of Claimant)
Respondent: Mr Nicholas Bidnell-Edwards (Counsel)
Interpreter: Sajida Ali (on 7 & 10 October 2024)
No Interpreter on 9 & 11 October 2024
Asifa Niazi (on 14 October 2024)
Aamer Shahid Kayani (on 15-18 October 2024)
Sakina Ismail (on 17 January 2025)

JUDGMENT having been sent to the parties on 6 February 2025 of Employment Judge Young and written reasons having been requested on 7 February 2025 by the Respondent in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The Claimant was employed by the Respondent, a Trade Union as an organiser from 10 May 1999 until 22 March 2022. ACAS Early Conciliation started on 26 March 2022 and the ACAS Early Conciliation Certificate was issued on 6 May 2022. The claim form was presented on 11 June 2022.

Hearing & Evidence

2. We heard evidence from the Claimant, Mr Bhimraj Rai (GMB shop steward based at Northwick Park Hospital and an employee of Medirest), Mr Michael Dooley (former Membership Development Officer from 2018-20 September

2024) Ms Jaqueline Hickey (former secretary of GMB at the GMB Hayes office from 1 July 2027- September 2021) and Mr Martin Smith (Head of Organising, GMB Head Office). Ms Hickey and Mr Smith gave evidence by CVP.

3. On behalf of the Respondent we heard oral evidence from Mr Keith Williams (Senior Organiser, GMB London Region), Mr Warren Kenny (Regional Secretary GMB London Region), Ms Ida Clemo (Research, Policy & Operations Officer, GMB London Region), Mr Gavin Davies (Senior Organiser, GMB London Region), Mr Tony Warr (Head of Legal and Senior Organiser GMB London Region).

4. The Claimant had an Urdu interpreter who he accessed when necessary.

5. On the first day of the hearing, 7 October 2025, the Respondent made an application for the hearing to be converted into a CVP hearing. the Claimant opposed this conversion of the entire hearing to CVP but supported a hybrid hearing. Mr Schouwenburg submitted that the Claimant would have a problem with using the interpreter if the hearing were entirely a CVP (video) hearing. Mr Schouwenburg applied for Mr Smith to give evidence via video as he had just been admitted to hospital and Ms Hickey's husband was unwell and she was his carer which made it difficult for her to get away.

6. Mr Schouwenburg applied for leave to rely upon Michael Dooley's witness statement who was to be attend the hearing in person. The Respondent's counsel objected to the admission of Mr Dooley's witness statement. We heard oral submissions of both parties. The Employment Tribunal's decision was that having reviewed the witness statement, we considered that the content witness statement is relevant, and we acknowledge that the reasoning for the late disclosure. Mr Williams was the manager of Mr Dooley before Mr Davies and so there are witnesses who can give evidence about the matters that had been raised by Mr Dooley. We considered that any prejudice can be alleviated by the Respondent having leave to ask questions in chief of its witnesses on matters contained in Mr Dooley's witness statement. We gave leave for the Claimant to rely upon the statement.

7. There was a discussion with the Respondent's counsel about status of the Claimant's further and better particulars and whether an amendment was required in respect of that document and the time issues associated with an amendment. The parties were asked to go away and agree the issues. After a break, Respondent's counsel confirmed that the list of issues were agreed. Mr Schouwenburg explained that the Claimant's position was that he believed that he had been treated in a discriminatory way, but that Mr Warr was not discriminatory.

8. The Claimant had submitted a joint statement in respect of Ms Jaqueline Hickey and Maureen Logan. It was explained to Mr Schouwenburg on day 1 that only one person could give evidence on behalf themselves. The Claimant would need to submit a witness statement on behalf of one or other of Ms Jaqueline Hickey or Maureen Logan or both submit a witness statement for Ms Jaqueline Hickey and a separate witness statement for Maureen Logan.

9. On day 2, 9 October 2024, Mr Schouwenburg confirmed that either Ms Jaqueline Hickey or Ms Maureen Logan would give evidence and that they would produce one witness statement.

10. The parties were also told that oral submissions would be 20 minutes. Mr Schouwenburg explained that Mr Rai might need a Nepalese translator, but as he understood Urdu an Urdu translator would be ok.

11. The interpreter did not attend on day 2. However, the Claimant confirmed that with Mr Schouwenburg's assistance he could continue without an interpreter. The Claimant confirmed that he was happy to be referred to as Pakistani.

Findings of Fact

12. The Claimant's evidence lacked credibility. The Claimant's evidence was unreliable, contradictory, and inconsistent. Some of this we attributed to the side effects of the Claimant's heart medication that he told us affected his memory, some we attribute to the fact that on the morning 7 October 2024 of the hearing and the second day that the Claimant gave evidence he had learned that his niece had passed away. The Claimant was provided with an interpreter which he used on occasion. However, none of these matters prevented the Claimant's evidence being predominately unreliable and largely (although not always) inconsistent with the contemporaneous documents. We found the evidence of Mr Rai to be truthful, but Mr Rai was unable to recall any dates when things were alleged to have happened. We found the Respondent's witnesses to be truthful and their evidence to be consistent with the contemporaneous documentation. We found the Michael Dooley and Martin Smith evidence was mostly based upon what the Claimant had told them rather than first hand evidence and in some cases their evidence was not consistent with what the Claimant told us, and we found could not rely on their evidence in relation to the Claimant's pleaded case. When they spoke about subjects that they had first had evidence their evidence was more reliable.

13. The Claimant was employed as a Recruitment and Organisation Officer ("Organiser") in London Region initially at the Good Mayes office and then from 2000 at the Hayes office of the Respondent. There were 5 organisers at the Hayes Office. The Claimant had the smallest allocation of all the London Region's 33- 34 Organisers. His allocation included a particular focus on the NHS, NHS contractors and a small number of food manufacturers. The Claimant had been recruited as an organiser for his language skills. The Claimant spoken multiple Asian languages and the Claimant had been utilised by the Respondent to great effect on various projects for the Respondent and election campaigns for the Labour party over the years.

14. The majority of employees and the organisers throughout the Claimant's employment were white. The Claimant was for a period of time the only Pakistani organiser for the GMB London Region. At the time of the Claimant's employment there were 5 officers at the Hayes office including the Claimant and 2 support staff. At any one time there were 5 organisers

at the Hayes office.

15. In 2009 the Claimant applied for the role of Senior Organiser, the Claimant did not get the role, Warren Kenny got the role, a white candidate. The Claimant's evidence was that he believes that Asian officers would not be promoted and that is why he did not get the role. The Claimant's evidence was that other white Officers were promoted to the role of membership development officer, and he was not encouraged to apply for such roles. We find that the Claimant did not apply for any roles as Membership Development Officer and there was no evidence that the Claimant expressed any interest in promotion. The Claimant acknowledged in his evidence that he would need help from senior officers to get promoted. We find that the Claimant did not get promoted to the senior organiser role as the Claimant has language and technological limitations would have significantly affected his suitability for the role. We find that he did not provide any details of his suitability for either the Senior Organiser role or any senior role for example Membership Development Officer role and so we do not infer that a fair process was not undertaken because he did not take any issue with the matter at the time and until 15 years later after his dismissal.

16. In 2011 the Claimant was subjected to a capability procedure by Mr Warren Kenny. By that time, Warren Kenny had been the Claimant's manager for 2 years. Warren Kenny had known the Claimant him since 1997. Warren Kenny's evidence was that he had never questioned the Claimant's ability to do the job. Warren Kenny shared an office with the Claimant for 5 years, it was his recollection that the Claimant attended ESOL classes during that time as he remembers the Claimant taking Asian reps to the classes himself. We accept Warren Kenny's evidence on this point.

17. By letter dated 8 September 2011 [608-609], Warren Kenny wrote to the Claimant explaining the history of having meetings with the Claimant where the Claimant agreed to meet certain targets but had not met those targets. The letter explored what reasons there might be for the failure to meet the targets. The Claimant as an organiser was allocated a "work sheet" which was a list of workplaces that the Claimant was responsible for recruiting members in, setting up organising structures and gaining recognition in the workplace. Gavin Davies' evidence was the Respondent had a buddy system in place, which meant that every officer had a buddy to cover their work when the officer was on annual leave. However, the buddy was not supposed to carry out all the work of the organiser on their worksheet but just deal with queries and emergency matters. Even when the buddy was away at the same time as the officer they were buddied with, there was a duty officer appointed on a daily basis who would cover emergency work again. Gavin Davies explained that it was for the line manager to allocate their team members a buddy and we accept Gavin's Davies' explanation.

18. Warren Kenny wrote in the letter dated 8 September 2011, "*it is established and agreed that you have had adequate training and support to prepare and carry out your role as a GMB Full time officer."* [608] Warren Kenny said that at that time the Claimant was not hitting where hoped to do, and during the discussions there were conversations about whether the Claimant required additional support, and none was forthcoming. Warren Kenny said in

evidence that the issue of the Claimant's training or tuition in English or IT did not come up with the Claimant as far as he could remember and that he did not have any experience with the Claimant not being able to read or write English properly and that as far as he was concerned the Claimant was capable of the full duties of role. Warren Kenny wrote the letter because at the time he was managing the organising team and there was a system of measuring under and over performance. When the Claimant was moved to the national office Warren Kenny did not have anything to do with this, he was told that the Claimant was moving by HR.

19. In 2012 Paul Hayes was general secretary and he decided that all officers should do the same work and should be generalists rather than specialists. The Claimant's evidence was that his specialist skills were his languages, and the generalist role required him to have really good written English which he did not have. We find that it the Claimant accepted from this point that there was an expectation he fulfils a generalist role.

20. The Claimant's evidence is that he had no issues and was not subjected to any race discrimination prior to 11 January 2017 when Tony Warr was his manager. We accept the Claimant's evidence on this point.

21. From 11 January 2017, the Claimant's line manager changed from Tony Warr to Keith Williams, senior organiser [129]. Keith Williams identified almost straightaway that the Claimant was not performing satisfactorily. Keith Williams met with the Claimant on 9 October 2017. Following that meeting Keith Williams produced a detailed letter dated 17 October 2017 [131-133] setting out the issues with the Claimant's performance namely that he was not recruiting enough members to the Respondent and not doing the things that would enable him to do that and enable the current members in the workplaces the Claimant was responsible for to organise. Keith Williams met with the Claimant approximately a year later and noted in his letter dated 28 September 2018 [134-135] that the Claimant's membership levels, and recruitment remained stagnant. Keith Williams proposed an investigation into the causes of the Claimant's underperformance and arranged a meeting with the Claimant for 31 October 2018.

22. Keith Williams recorded in his letter dated 23 November 2018 [136-140] following the meeting 15 November 2018, that the Claimant had told him that he had a weakness in writing and communication skills and a lack of industrial knowledge which the Claimant believed was attributable to the Claimant's level of performance [137]. Keith Williams further added in that letter that he was surprised at the Claimant's lack of industrial knowledge given that he had by that time been an organiser for 19 years. The Claimant disputed in evidence that he did say this at the meeting, but we accept the letter as an accurate record of what the Claimant told Keith Williams at the time.

23. Keith Williams gave evidence that he believed that throughout the duration of Claimant's employment, he had attended "numerous Officer training courses held on an annual basis, which provided training on TUPE, Industrial Action Ballots, Recognition, Press & Media Campaigning, Employment Law etc." [137]. The letter states that the Claimant advised

"*that over the course of the last three months that you had suffered a number of bereavements within your family, your brother, brother in law and your cousin's sister, the losses of which had been a stressful time for you and your Immediate family"* [137]. However, in oral evidence the Claimant stated that his bereavements at that time did not affect his performance at work. We find that the Claimant did tell Keith Williams that his performance was affected by the bereavements but in fact his performance was not affected by the bereavements at all, and this was just an excuse.

24. The Claimant was issued annually with a GMB Law at Workbook, as an aid to assist and familiarise himself with employment law. The Claimant had access to Unionline (a specialist employment solicitors' firm), for advice, if there was a specific aspect of employment law that he wished to discuss. However, the Claimant's evidence was that he did have access to the GMB law workbook and procedural training, he received training only for specialist skills over the years. He accepted that on an annual basis solicitors and barristers would provide training on employment law for example rights at work and agency staff. However, we find that by Keith Williams setting out in his letter the various resources that the Claimant had look to, to assist in increasing his industrial knowledge at the very least even if the Claimant did not know then what he needed to know on order to increase his industrial knowledge he could certainly have referred to these resources moving forward from 2018. The Claimant also had multiple opportunity to attend GDPR training in 2018, but he did not [629].

