EMPLOYMENT TRIBUNALS

Claimant: Mr Oluyinka Adelanwa

Respondent: Environment Agency

Heard at: London South (by video)

On: 6 to 13 May 2025

Before: Employment Judge Evans
Mr W Dixon
Ms J Jerram

Representation
Claimant: in person
Respondent: Mr Smith of counsel

JUDGMENT

The Tribunal's unanimous judgment is that:

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

2. The complaint of harassment related to race is not well-founded and is dismissed.

3. The complaints of victimisation are not well-founded and are dismissed.

REASONS

Preamble

1. These are the Tribunal's reasons for its reserved judgment. The judgment was reserved because two days were cut from the Hearing by the Tribunal shortly before it began as a result of judicial availability.

2. The claimant's employment with the respondent began on 21 October 2014 and ended, following his resignation, on 25 September 2024. Early conciliation began on 29 November 2022 and ended on 10 January 2023. The claimant presented his claim on 13 January 2023. It included complaints of direct race discrimination, harassment related to race, and victimisation.

3. The claim came before the Tribunal between 6 and 13 May 2023. The Tribunal began its deliberations on 13 May and concluded them on 22 and 23 May 2025.

4. Prior to the Hearing the respondent had prepared a bundle of 952 pages. A further 31 pages – being pages which the respondent identified as being contained in a bundle prepared by the claimant but not in its bundle – were added to it at the beginning of the Hearing. The bundle prepared by the respondent – which was the bundle used during the Hearing – therefore contained 983 pages. This bundle is referred to throughout these reasons as "the Bundle". All references to page numbers are to the pagination of the Bundle. The question of bundle preparation is considered briefly below.

5. The Tribunal also had before it the following documents:

    5.1. A bundle prepared by the claimant containing 502 pages ("the claimant's Bundle");

    5.2. A document prepared by the respondent cross-referencing the pagination in the Bundle and the claimant's bundle ("the Pagination Cross-referencing Document");

    5.3. Without prejudice materials comprising: (1) a letter from the respondent to the claimant dated 3 July 2023 (misdated – it was sent on 3 July 2024); (2) an email from Leigh Edlin to Jon Hollis, a union official dated 1 August 2024; (3) an email from Mr Hollis to the claimant dated 26 September 2024 forwarding an email to Mr Hollis from Mr Morgan, a senior lawyer of the respondent ("the Without Prejudice Materials") (the reason for these being before the Tribunal is explained below);

    5.4. A version of the second witness statement of Mr Edlin showing tracked changes. This was admitted by the Tribunal at the request of the claimant. The respondent made no objection;

    5.5. Two additional pages which had been at pages 946 and 947 of the respondent's disclosure but which had not been included in the Bundle. The claimant made no objection to their admission when given the opportunity to do so;

    5.6. Two video clips as described at [18] below;

    5.7. A document containing definitions of the word "hustle" from the Penguin Concise English Dictionary and the Collins English Dictionary. This was admitted at the suggestion of the Tribunal after the claimant had referred to the definitions during cross-examination;

5.8. Chronologies prepared by each of the parties;

5.9. A “core reading” list prepared by the respondent.

6. The claimant gave oral evidence by reference to a witness statement. So too did:

6.1. Thomas Sale, a Senior Advisor employed by the respondent, who is also a trade union representative of the Prospect trade union;

6.2. Russell Long, an Operations Manager employed by the respondent;

6.3. David Jennings, a Team Leader of the Thames MEICA team;

6.4. Neil Hull, a Team Leader of the Thames MEICA team;

6.5. Barry Russell, an Environment Manager employed by the respondent;

6.6. Jonathan Day, a Deputy Director in the Flood and Coastal Risk Management Directorate of the respondent;

6.7. Leigh Edlin, an Area Director of the respondent. A second witness statement had also been prepared and served for Mr Edlin with the Without Prejudice Materials.

7. A witness statement had also been prepared for John O’Flynn, an Operations Manager employed by the respondent. An amended version with just a few corrections was produced on 12 May 2025. However, Mr Flynn did not give oral evidence because the claimant said that he did not wish to cross-examine him.

Matters dealt with at the beginning of the Hearing

The bundles

8. The parties had been ordered to agree the contents of a hearing bundle with the respondent to prepare the bundle (see, for example, EJ Dyal’s orders (5) and (6) at page 151). The claimant did not like the order in which the respondent had included his documents in the bundle it prepared and so prepared his own bundle (referred to above and below as “the claimant’s Bundle”). EJ McLaren then made orders on 8 April 2025 (not included in the Bundle) intended to ensure that Tribunal would be able to use a single bundle. These included requiring the respondent to prepare the Pagination Cross-referencing Document (which enabled the claimant to readily find documents included in the claimant’s Bundle in the Bundle).

9. At the beginning of the Hearing, the claimant nevertheless wished to use the claimant’s Bundle. This contained all the documents he wished to refer to but did not include, for example, the pleadings. The Tribunal explained to the claimant why it was impractical for it to be referred to two separate bundles throughout the Hearing, particularly in light of the confusion which would inevitably arise. However, the Tribunal also noted that it wanted to ensure that: (1) the claimant was not

disadvantaged by a lack of familiarity with the Bundle; (2) all of the documents in the claimant's Bundle were in the Bundle.

10. Prior to the Hearing the respondent, in addition to preparing the Pagination Cross-referencing Document, had also gone through the claimant's witness statements and inserted the page references to the pagination of the Bundle next to the page references to the claimant's Bundle. The respondent had also cross-checked the contents of the Bundle with the claimant's Bundle and identified 31 pages which were contained in the latter but not the former. These are the documents added to the Bundle between pages 953 and 983.

11. The Tribunal asked the claimant if his concerns about the Bundle being used could be addressed by the following steps being taken:

    11.1. The addition of the 31 pages referred to above to the Bundle;

    11.2. The claimant being given time to check the page references to the Bundle added to his witness statements by the respondent;

    11.3. In the event that the claimant either could not find a document in the Bundle, or believed that a document from the claimant's Bundle had been omitted from it, the claimant being given time and where appropriate assistance to locate the document in the Bundle by reference if necessary to the claimant's Bundle.

12. The claimant confirmed that this would address his concerns and so that is how the Tribunal proceeded. The claimant checked the cross-references to the Bundle whilst the Tribunal was completing its reading in and identified a small number of page references which needed to be correct.

The list of issues

13. The Tribunal made clear that it would be deciding the case by reference to the List of issues beginning at page 153. The Tribunal raised issue 2.8 with the claimant. It concerns an act of alleged direct race discrimination and reads:

    2. Did the respondent do the following things: …

    > 2.8 In February 2022, the claimant discovered that, on an organogram, the respondent had removed his name from the SE (West) MEICA team without consultation or communication. *The respondent needs to take instructions on this.* The respondent adds that the claimant was required to report to a different line manger because of the breakdown in working relationships, effectively moving him to a different team. (Previously 97.4.3)

14. The Tribunal asked the claimant to explain what exactly the alleged act of direct race discrimination covered by issue 2.8 was intended to be because, as drafted, it appeared to be the removal of the claimant from an organogram.

15. The claimant gave a somewhat confused explanation but, in the end, settled on the alleged act of race discrimination being the respondent making his temporary removal from the MEICA team permanent without consulting with him and taking into account an allegation of racism made by the claimant.

16. Mr Smith for the respondent pointed out that the claim had been extensively case managed as a result of the initial claim form not being clear. It was indeed the case that EJ Tegerdine had made orders on 26 September 2023 (page 68) requiring the claimant to complete a table prepared by the respondent setting out the apparent alleged acts of discrimination. This had then been discussed and turned into a list of issues at the preliminary hearing before EJ Kelly on 5 January 2024. That was the origin of issue 2.8. The importance of the list of issues was emphasised by paragraph 97 of EJ Kelly's orders (page 131). Mr Smith contended that if the claimant wished to introduce an argument as set out at [15] above then he would need to apply to amend his claim.

17. It is true that the claim form with attached particulars of claim did not clearly identify a complaint in the precise terms set out in [15] above and so the Tribunal asked the claimant whether he wished to apply to amend. He said that he did not because he thought that issue 2.8 as drafted covered what he was complaining about. He said: "it is the removal from the organogram, by doing that they made me unemployed". The Tribunal noted that in the absence of an amendment application what the Tribunal would consider was whether the claimant's removal from an organogram was an act of direct race discrimination, not the matters set out in [15] above. The claimant said that he understood what an application to amend involved as he had already applied to amend his claim successfully once but he did not wish to apply to amend his claim.

Video evidence

18. There was a brief discussion about two short clips of news coverage that the claimant wished the Tribunal to watch in relation to the meaning of the word "hustle". The respondent had no objection to this and the Tribunal asked that the clips be emailed to it so that it could have copies of them for its deliberations.