25. Notwithstanding it is as a result of the Claimant telling Keith Williams of bereavements that affected his work that this is taken into account in respect of the Claimant's performance for that period but not the period before that. Keith Williams put an action plan in place in accordance with the capability procedure, which compromised of a period of 4 months for the Claimant's performance to improve and this was confirmed in Keith Williams's letter to the Claimant dated 23 November 2018 [140]. It was also agreed that Keith Williams would meet with the Claimant on a monthly basis to jointly review the Claimant's performance. Keith Williams did meet with the Claimant on 19 December 2018, which is recorded in a letter dated 20 December 2018 [141], at the meeting, discussion of the action points agreed at the meeting were discussed. Although the letter refers to the Claimant repeatedly saying to Keith Williams to sack him, we find that the letter does not give any threat or warning that the Claimant is to be dismissed. We find that the review and the letters were part of a process to help the Claimant improve his performance not a threat to dismiss the Claimant.

26. Although the Claimant and Keith Williams continued to meet on a monthly basis it wasn't until 23 March 2019 letter that Keith Williams mentions for the first time that the Claimant was advised that "*if there is no demonstrable improvement in your performance with regards to those agreed action points within the further six week time scale that this could possibly lead to termination of your employment with GMB under the GMB capability policy*."[156] However, at the next meeting on 20 May 2019 the Claimant showed last minute improvement [161] and so there was an extension of another 6 months of an opportunity for the Claimant to improve, which was communicated to the Claimant in a letter dated 24 May 2019 [157-161].

27. The Claimant said in his evidence that that he did meet the targets that were set for him by Keith Williams and that Keith Williams kept setting new targets even as he met them. The Claimant's evidence was that he disagreed with Keith Williams about what was required to recruit and gain recognition in relation to his worksheet and his suggestions and disagreements were not recorded in any of the letters that were written. However, we accept the contents of the letters of Keith Williams as reflecting the Claimant having not met the target in particular in not visiting the workplaces on his worksheet with sufficiency to increase the chances of recognition and not applying for defacto recognition where the workplace he was seeking recognition for was part of another workplace that did have union recognition. The Claimant's evidence is that he still had no support to develop his English language skills at this stage, and he believed that this attitude lead directly to discrimination that placed me at a disadvantage and made me feel targeted. We accept Ms Hickey evidence that the Claimant did have a limited understanding of English grammar and required help and support in writing in English. However, we find that there was no evidence that the Claimant sought assistance to improve his English grammar at any point. Furthermore, the Claimant was aware of ESOL which he could have accessed.

28. The Claimant said in oral evidence that he fulfilled his targets and that he said that he was subjected to the capability process because he is Pakistani. The Claimant said in evidence that he complained about capability process to seniors verbally. The Claimant did not mention any of the excuses he now relies upon in his witness statement and did not mention anything about any complaint. There are no records of the Claimant contesting the outcome of the meetings during the capability procedure. We find that the Claimant evidence is not credible on the capability process, and we do not accept it.

29. The Claimant's evidence was that Keith Williams viewed him as inferior through the tone of his voice, facial expressions, body language and general attitude and between 2017-2022 and would not greet the Claimant or talk to the Claimant. However, according to the Claimant's evidence Keith Williams would speak to other white organisers. However, Michael Dooley's evidence was that Keith Williams was friendly and got on well with the regional organisers, although he did not get on with a black officer, Trevelyan McCleod. We accept Keith Williams' evidence that he did not fail to greet the Claimant or talk to him or that he had any friction with Ms McCloud. We find that it is unlikely that Keith Williams as the Claimant's line manager would have ignored the Claimant and not greeted him or talked to him. We do not accept that when Keith Williams did speak to the Claimant his voice, facial expressions, body language and general attitude suggested a tone that the Claimant was inferior. From the correspondence that we have seen from Keith Williams we find that correspondence was professional and did not convey anything of the attitude that the Claimant alleges that Keith Williams had.

30. The Claimant accepted in evidence that he did not raise a grievance against Keith Williams in respect of the behaviour he now complains of in his Employment Tribunal claim. The Claimant's evidence was how could he raise a grievance against a senior who does not like him, he said that he was afraid of Keith Williams because he was his line manager and if he

raised a grievance he would get more problems. We do not accept the Claimant's evidence on this point, the Claimant said repeatedly throughout the disciplinary process that he regarded the Respondent as family, we do not accept that the Claimant would have regarded the Respondent as family if Keith Williams treated him as he suggested.

31. The Claimant was involved in gaining the recognition for 5 workplaces, London Linen Workwear Limited, London Linen Group, TRS Cash and Carry and TRS Wholesale and Bombay Halwa over the years. The Claimant would recruit members and organise and run campaigns, however the Claimant's own evidence was that he would not get involved in the legal paperwork involved in recognition, this meant that he would not sign the recognition agreements except for one agreement that he said that he did co-sign which was the Bombay Halwa agreement. However, we did not see a copy of Bombay Halwa agreement. We find that the Claimant did not apply for recognition either as that would require paperwork and we accept the Claimant's evidence of his lack involvement in respect of the paperwork on this point. The Claimant did not accept that he did not negotiate recognition for London Linen Group. Keith Williams' evidence was that he negotiated the recognition agreement for London Linen Group and the recognition agreement was signed by him [127]. Neither did the Claimant achieve recognition for TRS Cash & Carry, which Keith Williams did and there was no recognition agreement for TRS wholesale at all and that Tony Warr negotiated the Bombay Halwa recognition agreement. The Claimant's evidence was very confused in respect of whether he achieved trade union recognition in respect of London Workwear, the Claimant's evidence was that he did as Keith Williams asked him to do which was to write a letter to London Workwear asking for recognition based upon de facto recognition. We find that the Claimant recruited and campaigned in these 5 workplaces which was his role.

32. Keith Williams' evidence was that he would give a well done to the Claimant if he had increased membership, he considered that the Claimant had not done that. The Claimant could have sought de facto recognition earlier in respect of London Workwear but did not. We accept Keith Williams' evidence as the Claimant was doing his job in recruitment and campaigning and that he did not fail to acknowledge the 5 occasions where the Claimant achieved trade union recognition as good performance because the Claimant did not achieve trade union recognition on those five occasions.

33. The Claimant said that Keith Williams required higher standards or better performance from him than white organisers. The other organisers in the Claimant's team were Lisa Perry who is white, Perry Banks who is white, Anna Lee who is white and Trevelyn McLeod, who is black. Keith Williams denies that he required higher standards of the Claimant. Michael Dooley's evidence is that he was in a hybrid role as the Membership Development Officer and Regional Team Organiser, and he had an industrial sheet of his own. Mr Dooley's evidence was that the Claimant was being asked to attain membership numbers that he was not being asked to attain. The Claimant did not say what the higher standards were that were expected of him and what the standard that was expected of the white organisers in his witness statement. In oral evidence the Claimant said that different standards were that he and Trevelyn McLeod were criticised more than their white

colleagues. He witnessed Ms McLeod upset on an occasion where she had a meeting with Keith Williams and was criticised for her performance. The Claimant also added in oral evidence that his colleagues told him that he was being treated differently to them. However, the Claimant did not set any of this out in his written witness statement. We do not accept the Claimant's evidence on this point we find that the Claimant was describing the capability process, and it is right that the Claimant's colleagues were not subject to the capability process.

34. The Claimant said that there was a project board that was created specifically for him. The Claimant said that he was having monthly meetings, and his colleagues were not having monthly meetings. The Claimant said that he knew what his colleagues' targets were, as they would discuss what targets they gave to their line managers regularly and acknowledged that everyone was busy with their own projects.

35. Michael Dooley's evidence was that the Claimant had a target of 3-4 recognition agreements and that the Claimant had a target of 400 members a year. We noted that this was not consistent with the Claimant's evidence which did not mention any requirement to have a specific number of recognition agreements or membership. The Claimant referred to Michael Dooley only getting 1 recognition agreement in 8 years. Keith Williams' evidence was that there was no requirement for an officer to get 3-4 recognition agreements, but the idea was to increase membership. Any targets were to increase membership Mr Williams' said. Keith Williams' said that the Claimant was not put under any more scrutiny than other members of the team. The Claimant had the smallest membership numbers on worksheet of 1000 and others had larger worksheets of 2500-4000 and that the Claimant was not given a target of 400 members. We prefer Keith Williams' evidence to Michael Dooley. We find that Michael Dooley was not an appropriate comparator in respect of the Claimant as Michael Dooley was part of the regional organiser team, not the Claimant's team and accepted that the Claimant doing a different job to his. Although he did have a worksheet, he accepted in evidence that he was not required to get recognition at any particular workplace. As part for the Regional Organising Team ('ROT'), he and his fellow teammates were there to assist the industrial officer in recruiting and campaigning. We find that Michael Dooley was not in a position to know the specific targets that would be set by Keith Williams for his team.

36. We find that the Claimant has failed to identify the standards in any event, as criticism is not a standard. We accept Keith Williams' evidence on this point as the Claimant could not identify what the standards were. We do not accept the Claimant's evidence about his awareness of his colleagues' targets, none of this evidence was contained in his witness statement. Furthermore, the Claimant's colleagues did not attend the office regularly enough to be sufficiently engaged with the Claimant as his colleagues were busy with their own projects and therefore the Claimant was in no position to know what standards they were being expected to meet.

37. The Claimant was off sick from July 2020- May 2021. Keith Williams as the Claimant's line manager contacted the Claimant from time to time in accordance with his duty to keep in touch with the Claimant during his

sickness absence. The Claimant said that Keith Williams contacted him on 8 April 2021 and that he remembered that it was this date because he was at his GP's collecting a sick note as his sick note had run out. The Claimant's evidence was that Keith Williams asked him if he had plans for early retirement. Keith Williams' evidence was that he did not deny that he could have said something like that, but he had no recollection of such a conversation on 8 April 2021. We find on a balance of probabilities that Keith Williams did ask the Claimant about early retirement in a welfare call, in the context of the Claimant having just had a triple heart bypass and because the Claimant had by that time been off work for a significant amount of time. We make no finding as to whether this actually happened on 8 April 2021 as the Claimant clearly had difficulty remembering dates whether due to the side effects of his heart medication or understandably the passage of time. But we do find that it happened when the Claimant had been of sick for a substantial amount of time.

38. In September 2020, the Claimant was provided with a new laptop. However, the Claimant was off sick at this point and did not arrange to pick up his laptop until 14 June 2021. When the Claimant attended to collect his laptop on 14 June 2021, Ms Clemo, Research Policy and Operations Officer spent nearly a whole day setting the Claimant up on his laptop and giving him training on it. Ms Clemo told the Claimant that he could contact her for any further assistance IT training. The Claimant accepted that when he logged into his laptop there was immediately a warning message about GDPR which he clicked on in order to get into the rest of his laptop. The warning stated "*by clicking on the OK button below and log in into the GMB domain you agree to abide by the terms of the GMB information systems acceptable use policy data protection policy social media policy the Data Protection Act soon to be GDPR Computer Misuse Act and any other relevant legislation to the GMB network a copy of the acceptable use policy can be viewed on GMB intranet SharePoint site or by request to either the IT helpdesk or HR departments"* [329]

39. Whilst the Claimant was off sick, Lola McEvoy had been visiting the Northwick Hospital to assist with the campaign for recognition. Lola McEvoy was in Gavin Davies' ROT team. By letter dated 16 July 2021 [376] Medirest were invited by the GMB to voluntarily recognise them in the workplace. The letter dated 16 July 2021 was typed by Jackie Hickey. The Claimant's evidence was that Lola McEvoy drafted the letter. Gavin Davies was adamant in his evidence that Lola McEvoy would not draft letters for the Claimant as that was the Claimant's duty as an officer or an 'industrial officer' which was another name for an officer who had a worksheet. Gavin Davies believed that Lola McEvoy would only provide suggestions of wording in emails and not actually draft letters for the Claimant. Gavin Davies' evidence was that he knew that the letter was approved by the Claimant because only the Claimant and admin have access to his written electronic signature and the reference at the top the letter had both the Claimant's initials and Jackie Hickey's initials indicating that she typed it and the Claimant approved it and that is why his electronic signature was added. We accept Gavin Davies' evidence as to the role of a buddy and duty officer and what members of his team were tasked to do, however as Lola McEvoy has stated in her own statement that she drafted the letter [325], and it was sent by the Claimant. There is no evidence that this was ever challenged by

Gavin Davies or Tony Warr. We accept that Lola McEvoy did draft the 16 July 2021 letter, typed up by Jackie Hickey but we also accept that it was approved by the Claimant which is why his electronic signature was added.