Witness orders

19. The claimant had applied for witness orders requiring the attendance of Mr Simon Moody and Mr Hollis on 24 April and 1 May 2025 respectively. Having read the applications, it seemed to the Tribunal that the claimant had not understood the circumstances in which witness orders are normally made. In his applications the claimant had not set out the evidence he believed the witnesses would give. Nor had he said that they were unwilling to attend voluntarily. It appeared to the Tribunal that the basis for the applications was that the witnesses might be able to shed light on particular events.

20. The Tribunal explained to the claimant the circumstances in which witness orders are normally made. It also explained that if witness orders were made the claimant as the party calling the witnesses would not normally be able to cross-examine them. The Tribunal asked the claimant if he wished to proceed with his

applications. He said that he did not and said that the Tribunal could either strike them out or he would withdraw them. The Tribunal said it thought that it would be better if he withdrew them and he did so.

Without Prejudice Materials

21. Mr Smith noted that the claimant made reference to without prejudice discussions at paragraphs 81 and 82 of his witness statement. The respondent said that its position in relation to this was as follows. Either those paragraphs should be removed from the claimant's witness statement or the respondent should be allowed to rely on a small supplementary witness statement dealing with the relevant matters by Mr Edlin and on the Without Prejudice Materials (which would also mean the claimant waiving the relevant privilege).

22. Because this appeared to the Tribunal to be a sensible way of dealing with the matter, it asked the claimant how he wished to proceed. He said that he would like paragraphs 81 and 82 to remain (and so waive without prejudice privilege in relation to the issue they dealt with). The Tribunal therefore admitted the Without Prejudice Materials and said that the respondent could rely also on Mr Edlin's second witness statement.

The issues

23. The issues arising in this case are set out in Appendix One. The origins of that list are described at the beginning of it and can be seen clearly in EJ Dyal's orders at page 149.

The Law

Introduction

24. The Equality Act 2010 ("the Equality Act") prohibits various forms of discrimination by employers against employees with certain protected characteristics. It also prohibits victimisation. "Race" is a protected characteristic.

25. Section 39 of the Equality Act deal with various kinds of prohibited conduct. Section 39(2) of the Equality Act provides that an employer must not discriminate against an employee by, amongst other things, subjecting the employee to a detriment.

26. Section 39(4) of the Equality Act provides that an employer must not victimise an employee by, amongst other things, subjecting the employee to a detriment.

Direct discrimination

27. One of the forms of discrimination prohibited by the Equality Act is direct discrimination. This occurs where "because of a protected characteristic, A treats B less favourably than A treats or would treat others" (section 13(1) of the Equality Act).

28. The question, therefore, is whether A treated B less favourably than A treated or would treat an actual or hypothetical comparator and whether the less favourable treatment is because of a protected characteristic – in this case race. On such a comparison, there must be no material difference between the circumstances relating to each case (section 23 of the Equality Act).

29. Deciding whether there has been direct discrimination is a comparative exercise. In many cases the claimant does not rely on a comparison between their treatment and that of another person. Rather they rely on other types of evidence from which it is contended that an inference can be drawn. The comparison is with how the claimant would have been treated if they had had some other protected characteristic.

30. In other cases, the claimant compares their treatment with that of one or more other people. Such a comparison may be relevant in two ways. First, if there are no material differences between the circumstances of the claimant and the person with whom the comparison is made, this may provide significant evidence that there could have been discrimination. The person with whom the comparison is made in such cases is often referred to as an "actual comparator".

31. Secondly, where the circumstances of the person with whom the comparison is made are similar, but not sufficiently alike for the person to be an "actual comparator", the treatment of that person may provide evidence that supports the drawing of an inference of discrimination, sometimes by helping to consider how a hypothetical person whose circumstances did not materially differ from those of the claimant would have been treated – such a hypothetical person usually being referred to as a "hypothetical comparator".

Harassment

32. Harassment is defined in section 26(1) of the Equality Act:

(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.

33. Section 26(4) of the Equality Act deals with matters to be taken into account when deciding whether unwanted conduct had the relevant effect. The Tribunal must take into account the perception of the claimant, the other circumstances of the case and whether it was reasonable for the conduct to have had that effect.

34. In deciding whether conduct is "unwanted", this is a question of fact which requires the Tribunal to decide whether the conduct was unwanted *by the employee* (Thomas Sanderson Blinds Ltd v Mr S English UKEAT/0316). The employee need

not have been present when the conduct occurred. The conduct will not be unwanted if the claimant has made clear that they personally have no objection to it.