40. It was Mr Rai's belief that Lola McEvoy had been allocated to the Northwick Hospital workplace in place of the Claimant. We find that this was not the case, but that Lola McEvoy was as a member of the organising team was assisting with the campaign and recruitment of members but not to cover the Claimant's work, but she filled the gap that the Claimant left whilst he was off work. We do, however, accept Mr Rai's evidence that Lola McEvoy told him that she would make the CAC application.

41. By email dated 1 September 2021, Keith Williams informed the Claimant and other organisers that there was no longer admin support at the Hayes office, if the Claimant with other colleagues needed admin support, they were to provide clear instructions to Chris Bageley of what was needed and if anything was urgently required to inform Chris Bageley and Keith Williams immediately [330]. The Claimant's evidence was that he did not see the email from Keith Williams and that his understanding of what was to happen when admin support was withdrawn was that he was to go to his line manager for help completing the task and that there was going be to admin support. The Claimant said that in October 2021 the admin support was someone called John Weir and that he would help the Claimant whenever he needed help, however Mr Weir was not around on 28-29 September 2021. We do not accept the Claimant's evidence that he did not get the email. There was nothing preventing the Claimant asking for support.

42. By email 6 September 2021 [331-332], the Claimant emailed Lola McEvoy and wrote that they needed to register their CAC application with the TUC to ensure that no other union try to recognise themselves as Compass Medirest Northwick Park. The Claimant also requested that he and Lola McEvoy work together on the application as he did not have administrative support. However, on 7 September 2021 Lola McEvoy had an emergency and was off work on emergency leave .

43. The Claimant submitted the CAC application on 29 September 2021 [603]. The Claimant completed the application then because he felt he needed to complete it before he went on annual leave as he was being put under stress by Mr Rai who told him the shop stewards were becoming impatient. The Claimant completed the form with assistance from his nephew because he said in his evidence that he could not get assistance from anyone at the Respondent. The Claimant's oral evidence was that he did not give his nephew access to his laptop, that his nephew was present when he opened the laptop, and his nephew did not have access to his password. The Claimant went Michael Dooley for assistance first, but Michael Dooley had never completed a CAC application but told the Claimant he would do his best to help him. In the notes of Michael Dooley's interview, he says that he was told in August 2021 not to assist any officers in any aspect of their servicing work [379]. Michael Dooley wrote in his statement that the Claimant has asked for assistance in respect of an email before, he believed to check for errors and not content. Michael Dooley believed that the Claimant's email on that occasion was of a good standard.

44. We do not accept Michael Dooley evidence that Gavin Davies specifically told Michael Dooley that he was not to assist the Claimant, we find that the policy was that ROT were not to help any organisers not just the Claimant.

45. Michael Dooley told the Claimant to go his line manager to seek assistance. However, the Claimant did not go to his line manager at that point but went to Gavin Davies again for help. Gavin Davies asked Mike Ainsley another regional organiser to assist the Claimant, but Mike Ainsley had IT problem at the time and not filled in a CAC application before in any event. The Claimant's evidence is that he went to seek assistance from his line manager. However, Keith Williams denies that the Claimant asked him for help. We prefer Keith Williams evidence on this point as the Claimant had a reluctance to go to Keith Williams who he did not have a good relationship with because Keith Williams previously put the Claimant through the capability process. The fact that Michael Dooley told the Claimant to go to his line manager but then the Claimant went to Gavin Davies before he went to his line manager is evidence of this. We find that Gavin Davies did attempt to help the Claimant with the CAC application by offering him Mike Ainsely's assistance, however, Mike Ainsely only emailed the Claimant assistance when the Claimant had already submitted the CAC application.

46. On 11 October 2021, the Claimant received an email from Nigel Cookson of the CAC with some attachments [333-339] The Claimant could not open the attachments, so he contacted Mr Cookson to ask him what the correspondence was about. Mr Cookson told the Claimant that the attachments were the employer's response and a letter that said that the CAC would provide a decision shortly in respect of the CAC application. The Claimant's evidence was that he was told by Senior Case Manager Nigel Cookson that the CAC application could be corrected and resubmitted, and stated there was a possibility it would be accepted as long as the Claimant had proof of a majority of members who signed the petition and that he notified Keith Williams about the conversation between him and Nigel Cookson on the 10th or 11th October 2021. However, we do not accept the Claimant's evidence on this point. The Claimant could not have known about the CAC decision until 14 October 2021 when it was sent, so Mr Cookson could not have told him that he could resubmit the rejected application which had been rejected because the Claimant spoke to Mr Cookson on 11 October 2021 before the CAC rejection decision was made. If Mr Cookson gave advice about resubmitting a CAC application it had nothing to do with the rejection decision.

47. On receiving the 11 October 2021 email from Mr Cookson, the Claimant wrote to Keith Williams forwarding that email at 20:17 [328] with the Medirest response to the Claimant's application for recognition attached. [333- 334]. The Claimant's email stated "*sorry to email at this time. After reading this CAC email and response from Medirest, it seems that they are going to be recognised with Unison. I'm sure they don't have as many memberships as we had. We have nearly 300 people signing the petition to support our recognition."* We find that email did not have any decision contained within it stating that the Claimant's application for recognition was refused. The email from Mr Cookson from the CAC on 11 October 2021 which the Claimant forwarded attached Medirest's response and a letter from Mr Cookson stating categorically "*Please find attached a copy of the*

Employer's response to the above application. I have forwarded it to the panel and the penal will now consider the papers submitted. I will be in touch with the decision shortly…" [334] We find that the Claimant knew from what Mr Cookson told him and the letter attached to the 11 October email that no decision had been made. The Claimant may have thought that the application would be refused because he interpreted the correspondence from Medirest as recognising Unison in the future as a reason why they did not recognise the GMB, but he knew on 11 October that it is had not in fact been refused.

48. In response to the receipt of the Employer's response to the application for recognition from the Claimant, on 12 October 2021 at 14:56 Keith Williams wrote to the Claimant to enquire whether he had written to the TUC to protect the Respondent's position regarding recognition for the bargaining unit at Compass Medirest Northwick Park [328].

49. On 12 October 2021, the Claimant emailed Keith Williams to inform him of a number of errors of the CAC application and that he completed the CAC application by himself with help from his nephew [327]. The email did not mention that the CAC had rejected the application in respect of Compass Medirest Northwick Park. In response to the Claimant's email, Keith Williams wrote to the Claimant on 13 October 2021 at 09:43, stating that as the Claimant was on sick leave he would have the discussion with the Claimant when he returned from sick leave and would not communicate with the Claimant until his return. The Claimant was warned in the email by Keith Williams that he should not be sharing GMB business with third parties and that the Claimant was to provide a full explanation of why he sought assistance with a third party rather than him. We find that the "serious errors" referred to in Keith Williams email were to how Unison were allowed to get to a position where Medirest would recognise them rather than the GMB.

50. On 14 October 2021, the CAC emailed the Claimant to inform him that the application for recognition of Medirest members at Northwick Park contract was rejected [603 & 340-343]. The email had attached a letter which states at paragraph 22 that "for the reasons above the panel concludes that the application is not made in accordance with paragraphs 11 or 12 of the Schedule and is not accepted by the CAC" [343]. The CAC rejected the Claimant's CAC application for recognition respect of a bargaining unit at Northwick Park because the application had defined the members of union in the bargaining unit the same as the staff numbers in the bargaining unit [342].

51. The Claimant's evidence was he did not see that email on 14 October 2021 [250A] with the decision of CAC to reject the Claimant's application for recognition [340-343]. However, he met with Keith Williams on 14 October 2021 and told him about the CAC rejection, but this was not based upon seeing the email dated 14 October 2021 from the CAC. The Claimant said that Keith Williams asked him who filled in the CAC application and how the error occurred. Keith Williams denies he has any discussion with the Claimant on 14 October 2021 where the Claimant told him about the rejection of the CAC application.

52. We do not accept that the Claimant met with Keith Williams on 14 October. The Claimant's evidence was that he believed that the CAC application had been rejected on 11 October 2021 and had already told Keith Williams who filled in the CAC application in his email on 12 October 2021 [327], there would be no point in Keith Williams asking the Claimant again when he had already been informed that the Claimant completed the form with assistance of his nephew. Keith Williams would have been unlikely to have forgotten this fact seeing as it was the basis for him asking for a full discussion with the Claimant in his email 13 October 2021. Furthermore, the Claimant's evidence was that he did not see the email 14 October 2021 informing him of the rejection of his CAC application for recognition until 29 October 2021. So, the Claimant could not have told Keith Williams about the email on 14 October 2021 as he did not know about it at that time.

53. In the CAC application the Claimant set out that there were 237 members of the Respondent at the Medirest contract at Northwick Park NHS Trust however there were only 209 members of the Respondent within the Medirest contract at Northwick Park NHS Trust at the time. In or around this time the Claimant received CAC application rejection, the Claimant was supposed to visit the Northwick Hospital site to meet with Mr Rai. However, the Claimant did not attend the scheduled meeting as the Claimant was off sick. Mr Rai contacted the Claimant to ask why he had not attended and what was going on with the CAC application. The Claimant told him on the phone that he has made an error on the CAC application that they would submit another application. Mr Rai asked the Claimant to explain what had happened. The Claimant agreed to come and discuss the matter with Mr Rai in person. Mr Rai was not sure about the date he met with the Claimant. However, we find that it must have been after Mr Rai's email 25 October 2021 to Michael Dooley because in that email Mr Rai asks when the Claimant is returning to the office. Mr Rai also states that he had contacted a number of people to find out what has happened regarding the error that the Claimant had told him about. Although Mr Rai does not provide a date for this conversation, we accept the Claimant's evidence that it took place on or around 11-13 October 2021.

54. At the meeting on 29 October 2021 with Keith Williams, the Claimant admitted that he failed to share or seek advice when he received the email from the CAC on the 14 October with their notification that the Schedule 1A Application had not been completed correctly and the request for GMB Recognition had failed. However, we do not accept the Claimant's evidence that when he accepted this, he thought that the CAC application rejection was the letter he received from CAC of the employer's reply to the application on 11 October. The Claimant gave evidence that he knew received an email because he heard a ping which we accept and therefore he knew when he received the email from CAC on 14 October 2021, however, the Claimant did not read that email. We find that the Claimant did not read the email through choice.

55. Following a meeting with the Claimant on 29 October 2021, Keith Williams wrote to the Claimant [602-603] to confirm that he was recommending that matters that were investigated by Gavin Davies and would be referred to under the formal process of the disciplinary policy. In that letter Keith Williams also stated in that email "*further you accepted that you failed to*

share or seek advice when you received the email from the CAC on the 14th October with their notification that the Schedule 1A Application had not been completed correctly and the request for GMB Recognition had failed. This inaction raises concerns with your conduct as although you made the rep aware you did not communicate with me or any other Senior Management within the region. Additionally sharing this information with the rep before seeking any advice you have potentially exacerbated a difficult situation with members and could possibly have brought the Union into disrepute." [603]. We find the Claimant never at any point during the disciplinary process challenge this statement from Keith Williams or say that he did not see 14 October 2021 email from the CAC or did not tell Mr Rai that the CAC had rejected the application.

56. By email dated 2 November 2021 [593, (292-293)], Mr Warren Kenny invited the Claimant to attend an investigation meeting with Mr Gavin Davies in order to consider allegations that the Claimant potentially brought the Union into disrepute by means of misrepresenting membership figures in a formal process, potentially failing to inform on a formal process that could potentially be detrimental to the Respondent's members interests, potential breach of confidential information to a third party not employed by the GMB, allegedly failing to comply with an appropriate process in a CAC application that could have a detrimental effect to the GMB's ability to organise, allegedly failing to notify the senior management of the CAC decision but shared information with a representative causing concern and speculation with the impact bringing the Union into disrepute, general concerns relating to poor performance.

57. By letter dated 2 November 2021, Gavin Davies wrote to the Claimant to invite him to attend a formal disciplinary investigation [290]. The allegations to be investigated were the same as set out in the email dated 2 November 2021 from Warren Kenny [593]. Gavin Davies wrote the Claimant an additional letter inviting the Claimant to attend the investigation meeting on 7 December 2021 [291]

58. By letter dated 3 November 2021, the Claimant was invited to attend an investigation meeting on 21 December 2021 with Gavin Davies [289]. However, by email dated 15 December 2021, the Claimant requested that the meeting be postponed. By letter dated 16 December 2021 Gavin Davies agreed to the postponement and the investigation meeting was rescheduled to 11 January 2022 [288].

Investigation Meeting

59. On 11 January 2022, the Claimant attended an investigation interview with Gavin Davies [321-323]. The Claimant said in that interview that he did get the figures for the CAC application wrong and that he did not receive the figures from Lola McEvoy. But later he said that he was not happy with the figures supplied by Lola McEvoy, he said he was told by Keith Williams to wait until Lola McEvoy's return from emergency leave. The Claimant said that he spoke to Keith Williams to get assistance and was told that Keith Williams would get someone to help. The Claimant said that there was no admin staff available and that is why he asked his nephew to assist him. He said that his nephew was sitting with him, and he input his password and

did not read the disclaimer on GDPR. The Claimant said that he did not have training in data protection whatsoever [323].

60. In the investigation meeting, the Claimant admitted that he confused the number of staff 450 with the number of members and agreed that it was his responsibility.[322] The Claimant said that it was not the first time that the incorrect figures has been supplied for a CAC application. The Claimant said that he relies upon the membership system, the people he works with and the shop steward structure.

61. After the investigation meeting on 11 January 2022, the Claimant became very emotional, saying that he could not cope, and asking Gavin Davies, that there must be an alternative way of resolving the matter without it going to a disciplinary. Gavin Davies explained to the Claimant that it was not within his gift to enter into any negotiations with him on behalf of the GMB. Gavin Davies then asked the Claimant if he would like him to approach the Regional Secretary, Warren Kenny, on the Claimant's behalf on a "without prejudice" basis, to try to resolve matters without a disciplinary. The Claimant agreed. The Claimant then told Gavin Davies *"…..after working with GMB since 1996 if I am not needed and the offer is "attractive" (the word I used), then I will consider an offer and that I would also find out about what benefits e.g. pension and lump sum I will be entitled to. You noted this point as well as when I turn 60 this October regarding my pension.*" [275]. Gavin Davies followed this up by writing a letter to Warren Kenny stating, *"I had a private and confidential conversation with Tahir and he asked me to consider, without prejudice, whether or not the Region would in his words consider "making him a lucrative offer" and "providing him with a full pension forecast"* [607]. We find that the reason why Gavin Davies asked the Claimant if he wanted him to speak to Warren Kenny on a without prejudice basis was because the Claimant had asked about an alternative to going through the disciplinary process. We find that "lucrative" was just a synonym for "attractive" which is the word that the Claimant said that he used. We do not accept the Claimant's evidence that he did not know the meaning of the word and we find that the Claimant did use the word lucrative. We accept Gavin Davies' evidence that he used the word lucrative because the Claimant asked him to.

62. The Claimant was sent the investigation notes on 13 January 2022 by email. [320]

63. On 28 January 2022, 21:29 [317-319] the Claimant's responded to the provision of notes of the investigation meeting, where he corrected a number of matters that he said were not correctly recorded in the notes. He wrote in the email that he said in the investigation meeting that he had been asked to complete CAC applications before but that previously admin had completed it. [317]

64. The Claimant followed up his email dated 28 January 2022 21:29, with an email dated 28 January 2022 21:57, containing a personal statement [316]. In that statement the Claimant refers to someone else completing a CAC application where the figures were wrong by a greater margin than the error the Claimant made.

65. On 28 January 2022, Mr Martin Smith emailed Warren Kenny and Gary Smith of a proposal to second the Claimant to work on a national project concerning Uber and the Leicester garment industry. [605]. Warren Kenny had a one 2 one with the Claimant on 4 February 2022 to discuss the proposal. The Claimant was interested. Warren Kenny did not have any involvement with whether the secondment would start or not. Warren Kenny told the Claimant that it had nothing to do with London office. The Claimant gave evidence that there was no discussion about the reopening of an investigation with Warren Kenny at that meeting which we accept.

66. The Claimant in evidence conceded that the allegation made about the reopening of the investigation was because he was a Pakistani was not an allegation that he made against Warren Kenny, but that the disciplinary investigation could not have been reopened without Warren Kenny's permission as he believed nothing was done without his permission. He said that he was not accusing Warren Kenny of stopping his secondment.

67. We find that the Claimant made an assumption that the disciplinary investigation would stop because he was being considered for a secondment with Martin Smith at national office. But the Claimant conceded in evidence that he never asked Warren Kenny to stop the disciplinary investigation. We find that the disciplinary investigation was not reopened as it had not stopped. We accept Martin Smith's evidence that since the report and recommendations of Karon Monaghan QC into past GMB practice no risk should be taken that that disciplinary policy and process should be seen to be subverted. We also accept Warren Kenny's evidence that there were 2 separate processes and that the disciplinary investigation continued alongside the consideration of the Claimant for the secondment position at the national office and that the disciplinary process was ongoing and concluded before the Claimant would have moved to the secondment position. We do not accept Martin Smith's evidence that that Warren Kenny had given him permission to make a secondment offer to the Claimant and that is why he wrote the email dated 23 February 2022 [282] setting out the details of the secondment offer. We accept Gavin Davies' evidence that in February 2022 Martin Smith was hassling him about proceeding with the loan offer (aka secondment offer) and Gavin Davies told Mr Smith that it was not his decision regarding the disciplinary process and that it was Keith Williams' decision as the Claimant's line manager. We find that Mr Smith would not have hassled Gavin Davies for a decision if he already had permission from Warren Kenny.

Disciplinary hearing

68. By letter dated 1 March 2022 [285] the Claimant was invited to attend a disciplinary hearing on 18 March 2022. In the letter dated 1 March 2022 [286] the Claimant is told that both parties can call witnesses, and he should inform Tony Warr of the names of any witnesses he intends to call 5 days before the date of the hearing. The allegations against the Claimant to be considered in the disciplinary meeting were: (a) potentially bringing the Union into disrepute by means of misrepresenting membership figures in the formal process, (b) potential failure to inform on a formal process that could potentially be detrimental to our members interests, (c) potential breach of confidential information to a third party not employed by the GMB,

(d) alleged failure to comply with an appropriate process in a CAC application that could have a detrimental effect to the GMB's ability to organise, (e) alleged failure to notify the senior management of the CAC decision but shared information with Rep causing concern and speculation with the impact of bringing the union into disrepute, (f) general concerns relating to poor performance.

69. With the invitation the Respondent attached an appendix with copies of documents in the appendix which included a letter from Gavin Davies rescheduling formal investigation meeting with the Claimant dated 16 December 2021 [288-289], submitted CAC application dated 28 September 2021[294-301], membership figures dated 22 September 2021 [302], minutes of investigation meeting on 11 January 2022 with the Claimant's corrections on 28 January 2022 [316], minutes of investigation meeting [320-323], statement from Lola McEvoy dated 12 January 2022 [324-325], statement from Michael Ainsley [326], employers response to CAC application [336-339], CAC rejection of application dated 14 October 2021 [340-343], petition of Compass Medirest Northwick Park employees [347-375], notes of interview with Michael Dooley [379-381], appendix p- email correspondence between Claimant and Michael Ainsley 28.09.21 [382-383], Respondent's data protection staff handbook (November 2018) [384-426], Respondent data protection policy and privacy standard [427-441], E-mail and internet policy and guidelines [442-451], GMB privacy Notice [452-464], GMB London Region Guidance to Staff on changes to Data Protection Legislation [465-474].

70. The Claimant attended the disciplinary on 18 March 2022 without a union representative. [477-511] At the disciplinary, it is noted in the minutes that Tony Warr noticed that the Claimant was not following the documentation in the bundle and had to be assisted and taken to the relevant documents in the bundle [480]. Keith Williams accepts that he knew of the Claimant's IT skill limitations and that is why the Claimant had secretarial support [491]. Keith Williams explained in the disciplinary meeting that the rejection of the application could have a detrimental effect on membership. Keith Williams' understanding of the Claimant's daughter's assistance was help with grammar not drafting emails [493]. Tony Warr told the Claimant in the disciplinary meeting that the Respondent would not take the capability process any further [494]. In the hearing the Claimant said that he had dyslexia [496]. However, in evidence that Claimant confirmed that what he meant by dyslexia was that sometimes he forgets after medicine use.

71. At the disciplinary meeting, the Claimant denied being involved in writing a CAC application before the Compass Medirest Northwick Park [503]. The Claimant said that the figures input into the CAC application were given to him by others [504] he said that no one has told him that he could not have the assistance of family members for it was well known of his IT limitations and he made sure that his nephew did not see his password [504]. He said that he would be open to any further training provided. The Claimant accepted responsibility for having to complete the CAC application [505] but as he was off sick it was the other officers involved responsibility as well. The Claimant said that he considered that it was the officers, responsibility to check the figures disclosed on the CAC application [506]. The figures that

the Claimant used for the CAC application were provided by Ms Jackie Hickey that day [507] and he accepted that he did not verify the figures. The Claimant said that he did not remember seeking training in order to assist with the limitations he had. The Claimant accepted that he had received that GDPR policies and that he had trained reps in respect of GDPR by going through the booklet provided [508]. The Claimant accepted that his daughter helped him send a few emails 2 weeks before [509].

72. The Claimant says in the disciplinary that Lola was responsible for the CAC application [509]. Keith Williams' evidence at the hearing was that the responsibility for the CAC application remained the responsibility of the Claimant at all times. The Respondent did operate a buddy system where if an organiser is off work, the buddy will pick up the urgent enquires and membership matters in the organisers absence, but the buddy would not be responsible for all the work of the organiser who was absent. Even if the Claimant were off work and they have a buddy, the buddy would not be responsible for all the Claimant's work.

73. Gavin Davies points out in the disciplinary [481] that the Claimant's nephew had potential access to personal data is in breach of the Respondent's data protection policy. In the hearing the Claimant says that he was not aware of the serious of confidentiality/ data protection issues [481].

74. In the disciplinary meeting Keith Williams stated that he became aware of the CAC application rejection on 26 October 2021[484]. We find that it was not put to Keith Williams that he was told about problems with the CAC application on 12 October 2021. He did not say anything about not being told being told about problems in the 12 October 2021 email at the hearing. The Claimant accepted in evidence that he did not correct the notes of disciplinary. The Claimant did not say in evidence that Keith Williams falsely alleged that he was only informed of problems with the CAC application when he was told about this by email. We find that Keith Williams did not falsely allege in the 18 March 2022 meeting that he was only informed of problems with the CAC application as the subject of the disciplinary process on 26 October 2021. We find that the Keith Williams was told of some problems in the Claimant's 11 & 12 October 2021 emails.

75. During the disciplinary hearing, there was a 10 minute adjournment for 10 minutes at 10:30am and then the Claimant requests 5 minute break and then they return at 12:25, there was a break for lunch at 12:30-13:10, there was a final break at 15:15 for 10 minutes. Tony Warr's evidence was that the Claimant threw down his papers and stormed out of the meeting to the men's toilets where he banged the door so hard that damage was done to one of the doors during one of these breaks. However, the Claimant's evidence was that as he stood up to leave, the papers fell on the floor, and he did not purposely throw these papers on the floor and that he placed the papers back on the table before exiting the room. We accept the Claimant's evidence that the papers fell as the letter does not say that the Claimant threw the papers on the floor, but that the Claimant's behaviour resulted in the papers being flown on to the floor. However, Tony Warr's evidence was unchallenged in respect of the Claimant damaging the door in the male toilets. The Claimant said that he did go to the toilet in the break but there was no proof in oral evidence, but did not deny that he banged the door and

damaged it. We accept Tony Warr's evidence on this point. We find that Tony Warr was not making false allegations in his dismissal letter.

76. The Claimant's evidence was that procedure flawed as there was no HR at the disciplinary meeting in accordance with the disciplinary procedure [paragraph 118 CWS]. The Claimant said in evidence that the difference that would have occurred if HR attended was, they would have advised him not to go ahead without a representative. The Claimant said also that he asked where HR were. At the start of the disciplinary meeting Tony Warr told the Claimant that HR could not attend but could be contacted for procedural advice. We note that the Claimant did not ask at any time for HR in the disciplinary thereafter. The Claimant claimed in evidence that he did not know that he could have adjourned the hearing as he did not have a representative. But in the meeting notes, the Claimant confirmed that he had chosen to attend the disciplinary without a representative because he regarded the Respondent as family. [477] We find that it is inconceivable given the Claimant's role and representative responsibilities as an organiser that he did not know he could adjourn the disciplinary at any time or needed to be told that by HR. We do not accept the Claimant's evidence on this point.