35. Turning to the necessary causal connection, "related to" is a broad test requiring an evaluation of the evidence in the round. It is broader than the "because of" formulation in a direct discrimination claim. In deciding whether conduct "related to" a protected characteristic, the Tribunal must apply an objective test and have regard to the context in which the conduct took place (Warby v Winda Group Plc EAT 0434/11). It is not, however, to be reduced to a "but for" test. It is not enough to show the individual has the protected characteristic or that the background related to the protected characteristic.

Victimisation

36. Victimisation is defined in section 27 of the Equality Act:

> *(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*
> *(a) B does a protected act, or*
> *(b) A believes that B has done, or may do, a protected act.*
>
> *(2) Each of the following is a protected act—*
> *(a) bringing proceedings under this Act;*
> *(b) giving evidence or information in connection with proceedings under this Act;*
> *(c) doing any other thing for the purposes of or in connection with this Act;*
> *(d) making an allegation (whether or not express) that A or another person has contravened this Act. …*

37. The causal connection required is the same as in a direct discrimination claim. It is not a "but for" test but an examination of the real reason of for the treatment. As such, it is necessary to consider the employer's motivation (conscious or unconscious).

Burden of proof

38. Section 136 of the Equality Act 2010 provides for a shifting burden of proof:

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

39. The correct approach to the shifting burden of proof remains that set out in the guidance contained in Barton v Investec Securities ltd [2003] IRLR 332 approved

by the Court of Appeal in Igen Ltd v Wong [2005] IR 931 and further approved recently in Efobi v Royal Mail Group Ltd [201] ICR 1263.The Barton guidance is as set out below. The references are to sex discrimination because it was a sex discrimination claim, but the guidance applies equally to a claim of direct race discrimination:

(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

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

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

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

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

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

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

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

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

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

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

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

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

40. There is therefore a two-stage process to the drawing of inferences of direct discrimination. In the first place, the claimant must prove facts from which the tribunal could conclude in the absence of any other explanation that the respondent had committed an act of discrimination against the complainant. If the burden does shift, then the employer is required to show a non-discriminatory reason for the treatment in question.

41. In Efobi the Supreme Court confirmed the point that a Tribunal cannot conclude that "there are facts from which the court could decide" unless on the balance of probability from the evidence it is more likely than not that those facts are true. All the evidence as to the facts before the Tribunal should be considered, not just that of the claimant.

42. In Madarassy v Nomura International plc [2007] ICR 867 the Court of Appeal stated that "could conclude" must mean "a reasonable Tribunal could properly conclude" from all the evidence before it. However, that does not include evidence of the reason for any less favourable treatment (Efobi). Consequently, a Tribunal may have to draw a distinction between primary facts (which can include facts which might be an alternative reason for the treatment) and evidence about the mental processes of the decision maker (Edwards v Unite the Union [2024] EAT 151).

43. The Court of Appeal in Madarassy also pointed out that the burden of proof does not shift simply on proof of a difference in treatment and the difference in status. This was because it was not sufficient to prove facts from which a Tribunal could conclude that a respondent could have committed an act of discrimination.

44. In deciding whether there is enough to shift the burden of proof to the respondent, it will always be necessary to have regard to the choice of comparator, actual or hypothetical, and to ensure that they have relevant circumstances which are the same or not materially different as those of the claimant having regard to section

23 of the Equality Act. Evidence of the treatment of a person whose circumstances materially differ to those of the claimant is inherently less persuasive than that of a person whose circumstances do not materially differ. If anything more is required to shift the burden of proof when there is an actual comparator, it will be less than would be the case if a claimant compares their treatment with a person whose circumstances are similar, but materially different, so that there is not an actual comparator.

Burden of proof in claims other than direct discrimination

45. When the claim is not one of direct discrimination, the way in which the shifting burden of proof provision will apply depends upon the provision concerned:

    45.1. In a complaint of harassment, the claimant will need to establish on the balance of probabilities that they have been subjected to unwanted conduct which had the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. They will also need to adduce some evidence to suggest that the conduct could be related to a protected characteristic.

    45.2. In a complaint of victimisation, if the claimant proves that they have done a protected act and that they have then suffered a detriment at the hands of the employer, a prima facie case of discrimination which shifts the burden of proof to the employer will be established if there is evidence from which the Tribunal could infer a causal link.