77. We find that the Claimant's version of events in the investigation meeting was inconsistent with what the Claimant was saying in the disciplinary hearing. The Claimant took responsibility for the errors in the CAC application at the investigation meeting and then blamed others at the disciplinary. We find that the Claimant did not read or look at the email dated 14 October informing him of the CAC rejection of his application for recognition. So when the Claimant was asked at the investigation meeting for his response the allegation regarding his failure to inform Keith Williams about the CAC decision, the Claimant responded in respect of the correspondence he received from the CAC on 11 October 2021 with the employer response to the CAC application. the Claimant knew that he has not received the CAC decision. He purposely misleads the Respondent by saying that he told Keith Williams about the problems with the CAC application as if that was the answer to the allegation about the CAC decision.

78. By letter dated 22 March 2022 from Tony Warr, the Claimant was informed that he was dismissed by reason of gross misconduct [512-513]. In the letter of dismissal, Tony Warr explains his reasons for dismissal as *"I found misconduct occurred in the first five of the six allegations the most serious of which being the third this is being the potential breach of confidential information to a third party not employed by the GMB which I consider to be standalone matter of misconduct in itself….. More worryingly was that you confirmed that despite being in a formal disciplinary process for at least four months you continue to allow access to your e-mail account to someone outside of GMB."* [513]

79. Tony Warr explained in his evidence that he found the Claimant guilty of the allegations against him in relation to allegation A because the Claimant did not explain where he got the membership figures and did not seem willing to accept that he got the membership figures incorrect even though he accepted that it was his responsibility and he took into account that the

Claimant had gone through the CAC process before. In respect of allegation B he believed Keith Williams that the Claimant had not told him about the CAC decision and even though the Claimant experience with CAC applications meant that he would have known to keep Keith Williams updated. In respect of allegation C, there was a potential for a confidentiality breach because the Claimant admitted that his nephew was next to him when he logged on and put in his password. Tony Warr did not accept that the Claimant had no alternative but to ask his nephew as there was secretarial support available following Keith William's email dated 1 September 2021. Tony Warr did take into account the fact that the Claimant said that he did not have any specific training but also considered the fact that he had given GDPR training to the union representatives. In respect of allegation D, Tony Warr considered that the Claimant letter to Lola McEvoy made it clear that he was aware that he needed to notify the TUC of the application for recognition. The Claimant also completed the petition incorrectly. The Claimant admitted that he should have completed the application more professionally. In respect of the final allegation E, the Claimant did not explain why he told others about the CAC rejection but not senior management. Tony Warr also took into account that the Claimant had told Mr Rai the decision of the CAC before Keith Williams.

80. We accept Tony Warr's evidence on the decision that the Claimant could have checked the CAC application with Keith Williams and or himself before submitting the CAC application and that he took this into account in his decision and that during the disciplinary hearing the Claimant himself admitted to "not communicating about the application on time". [507] and that he considered that the Claimant did not address his failure to keep his line manager informed.

81. Michael Dooley gave evidence that around June 2019 he rigged a ballot in an attempt to determine the outcome of a ballot. He admitted it to the Respondent, but he was not dismissed. Tony Warr's evidence is that since the criticism of the Monaghan report in 2020, the Respondent had to go through the processes. We accept Tony Warr's evidence of the Respondent's explanation for the reason for the difference in treatment between Michael Dooley and the Claimant based upon position after the Monaghan report.

82. We find that the Claimant was careless in how he completed the CAC application. We find that the Claimant was negligent in not seeking assistance from Keith Williams to check the CAC application at the very least. We find that the Claimant did not tell the truth in the investigation meeting or the disciplinary hearing when he said that he had told Keith Williams about the CAC decision, we find that the Claimant knew that he did not know what the CAC decision was on the 11 October 2021 because he was told by Mr Cookson that the decision was to come after he received the email on 11 October 2021. We consider that this was not a mistake by the Claimant but was intentional.

83. The Claimant gave evidence that no dismissal decision could be made without Warren Kenny's permission. However, the Claimant did not mention this in his witness evidence or his pleadings and admitted the in oral evidence it was the first time he was mentioning it. We find that Tony Warr

made the decision to dismiss the Claimant, Warren Kenny had nothing to do with the decision.

Appeal

84. The Claimant appealed by email [514-517]. The Claimant was invited to attend an appeal hearing on 31 May 2022.

85. In the appeal document the Claimant's grounds were he was not provided with evidence of how by his CAC application he brought the Respondent into disrepute [514], on the basis that Bhimraj Rai should have been interviewed. However, in the disciplinary hearing, Gavin Davies explained that *"…although he accepted Tahir's explanation of how the error occurred but believes in a formal process the membership figures have to be correct as even if the figures were only out by 2 members it could have an effect of the application failing and would therefore mispresent the union"* [479]. We accept Tony Warr's evidence was that when a CAC application fails it often gives an opportunity to sister union to undermine CAC application to organise and recruit and Unison made great play of it in the hospital saying we are the only recognised union. We find that the Claimant was told the reason for why there was disrepute.

86. We accept Gavin Davies evidence that he has no recollection of the Claimant asking at the investigation meeting for Bhimraj Rai to be interviewed. We note the Claimant did not ask for Bhimraj Rai to be interviewed at the disciplinary hearing either and that by letter dated 14 March 2022, the Claimant was reminded again by Tony Warr that he could have witnesses [475]. We also accept Bhimraj Rai's evidence that he was being put under pressure by the members at medirest Northwick Park to get recognition and so told the Claimant about this pressure. Tony Warr stated at the appeal document [793] that the Claimant could have called Bhimraj as a witness himself. We find that the Claimant knew that the members wanted recognition as he was told this by Bhimraj Rai. Although the Claimant says he was never provided with evidence of how his CAC application brought the GMB into disrepute [paragraph 129]

87. The Claimant also alleged in his appeal that it was not clear to him how the failure to inform could potentially affect the members interests. However, the Claimant asks the question in the disciplinary meeting *"the incorrect information was only regards the CAC application and has not affected our membership what your understanding of the application not affecting our membership?" Keith Williams answers the question explaining that "given the history with medirest with almost getting recognition a few times but not quite managing it, it was a prime opportunity… and given that the application was incorrect that could have a detrimental effect on membership down there"* [491] We note that at the disciplinary hearing [506] Tony Warr asks the Claimant if he understands the allegations against him and the Claimant response that yes his understands the allegations which are very clear. [506] We find that the Claimant did understand the allegations against him and that he did not ask for Bhrim to be interviewed.

88. The Claimant denied in the appeal document that there was a breach of the confidential information and that if there was a breach he was not trained

on using computers, the Claimant also denied that any information that he shared with Mr Rai caused concern and speculation. In the appeal the Claimant made the same points he made in the disciplinary. [518]

89. The Claimant set out in his appeal document that dismissal was too harsh and that a warning or training were alternatives. [516]. The Claimant also said that others did worse acts of misconduct than him [514]. The appeal grounds in essence it was not intentional that he got the figures wrong for the CAC applications and that he did not get support and that was not considered in the disciplinary.

90. Paul McCarthy heard the Claimant's appeal [518-528]. He met with the Claimant first online and then he spoke to Mr Warr. The Claimant attended with a union representative. We find that Mr McCarthy heard the appeal as a review because he conducted the appeal online where both parties were not in the same room so there was no questioning of either party.

91. At the appeal, the Claimant accepted that the membership figures were his mistake [518], and he accepted that what was alleged by the Respondent happened but that that the impact was not as great as was made out. The Claimant asked Mr McCarthy to take into consideration that he had not received any training [520]. The Claimant confirmed that he chose not to bring witnesses [522]. Mr McCarthy states in the hearing that he would ask Mr Warr to come into the appeal and speak to him separately. The Claimant and his representative agreed to this [523]. Mr McCarthy asks the Claimant about his disciplinary record and the Claimant tells him is record is clean [523]. The Claimant says that he was singled out for discrimination but defines discrimination as representing members. When the Claimant is asked to explain what the racial discrimination was, the Claimant says that he is being made responsible for matters as he is the senior officer.

92. In the appeal hearing the Claimant said that Paul McCarthy (general secretary) promised to investigate the questions raised with Tony Warr and come back to Claimant and his union representative. However, we find that was not the case as there is no record of this in the minutes. The Claimant accepted in evidence that he received the appeal notes in July 2022 and that most of the notes are correct. Tony Warr submitted a written document to Mr McCarthy [785-804] setting out the case in respect of his decision to dismiss the Claimant. In that document Tony Warr explains that he considered that the Claimant had 2 years during lockdown to carry out IT training [794]. When Mr McCarthy spoke to Tony Warr at the appeal, Tony Warr explains that he did consider a final warning but in his view the seriousness of the offence warranted the Claimant's dismissal without notice [528]. He also explained that he did not think that the Claimant should got to the secondment as that would send the wrong message to the workforce [528].

93. By email dated 20 June 2022, Mr McCarthy upheld the dismissal. [530]. We find that the presence of the union representative meant that the Claimant was satisfied with how the hearing was conducted. As there is no record of the Claimant's union representative raising any issues about the format of the appeal. We accept Tony Warr evidence that the Claimant's union representative was very experienced.

94. The Claimant also complained that his long service was not taken into account. In evidence Tony Warr explained that he did take the Claimant's long service into account, and we accept Tony Warr's evidence on this point. Tony Warr explained to Mr McCarthy in his document that he gave consideration to the Claimant's apology and admission of his mistakes and his service, but he had to balance the potential damage to the Union in terms of the Claimant's actions and decision [802]

95. The Claimant's evidence was that believes that the decision to uphold his dismissal at the appeal was pre planned [paragraph 148]. However, the Claimant did not point us to any evidence to support this and we find that there was no evidence that the appeal decision was preplanned.

The Law

Unfair dismissal

96. The test for unfair dismissal is set out in section 98 of the Employment Rights Act 1996 ("ERA 1996"). Under section 98(1) ERA 1996, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within subsection (2), e.g. conduct, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

97. The reason for dismissal is "*a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee*." (Abernethy v Mott Hay and Anderson [1974] ICR 323, CA.)

98. In Sutton and Gates (Luton) Ltd v Boxall [1979] ICR 67, Kilner Brown J sitting in the EAT directed Tribunals to consider *" it may not necessarily be that there is a wide range in the field of incapability, but that incapability ought to be treated much more narrowly and strictly than has been done in the past; and cases where a person has not come up to standard through his own B carelessness, negligence or maybe idleness are much more appropriately dealt With as cases of conduct or misconduct rather than of capability. It means of course that industrial tribunals, as argued in this case, may well be in danger of misdirecting themselves unless they clearly distinguish in their own minds how far it is a question of sheer incapability due to an inherent incapacity to function, compared with a failure to exercise to the full such talent as is possessed."* [per page 71, paragraph A-B]

99. Under s98(4) ERA 1996 *"… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case."*

100. Tribunals must consider the reasonableness of the dismissal in accordance with s98(4) ERA 1996. However, Tribunals have been given guidance by the EAT in British Home Stores v Burchell [1978] IRLR 379, EAT as to how

to deal with misconduct dismissals. There are three stages: (1) did the Respondent genuinely believe the Claimant was guilty of the alleged misconduct? (2) Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief (3) did they carry out a proper and adequate investigation?

101. Tribunals must bear in mind that whereas the burden of proving the reason for dismissal lies on the Respondent, the second and third stages of Burchell are neutral as to burden of proof and the onus is not on the Respondent (Boys and Girls Welfare Society v McDonald [1996] IRLR 129, [1997] ICR 693).

102. Finally, Tribunals must decide whether it was reasonable for the Respondent to dismiss the Claimant for that reason.

103. It is well rehearsed law that the Tribunal must not substitute its own decision as to whether the decision of the employer to dismiss the employee was fair but must decide whether the actions of the employer in dismissing the employee were within the range of reasonable responses of a reasonable employer.

104. In the seminal authority of Iceland Frozen Foods Ltd v Jones]1983] ICR 17, EAT, the EAT set out the position as this: *"(1) the starting point should always be the words of [S.98(4)] themselves; (2) in applying the section [a] tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the… tribunal) consider the dismissal to be fair; (3) in judging the reasonableness of the employer's conduct [a] tribunal must not substitute its decision as to what was the right course to adopt for that of the employer; (4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another; (5)the function of the… tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair*."

105. The range of reasonable responses test (or, to put it another way, the need to apply the objective standards of the reasonable employer) applies as much to the question of whether an investigation into suspected misconduct was reasonable in all the circumstances as it does to other procedural and substantive aspects of the decision to dismiss a person from his employment for a conduct reason. The objective standards of the reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed. (Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23, CA)

106. Included in applying the reasonable responses test, the Tribunals must also take into account the ACAS Code on Disciplinary and Grievance Procedures ("Code"). By virtue of section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992, the Code is admissible in evidence and if any provision of the Code appears to the tribunal to be

relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

107. Failure by any person to follow a provision of the Code does not however in itself render him liable to any proceedings. However, the Code is also relevant to compensation. Under section 207A, if the claim concerns a matter to which the Code applies and there is unreasonable failure by either the employer or the employee to comply with the Code, there can be an increase or reduction in compensation (respectively) according to what is just and equitable of up to 25%.

108. Under s122(2) ERA 1996, the Tribunal shall reduce the basic award where it considers that any conduct of the Claimant before dismissal was such that it would be just and equitable to do so.

109. Under s123(6) ERA 1996, where the Tribunal finds the dismissal was to any extent caused or contributed to by any action of the Claimant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable.

110. Where the dismissal is unfair on procedural grounds, the Tribunal must also consider whether, by virtue of Polkey v AE Dayton Services [1987] IRLR 503 HL, there should be any reduction in compensation to reflect the chance that the Claimant would still have been dismissed had fair procedures been followed.

111. Under s123(1) ERA 1996, the amount of the compensatory award shall be such an amount as the tribunal considers just and equitable in all the circumstances having regard to the law sustained by the complainant in consequence of the dismissal as far as that loss is attributable to action taken by the employer.

112. S123(4) ERA 1996 *says" in ascertaining the loss referred to in subsection (1) the tribunal should apply the same rule concerning the duty of a person to mitigate his loss as applied to the damages recoverable under the common law of England and Wales…"*

Wrongful Dismissal

113. To determine the question of whether the dismissal was wrongful, that is in breach of the employee's contract, the Tribunal should not be concerned with the reasonableness of the employer's decision to dismiss but with the factual question: Was the employee guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract? (Enable Care and Home Support Ltd v Pearson, EAT 0366/09).

Harassment

114. Section 26, EQA 2010 sets out the legislative framework for 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 […..]

(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;"

115. In Richmond Pharmacology v Dhaliwal [2009] ICR 724 the EAT stressed that the Tribunal should identify the three elements that must be satisfied to find an employer liable for harassment: (a) Did the employer engage in unwanted conduct, (b) Did the conduct in question have the purpose or effect of violating the employee's dignity or creating an adverse environment for him/her, (c) Was that conduct on the grounds of the employee's protected characteristic?

116. In a case of harassment, a decision of fact must be sensitive to all the circumstances. Context is all-important. The fact the conduct is not directed at the Claimant herself is a relevant consideration, although this does not necessarily prevent conduct amounting to harassment and will not do so in many cases.

117. Richmond Pharmacology v Dhaliwal confirmed that not every comment that is slanted towards a person's protected characteristic constitutes violation of a person's dignity etc. Tribunals must not encourage a culture of hypersensitivity by imposing liability on every unfortunate phrase.

118. Mrs Justice Slade's comments on how a Tribunal should approach the words "related to the protected characteristic" are helpful in the EAT decision of Bakkali v Greater Manchester (South) t/a Stage Coach Manchester [2018] IRLR 906, [2018] ICR 1481 (EAT). She says, whilst it is difficult to think of circumstances in which unwanted conduct on grounds of or because of a relevant protected characteristic would not be related to that protected characteristic of a claimant – "related to" such a characteristic includes a wider category of conduct and as such requires a broader enquiry when making a decision. (See paragraph 31 (Slade J presiding)

119. Tribunals must not devalue the significance of the meaning of the words used in the statute (i.e., intimidating, hostile, degrading etc.). They are an important control to prevent trivial acts causing minor upset being caught in the concept of harassment. Being upset is far from attracting the epithets required to constitute harassment. It is not enough for an individual to feel uncomfortable to be said to have had their dignity violated or the necessary environment created. (Grant v Land Registry [2011] IRLR 748).

120. Considering whether there has been harassment includes both a subjective and objective element. Underhill J in Pemberton v Inwood [2018] EWCA Civ 564 summarised the position as follows: *"In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b))"*

121. Section 212(1) EqA says "*detriment does not, subject to subsection (5) include conduct which amounts to harassment."*

122. Section 212(5) EqA says "*Where this Act disapplies a prohibition on harassment in relation to a specified protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 13 because of that characteristic."*

123. Section 212 EqA means that an action that is complained of must be either direct discrimination or harassment, but it cannot be both. Equally such an action cannot be both harassment and victimisation. It must be one or the other. This is because the definition of detriment excludes conduct which amounts to harassment.

Burden of Proof provisions

124. Section 136 of the Equality Act 2010 states:

> *"(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 sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.*
> *(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.*
> *(5) This Section does not apply to proceedings for an offence under this Act.*
> *(6) A reference to the court includes a reference to – (a) An Employment Tribunal."*

125. Pre- Equality Act 2010 House of Lords decision of Igen v Wong [2005] IRLR 258 set out a two stage test tribunals must apply when deciding discrimination claims. This two stage approach was discussed in the Court of Appeal decision of Madarassy v Normura International plc [2007] EWCA 33, with guidance being provided by Mummery LJ. Since the Equality Act 2010 (although the burden of proof provisions differs in wording to the test set out in Igen), the Appellant Courts and EAT have repeatedly approved the application of the guidance set out by Mummery LJ in Madrassy. In summary the first stage is where the burden of proof first lies with the Claimant who must prove on a balance of probabilities facts from which a

Tribunal could conclude, in the absence of any other (non discriminatory) explanation that the Respondent had discriminated against him. If the Claimant meets the burden and establishes a prima facie case (which will require the Tribunal to hear evidence from the Claimant and the Respondent, to see what proper inferences may be drawn), then the burden shifts and the Respondent must prove that it did not commit the act disproving the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The Respondent will have to show a non-discriminatory reason for the difference in treatment.

126. Tribunals must be careful, and the burden of proof provisions should not be applied in an overly mechanistic manner: see Khan v The Home Office [2008] EWCA Civ 578 (per Maurice Kay LJ at paragraph 12).

127. The approach laid down by section136 EqA requires careful attention where there is room for doubt as to the facts necessary to establish discrimination, but where the Tribunal is able to make positive findings on the evidence one way or another, the provisions of section136 does not come into the equation: see Martin v Devonshires Solicitors [2011] ICR 352 (per Underhill J at paragraph 39), approved by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054 (per Lord Hope at paragraph 32).

128. It is, however, not necessary in every case for the Tribunal to specifically identify a two-stage process. There is nothing wrong in principle in the Tribunal focusing on the issue of the reason why. As the Employment Appeal Tribunal ("EAT") pointed out in Laing v Manchester City Council [2006] IRLR 748 "*If the tribunal acts on the principle that the burden of proof may have shifted and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever*".

Direct discrimination

129. Section 13 EQA 2010 sets out the statutory position in respect of claims for direct discrimination because of philosophical belief.

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

Section 39 (2) applies to employers and states:

"An employer (A) must not discriminate against and employee of (A)'s (B)…
(c) by dismissing B
(d) by subjecting B to any other detriment."

130. When determining questions of direct discrimination there are, in essence, three questions that a Tribunal must consider: (a) Was there less favourable treatment? (b) The comparator question; and (c) Was the treatment 'because of' a protected characteristic?

131. The test for unfavourable treatment was formulated in the case of Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11 in that case the House of Lords as it was then, said that unfavourable treatment arises where a reasonable worker would or might take the view that they

had, as a result of the treatment complained of, been disadvantaged in the circumstances in which they had to work.

132. Lord Hope's judgment in Shamoon clarifies that a sense of grievance which is not justified will not be sufficient to constitute a detriment.

133. Section 23 EQA 2010 deals with comparators and states that:

"There must be no material difference between the circumstances relating to each case."

134. Shamoon held that the relevant circumstances must not be materially different between the Claimant and the comparators, so the comparator must be in the same position as the Claimant save in relation to the protected characteristic.

Conclusions/Analysis

Unfair dismissal

135. We considered the decision of Sutton and Gates (Luton) Ltd v Boxall, as to whether what is alleged against an employee is capability or misconduct and therefore what is the reason for dismissal. We conclude that the reason for dismissal is misconduct. We considered whether capability was the reason for dismissal, but our findings were that the Claimant was careless and negligent, and these are attributes of misconduct. We concluded that whilst there were elements of the Claimant's capability regarding his English writing and his lack of IT knowledge/skill, we consider that both were as a result of the Claimant not requesting the requisite training and the Claimant's negligence in avoiding learning IT skills.

136. In considering section 98 (4) Employment Rights Act 1996, we have applied the Burchell test and consider whether the Respondent had a genuine belief of the misconduct, whether the Respondent held that belief on reasonable grounds, and was there a reasonable investigation?

Burchell Test

137. The next question to answer involves the three stages of the BHS v Burchell case.

138. *Did the Respondent have a genuinely belief of the misconduct and the Respondent hold this belief on reasonable grounds?*

139. The Claimant complained in his appeal that he was not given the evidence to explain how his CAC application brought the Claimant into disrepute. However, in the disciplinary hearing, Gavin Davies explains that *"…although he accepted Tahir's explanation of how the error occurred but believes in a formal process the membership figures have to be correct as even if the figures were only out by 2 members it could have an effect of the application failing and would therefore mispresent the union"* [479] Tony Warr's evidence was that When a CAC application fails it often gives an opportunity to sister union to undermine CAC application to organise and recruit and a

recognition agreement followed as a result, unison made great play of it in the hospital saying we are the only recognised union. Gavin Davies explanation of disrepute [500]

140. The Claimant admitted repeatedly that he got the membership figures incorrect although the Claimant informed Keith Williams about the problems with the CAC application identified by the employer's response. The Claimant did not inform Keith Williams or anyone about the CAC rejection. It was within the range of reasonable responses for Tony Warr to conclude that the Claimant was guilty of this allegation.

141. The Claimant grounds of appeal stated that there has been no breach of confidential information to a third party. The Claimant did admit to the Respondent in the investigation meeting that his nephew has sat with him when in entered his password for his laptop. It was therefore reasonable for the Respondent to conclude that the Claimant was in potential breach of confidential information to a third party who is not an employee of the Respondent who was the Claimant's nephew.

142. The Claimant admitted that he should have written to the TUC to register the CAC application in his email dated 12 October 2021 [327] and so it was reasonable for the Respondent to have genuine belief that the Claimant was guilty of this allegation.

143. The Claimant also alleged in his appeal that it was not clear to him how the failure to inform could potentially affect the members interests. However, the Claimant asks the question in the disciplinary meeting *"the incorrect information was only regards the CAC application and has not affected our membership what your understanding of the application not affecting our membership?" Keith Williams answers the question explaining that "given the history with medirest with almost getting recognition a few times but not quite managing it, it was a prime opportunity… and given that the application was incorrect that could have a detrimental effect on membership down there"* [491]

144. Whilst it is the case that we found that the Claimant had not seen the decision of the CAC until 29 October 2021, we consider that the Claimant mislead the Respondent to believe that he did know about the CAC rejection of his application and did know of the decision because he saw the email 14 October 2021. So, it was reasonable for Tony Warr to conclude that the Claimant did tell Mr Rai about the rejection of the CAC application. The Claimant did not own up to not reading the 14 October email until the tribunal hearing.

145. We therefore consider that the Respondent did have a genuine belief of the misconduct and reasonable grounds for holding that genuine belief.

Was there a proper and adequate reasonable investigation?

146. We found that the Claimant did not ask at the investigation meeting or disciplinary that Bhimraj Rai should be interviewed, however the Claimant did not give any evidence as to what difference interviewing Bhimraj Rai would have made. We accepted that Bhimraj Rai was concerned about the

recognition and was under pressure. We conclude that this is what Bhimraj Rai would have said if he was interviewed and that supported the allegation that the Claimant's error on the CAC had the potential to affect members interests. We consider that it was in the range of reasonable responses.

147. We consider that it was in the range of reasonable responses that Mr Rai was not interviewed, and HR were not attendance as HR were available and the Claimant did not call on HR even though was told that he could do so by Tony Warr in the disciplinary meeting. We conclude that there was a proper and reasonable investigation.

Reasonableness: Sufficiency of reason for dismissal

148. The Claimant set out in his appeal that dismissal was too harsh and that a warning or training were not considered as alternatives. [516] Tony Warr explains in the dismissal that he regards the allegations a, b, d, e accumulatively as gross misconduct and the allegation c regarding potential breach confidentiality as gross misconduct alone. We also accepted that Tony Warr did consider a final warning but in his view the seriousness of the allegations required that the Claimant be dismissed without notice and we accepted that he did consider the Claimant's long service. We consider that it was within the range of reasonable responses for Tony Warr to regard what the Claimant did as gross misconduct.

149. We found that that Tony Warr did consider alternatives to dismissal by his consideration of a final warning and whether the Claimant should go to the secondment. The Claimant had access to training, and we found that he did not utilise it. The Claimant knew he could obtain assistance with his written English even after Ms Hickey left the Respondent as he sent an email explaining the process to get assistance. We therefore consider that Respondent acted reasonably in not accepting that the Claimant's limitations contributed to his misconduct.

150. The Claimant's case was that other staff who did matters that were worse than the misconduct alleged against the Claimant were and not dismissed. The Claimant relied upon Michael Dooley's admission that he stuffed a ballot box in an attempt to determine the outcome of a ballot. However, the Claimant did not raise this in his disciplinary or appeal and so the Respondent could not have taken this example into account. Notwithstanding, we accepted the Respondent's explanation for the reason for the difference in treatment as attributable to the change in treatment of disciplinary matters after the Monaghan report which criticised the Respondent for not dealing with disciplinary matters properly. Michael Dooley's misconduct took place before the Monaghan report was published. We consider that it was within the range of reasonable responses for the Respondent to treat the Claimant's misconduct as a sufficient reason for dismissal.

151. The Claimant did not provide any written or oral evidence about the appeal. Mr Schouwenburg made a number of submissions about the flawed nature of the appeal. He submitted that, the appeal was defective, the appeal should usually take place within 21 days [539] but it was longer, there was a gap between the disciplinary and appeal, Mr McCarthy portrayed a

mindset that it was not important, couldn't bring himself to come to London from Liverpool and all the participants should have been in the hearing at the same time, it should have been held in person, Mr McCarthy did not provide a decision with the reasons for the decision. We considered the Respondent's disciplinary policy and the ACAS code of conduct in respect of Mr Schouwenburg's criticisms of the appeal.

152. We conclude there is no breach of the Respondent's disciplinary policy in respect of any of the criticisms of Mr Schouwenburg. We found that the presences of the representative and the fact that there is no record of any criticisms about the appeal procedure in the appeal as well as the fact that the Claimant agreed that Mr McCarthy could speak to Mr Warr after he has spoken to the Claimant did not indicate to us that the appeal was conducted improperly.

153. The ACAS code does not require reasons for an appeal, just the outcome, whilst it is not good practice to have an appeal where all the parties are not in the same room virtual or physical, but we do not consider in this case that it affected the fairness of the appeal.

154. The Claimant's dismissal was fair. The complaint is not well founded, and the complaint is dismissed.

Wrongful dismissal

155. We have found that the Claimant did what was alleged in the allegations A-E set out in the letter 1 March 2022 and the matters for which he was dismissed. We consider that those matters were serious and we found in particular that the Claimant was careless and negligent in how he handled the CAC application by not consulting his line manager before submitting the application and intentionally misleading the Respondent in not telling the truth at the investigation meeting and disciplinary when he denied he didn't tell senior management about the CAC rejection, he made a choice not to read the CAC email 14 October 2021. We consider that allegations A-E amounted to gross misconduct. The Claimant's actions resulted in the Claimant's dismissal for gross misconduct. In the circumstances, there has been no breach of contract. The complaint of wrongful dismissal fails and is dismissed.

Discrimination/Harassment

Issue 18.1.1- Subject the Claimant to a capability procedure in 2018.

156. The Claimant was subject to the capability procedure because he was not fulfilling his own agreed targets, his membership numbers was stagnant as reflected in Keith Williams's letters in 2018-2019 that we accepted. We accept that being subject to the capability procedure was a detriment for the Claimant, but the Claimant gave no evidence that other member of his team who were white had stagnant numbers. We consider that a hypothetical white organiser who had stagnant membership would have also been subject to the capability procedure. There were no facts from which we could infer that the reason for the Claimant being subjected to the capability procedure was because he was Pakistani. We accepted the reason why the

Claimant was subjected to the capability was because he was underperforming. The Claimant's complaint is not well founded, and the complaint is dismissed.

Harassment

157. Being subject to the capability process is unwanted conduct but we consider that the Claimant was subject to the capability process because he was underperforming and that is not related to his race. In the circumstances there was no harassment. The Claimant's complaint is not well founded, and the complaint is dismissed.

158. Issues 18.1.2 & 28.1- From 2017-22 March 2022 fail to greet or talk to the Claimant when he greeted or talked to white organisers. In this regard it is the Claimant's case that this happened with regularity. He does not rely on any particular instance which he is able to particularise by way of a date or specific circumstances;

Direct race discrimination

159. We found that Keith Williams did greet and speak to the Claimant. In the circumstances where was no detriment and there are no facts upon which we can infer that the Claimant was discriminated on the grounds of race. The complaint is not well founded and is dismissed.

Harassment

160. We consider that there was no unwanted conduct because the Keith Williams did not ignore the Claimant by failing to greet or speak to the Claimant when he spoke to the Claimant's white organiser colleagues. In the circumstances we conclude there was no harassment, and the complaint is not well founded, and the complaint is dismissed.

161. Issues 18.1.3 & 28.1- From 2017-22 March 2022 Keith Williams required higher standards or a better performance from him than from white organisers. The Claimant has been ordered to particularise this aspect of his claim. The Claimant relies on (a) requiring the Claimant to achieve recognition at the London Workwear Company in 2017; and (b) requiring the Claimant to achieve more recognition agreements, and members for GMB than others.

Direct race discrimination

162. We found that the Claimant regarded the standard of performance as criticism and criticism is not a standard. We did not accept that the Claimant discussed performance with his colleagues regularly and so he did not know about their assessed performance in any detail. We found that the Claimant was being held to the same standard as his other colleagues and there was no requirement of better performance by the Claimant. In the circumstances there was no detriment to the Claimant as Keith Williams did not require higher standards or better performance from him over his comparator white organisers or require the Claimant to achieve more recognition agreements or members for the GMB than others. There was no difference in treatment.

There were no prima facie facts on which we could infer that the Claimant had been discriminated against. The Claimant's complaint is not well founded and is dismissed.

Harassment

163. As we found that standards are not criticism and that Keith Williams did not require better performance from the Claimant over his white organiser colleagues, membership numbers and recognition agreement there was no unwanted conduct by Keith Williams towards the Claimant. With no unwanted conduct there can be no harassment. The Claimant's complaint is not well founded and is dismissed.

Issue 18.1.4 & 28.1-From 2016-2019 Keith Williams failed to acknowledge the five instances where the Claimant achieved trade union recognition as instances of good performance over the last five years. The Claimant relies on recognitions in respect of: a) London Linen; b) London Workwear; c) TRS Cash and Carry; d) TRS Wholesale; and e) Bombay Halwa

Direct race discrimination

164. We found that the Claimant did not personally achieve trade union recognition in the last five years in respect of London Linen, London Workwear, TRS cash and carry or TRS wholesale or Bombay Halwa. Keith Williams did not fail to acknowledge these alleged achievements of the Claimant as the aforementioned 5 recognition agreements were not achievements of the Claimant. In the circumstances there was no detriment and are no facts upon which the Employment Tribunal could infer that the Claimant was subjected to race discrimination. The Claimant's complaint is not well founded and is dismissed.

Harassment

165. We consider that it was not unwanted conduct that Keith Williams did not acknowledge the Claimant's achievements. This did not amount to conduct in these circumstances within the meaning of section 26 Equality Act 2010. Even if Keith Williams failed to acknowledge the Claimant's achievements (which we did not accept) we accepted the reason why Keith Williams did not acknowledge the Claimant's alleged achievements was because the Claimant did not achieve the 5 recognitions and so it was not related to the Claimant's race. The Claimant complaint is not well founded, and the complaint is dismissed.

Issue 18.1.5 & 28.1 – Did Keith Williams ask on 8 April 2021 if the Claimant had plans for early retirement on medical grounds at the end of his sick pay period, having had a triple bypass operation, when on the way to the Claimant's Doctor

Direct race discrimination

166. We found that Keith Williams did ask the Claimant if he had plans for early retirement during a welfare call. However, we found that Keith Williams did this because of the context that the Claimant had been on long term sick

having just had a heart bypass. We conclude that whilst this is a detriment, there were no facts upon which we could infer that the reason for the enquiry was on the grounds of the Claimant's race. The Claimants complaint is not well founded and is dismissed.

Harassment

167. Whilst we conclude that the comment from Keith Williams about retirement was unwanted conduct, we accepted Keith Williams explanation for why he would have asked about whether the Claimant was thinking about early retirement. We found it was because of the Claimant's long term sickness, and we conclude it was not related to the Claimant's race. In the circumstances, the Claimant's complaint is not well founded and is dismissed.

Issue 18.1.6 & 28.1- On 18 March 2022, did Mr Williams falsely allege that he (Mr Williams) was only informed of problems with the CAC application the subject of the disciplinary process on 26 October 2021 when he was, in fact, informed of this by email on 12 October 2021;

Direct race discrimination

168. We found that there was no false allegation by Keith Williams in the disciplinary hearing on 18 March 2022. In the circumstances we conclude that there are no findings on which we can infer that there was any race discrimination by Keith Williams. The Claimant's complaint is not well founded, and the complaint is dismissed.

Harassment

169. As there was no false allegation, there was no unwanted conduct. In the circumstances the Claimant was not subjected to harassment and the Claimant's complaint is not well founded and is dismissed.

Issue 19.1 & 28.1- On 11 January 2022, Asking the Claimant if he could speak to the Regional Secretary on a without prejudice basis on the Claimant's behalf with regard to agreeing a possible leaving package for the Claimant.

Direct race discrimination

170. We found that the Gavin Davies did ask the Claimant if he wanted the Claimant to speak to Warren Kenny on a without prejudice basis. We found that the reason was because the Claimant had asked about an alternative to going through the disciplinary process. We conclude that there are no facts upon which we can infer that the reason for Gavin Davies' conduct was on the grounds of the Claimant's race. The complaint is not well founded and is dismissed.

Harassment

171. We found that the Claimant asked for an alternative and agreed to Gavin Davies speaking to the regional secretary Warren Kenny about a without

prejudice offer. In those circumstances we conclude that it was not unwanted conduct. In those circumstances the complaint is not well founded and is dismissed.

Issues 19.2 & 6.1.1- On 12 January 2022, telling Mr Warren Kenny that the Claimant had asked for a "lucrative offer" by way of a severance package.

Direct race discrimination

172. We found that the Claimant did say the word lucrative. We found that the Gavin Davies used the word lucrative because the Claimant asked him to. In the circumstances, we conclude that there no prima facie facts on which we could conclude that the Claimant was discriminated against on the grounds of his race. The Claimant's complaint is not well founded, and the complaint is dismissed.

Harassment

173. We found that the Claimant asked Gavin Davies to convey that he was interested in lucrative offer. We conclude that this cannot therefore be unwanted conduct. We conclude that there is no harassment, and the complaint is not well founded and is dismissed.

Issues 19.3 & 6.1.1- From the start of September 2021, Gavin Davies failed to provide appropriate assistance to the Claimant for the purposes of making the CAC application the subject of the disciplinary process, the making of a CAC application being something that the Claimant had not previously undertaken.

Direct race discrimination

174. We found that Gavin Davies did provide assistance to the Claimant in completing the CAC application by providing the assistance of Mr Ainsley. In those circumstances there are no prima facie facts from which we could infer discrimination.

Harassment

175. As there was no unwanted conduct by Gavin Davies then there can be no harassment as Gavin Davies did provide assistance. We conclude that there is no harassment, the Claimant complaint is not well founded and is dismissed.

Issues 19.4 & 6.1.1- On 4 March 2022, Warren Kenny (the Regional Secretary), Martin Smith (the National Organiser) and the Gary Smith (the General Secretary) re-opening the disciplinary investigation associated with the CAC issues after the Claimant had been offered a new job at national level.

Direct race discrimination

176. We found that there was no reopening of the disciplinary investigation as it continued alongside the secondment process. The Claimant was not able

to point to any prima facie facts from which we could infer there was race discrimination other than he was Pakistani and Warren Kenny, Martin Smith and Gary Smith are white. The Claimant did not accuse Martin Smith of making a decision about his disciplinary investigation. In conclusion we find that as there was no reopening of investigation, and the Claimant accepted Warren Kenny did not stop his secondment. There was no evidence about Gary Smith's involvement at all in any decision. In the circumstances we conclude the Claimant was not subjected to direct race discrimination and the Claimant's complaint is not well founded and is dismissed.

Harassment

177. As we found there was no reopening of the investigation and Warren Kenny did not stop the Claimant's secondment, we conclude that there was no unwanted conduct. We therefore conclude that there was no racial harassment and the Claimant's complaint is not well founded and is dismissed.

Issues 20 & 6.1.1- When in 2011 the Claimant applied for the role of senior organiser, did the Respondent fail to promote the Claimant to this role.

Direct race discrimination

178. There was no evidence of any complaint of race discrimination at the time the Claimant applied for the role of Senior Organiser. In fact, in his witness statement the Claimant stated that he was not subjected to any direct race discrimination before 2017 which would include the period that the Claimant applied for the senior organiser role. The Claimant did not mention it in his witness statement, it was mentioned for the first time in his oral evidence. We found that the Claimant has language, and technological limitations which would have affected his suitability for a senior role. We concluded that these are the reasons why the Claimant was not promoted and as such the Claimant failed to establish any prima facie facts upon which we could infer direct race discrimination. The Claimant's complaint is not well founded and is dismissed.

Harassment

179. As we have found that the reason for the Claimant not being promoted was because of his limitations and the Claimant accepted that he was not subjected to race discrimination before 2017, we conclude that the failure to promote the Claimant was not related to the Claimant's race and as such the Claimant was not subjected to any racial harassment. The Claimant's complaint is not well founded and is dismissed.

Issue 6.1.2

180. We find that the Claimant did damage the male toilets at the hearing on 18 March 2022, but we did not find that the Claimant threw the papers on the floor. However, the letter did not accuse the Claimant of throwing papers on the floor and so there was no false allegations. There is no unwanted conduct and therefore there is no harassment. The Claimant's complaint is not well founded and is dismissed.

Issues 21 & 28.1 - Tony Warr dismissal

181. The Claimant did not allege in his evidence that Tony Warr discriminated against him when he dismissed him and, we were told his case was that it was the discriminatory acts of others that tainted the decision of Tony Warr. However, we found that Tony Warr made the decision to dismiss the Claimant, Warren Kenny had nothing to do with the decision. As we found there was no discrimination or by others or harassment and the Claimant was not alleging that Tony Warr himself was motivated by the Claimant's race to dismiss him. Although the Respondent's list of issues which was agreed by the Claimant does not refer to issue 20 as amounting to harassment, the list of issue issued by EJ Andrew Clarke does and so we consider that we must consider the allegation. We conclude that there were no facts upon which we could infer that Tony Warr's decision to dismiss the Claimant on the grounds of race or that the unwanted conduct of the dismissal decision was related to the Claimant's race. The Claimant's complaints of direct race discrimination and harassment are not well founded and are dismissed.

Time limits

182. We did not find any discrimination took place and so the issue of time limits was no longer relevant in relation to discrimination or harassment.

Holiday pay

183. In the Claimant's further and better particulars the Claimant reference that he has 43 days outstanding of holiday pay in the holiday year May 2021-May 2022. However, the pleadings state that the Claimant claim for holiday is based upon 33 days holiday that he was owed up to May 2021 and 10 days holiday until his dismissal. However, the records of the Claimant's holiday in the bundle 697-700 do not reflect what the Claimant has pleaded. The Claimant gave no evidence in respect of a holiday pay. The Employment Tribunal was therefore unable to make any findings in respect of the Claimant's holiday pay claim. In the circumstances, the Claimant's claim is dismissed.

Approved by:
Employment Judge Young

Dated 24 February 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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

Recording and Transcription

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

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

184. Annex

185. Time Limits

186. The Respondent accepts that the Claimant has brought his claim for Unfair Dismissal, and Wrongful Dismissal within the primary time limit such that these claims are in time.

187. The Respondent maintains that all of the claims pursued under the Equality Act 2010 are out of time.

188. The claims for direct race discrimination and harassment relate, in part, to matters taking place very significantly prior to the commencement of the primary limitation period in this case. Subject to it being found that the conduct in question extended over a period of time culminating during that limitation period, having regard to the principles set out in s.123 of the Equality Act 2010 the tribunal will need to decide:

189. Was the claim made to the tribunal within three months (plus the early conciliation extension) of the act to which the complaint relates.

a. If not, was there conduct extending over a period of time?

b. If so, was the claim made to the tribunal within three months (plus any early conciliation extension) at the end of that period?

c. If not, were the claims made within a further period that the tribunal thinks is just and equitable? In that regard the tribunal will need to decide:
    i. Why were the complaints not made to the tribunal in time?
    ii. In any event, is it just and equitable in all the circumstances to extend time?

190. Unfair Dismissal

191. It is admitted that the Claimant was dismissed.

192. What was the reason or principal reason for dismissal?

a. The Respondent (which bears the burden in this regard) says that this was either conduct or capability.

193. If the principal reason was either conduct or capability that is a potentially fair reason for dismissal. If the tribunal should conclude that the reason for dismissal was other than that, it must ask whether the reason for dismissal thus identified is a potentially fair reason.

194. Did the Respondent act reasonably in all the circumstances in treating that reason as a sufficient reason to dismiss the Claimant?

195. In so far as the reason for dismissal was the Claimant's conduct, the Tribunal will need to decide: did the Respondent genuinely believe the Claimant had committed misconduct?

196. If the reason was misconduct, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? In that regard the tribunal will need to consider:

a. Were there reasonable grounds for that belief?
b. At the time that belief was formed had the Respondent carried out a reasonable investigation?
c. Did the Respondent otherwise act in a procedurally fair manner?

197. If the Claimant was dismissed on the ground of capability, did he receive adequate warnings and an opportunity to improve and was the dismissal within the range of reasonable responses?

198. Was the dismissal within the range of reasonable responses open to a reasonable employer?

199. <u>Wrongful Dismissal</u>

200. Was the Claimant wrongfully dismissed? Specifically, what was the Claimant's notice period?

201. Was the Claimant paid for that notice period?

202. If not, was the Claimant guilty of gross misconduct or did he do something so serious that the Respondent was entitled to dismiss him without notice?

203. <u>Direct Race Discrimination</u>

204. Protected Characteristic - the Claimant relies on his race as a Pakistani Muslim man.

205. Did the Respondent do the following things:

a. Did Keith Williams (his line manager from 2016 onwards) treat the Claimant in the following ways:
    i. Subject the Claimant to a capability procedure in 2018;
    ii. From 2017-22 March 2022 fail to greet or talk to the Claimant when he greeted or talked to white organisers. In this regard it is the Claimant's case that this happened with regularity. He does not rely on any particular instance which he is able to particularise by way of a date or specific circumstances;
    iii. From 2017-22 March 2022 requiring higher standards or a better performance from him than from white organisers. The Claimant has been ordered to particularise this aspect of his claim. The Claimant relies on (a) requiring the Claimant to achieve recognition at the London Workwear Company in 2017; and (b) requiring the Claimant to achieve more

recognition agreements, and members for GMB than others: [reference FBP81];

iv. From 2016-2019 fail to acknowledge the five instances where the Claimant achieved trade union recognition as instances of good performance over the last five years. The Claimant relies on recognitions in respect of: a) London Linen; b) London Workwear; c) TRS Cash and Carry; d) TRS Wholesale; and e) Bombay Halway: [FBP81];

v. Asking on 8 April 2021 if the Claimant had plans for early retirement on medical grounds at the end of his sick pay period, having had a triple bypass operation, when on the way to the Claimant's Doctor: [BP82];

vi. On 18 March 2022, did Mr Williams falsely allege that he (Mr Williams) was only informed of problems with the CAC application the subject of the disciplinary process on 26 October 2021 when he was, in fact, informed of this by email on 12 October 2021;

b. It is noted that these are the only allegations of treatment said to amount to less favourable treatment by reason of the Claimant's race made in respect of the conduct of Mr Williams.

206. . Did Mr Gavin Davies treat the Claimant in the following way:

a. On 11 January 2022, Asking the Claimant if he could speak to the Regional Secretary on a without prejudice basis on the Claimant's behalf with regard to agreeing a possible leaving package for the Claimant;
b. On 12 January 2022, telling Mr Warren Kenny that the Claimant had asked for a "lucrative offer" by way of a severance package;
c. From the start of September 2021, failing to provide appropriate assistance to the Claimant for the purposes of making the CAC application the subject of the disciplinary process, the making of a CAC application being something that the Claimant had not previously undertaken;
d. On 4 March 2022, Warren Kenny (the Regional Secretary), Martin Smith (the National Organiser) and the Gary Smith (the General Secretary) re-opening the disciplinary investigation associated with the CAC issues after the Claimant had been offered a new job at national level;

207. When in 2011 the Claimant applied for the role of senior organiser, did the Respondent fail to promote the Claimant to this role.

208. Dismissal by Mr Warr

209. Were the aforementioned alleged acts of direct discrimination less favourable treatment?

210. The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's circumstances.

211. The Claimant says that he was treated worse than the white Organisers who were, from time to time from 2016 onwards, his colleagues in the London Region and those who were promoted to more senior posts when he was denied promotion. [The Respondent says the Claimant has not named actual comparators and therefore does not have an actual comparator]

212. Otherwise, the Claimant relies upon a hypothetical comparator, saying that he was treated worse than someone else in his circumstances but who lacked his protected characteristic would have been treated.

213. If there was less favourable treatment, was it because of his race?

214. Did the Respondent's treatment amount to a detriment?

215. <u>Harassment related to race (Equality Act 2010 section 26)</u>

216. Did the Respondent do the following things:

a. The Claimant relies upon each act complained of in paragraphs 18 & 19.
b. On 22 March 2022, the Claimant alleges he was accused by Mr Warr falsely of unacceptable behaviour (namely throwing papers on the floor and damaging the male toilets) at the disciplinary hearing on 18 March 2022.

217. If so, was that unwanted conduct?
218. Did it relate to the Claimant's race?
219. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
220. If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

221. <u>Holiday Pay (Working Time Regulations 1998)</u>

222. Did the Respondent fail to pay the Claimant for annual leave the Claimant had accrued but not taken when his employment ended?
223. How much of the leave year had passed when the Claimant's employment ended?
224. How much leave had accrued for the year by that date?
225. How much paid leave had the Claimant taken in the year?
226. Were any days carried over from previous holiday years?
227. How many days remain unpaid?
228. What is the relevant daily rate of pay?

229. <u>Remedy for unfair dismissal</u>
230. Does the Claimant wish to be reinstated to his previous employment?
231. Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?
232. Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

233. Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

234. What should the terms of the re-engagement order be?
235. Did the Claimant unreasonably fail to comply with the Code that by failing to raise the matters of which he now complains as grievances?
236. If so is it just and equitable to decrease any award payable to the Claimant? By what proportion, up to 25%?
237. If the Claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?
238. If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
239. Does the statutory cap of fifty-two weeks' pay or £86,444 apply?
240. What basic award is payable to the Claimant, if any?
241. Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

242. Remedy for Direct Discrimination

243. What amount of compensation for financial losses should be paid in respect of discrimination?
244. What amount of injury to feelings should the Claimant be awarded?
245. What, if any, recommendations should be made?
246. What amount, if any, interest should be paid?

Approved By:

Employment Judge Young
Date: 24/2/2025

REASONS SENT TO THE PARTIES ON 25/2/2025

FOR THE TRIBUNAL OFFICE – N Gotecha

247. Public access to employment tribunal decisions

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

249. Recording and Transcription

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

251. https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/