Submissions

46. The parties both provided written submissions for which we are grateful. We do not set them out in any detail here.

47. Mr Smith made only oral submissions. In brief summary, Mr Smith for the respondent submitted that the complaints were generally out of time. Turning to the harassment claim, he submitted that Dr Jennings could justify what he had said and that in any event it was obvious, particularly in light of what the claimant had said in cross-examination, that the comments were unrelated to race. Turning to the direct discrimination claim, the organogram complaint failed because the organogram in question did no more than reflect a factual state of affairs. Turning to the grievances, it was obvious that the decision makers had properly considered the evidence. Turning to the hustling comment, the comparative exercise was complicated, but Mr Hull was reporting what someone else had said to him and would have done so in comparable circumstances if the claimant had been white. Turning to the victimisation claim, the causative link was simply not made out in relation to any of the allegations.

48. The claimant had prepared written submissions and also made oral submissions. Again, in brief summary, in his oral submissions the claimant said that a decision in his favour would be a useful precedent of value to the country. So far as drawing inferences was concerned, the Tribunal should apply common sense.

49. In relation to issue 2.8, the claimant submitted that his removal from the Organogram and, indeed, Mr Edlin's conduct were linked by the "greater degree of separation" request made by Mr Hull. That request was deeply rooted in race. The claimant said that he wanted to explain why he was reluctant to raise race as an issue. He explained that he had always said that one should not go around calling people racist because that "shuts down" the conversation. Turning to his grievance, the claimant submitted that it was plain that there was no point bothering with a grievance that might result in the dismissal of a white person. Turning to the use of the word "hustler", the claimant submitted that the two videos clearly demonstrated that its use was racist.

50. In terms of comparators, the claimant said it was known that black people did not stay long at the respondent. So far as the use of the word hustler was concerned, the comparator was Svengali. Turning to the involvement of Mr Edlin, the claimant submitted that there was no reason why he could not have remained under the management of Mr Long for a significant further period of time.

51. The claimant's written submissions ran to 11 pages. They are not altogether clear and we do not seek to summarise them in any detail here, but we have read them carefully. The claimant explained that he had come to the Tribunal to achieve a singular outcome which was to clear his name. He submitted that there was evidence that race had influenced the respondent's behaviour and acts but the respondent had defended its behaviour and blamed the claimant.

52. The claimant submitted that Mr Hull in cross-examination had agreed that Mr Moody had agreed his request for a "greater degree of separation" and that this was the first link. He submitted that Mr Hull had alleged racist behaviours by the claimant towards other employees in his notes at pages 402 and 403 but that he had failed to provide evidence of this. He submitted that the "greater degree of separation" request was based on a race issue. He submitted that the request resulted in him being removed entirely from MEICA. This amounted to segregation because of race.

53. The claimant further submitted that Mr Edlin has then consolidated this segregation, which itself originated in the "greater degree of separation" request.

54. Turning to Dr Jennings, the claimant submitted that he had provided incorrect information about past incidents to Mr Edlin and about whether they were "minor conduct". They caused Mr Edlin to falsely believe that the claimant was unable to work with managers and colleagues. The claimant went on to submit that whilst "to many the phrase 'Hustle' seems harmless", in fact it was in the circumstances of this case a racist term and yet Mr Hull had used it. There had then been a cover up of this.

55. Turning to the non-renewal of the electrical authorisation, the claimant pointed out that this had only happened after he had begun his Tribunal claim. The decision to remove his authorisation was not proportionate and has made life difficult for him.

56. Turning to the dismissal of his grievance, the respondent had failed to deal with the issue of race despite the claimant raising it.

Findings of fact

57. These findings of fact do not of necessity refer to all of the evidence that was before the Tribunal. As in many cases, the bundle was of excessive length and contained many irrelevant documents. The Tribunal made plain at the outset that it would not necessarily read pages contained in it that were not referred to in the witness statements or during the course of the Hearing.

General background findings

58. The claimant was employed as a MEICA Advisor (mechanical engineer) from 21 October 2014.

Credibility of the witnesses

59. We make the following findings in relation to the credibility of the claimant and Mr Hull, the two most important witnesses.

60. **The claimant**: we did not find the claimant to be a credible witness for the following reasons.

    60.1. First, his oral evidence was at times inconsistent with his own case. This was most notable in relation to his allegation against Dr Jennings. Issue 4.2 is an allegation of harassment related to race made against Dr Jennings. During cross-examination, the claimant apologised to Dr Jennings and said, in effect, that although he felt harassed as a result of the factual matters specified in Issue 4.2, he did not contend that Dr Jennings' conduct related to race. The claimant said "Dr Jenning has never done anything to me that would be of race. I would defend Dr Jennings". The Tribunal pointed out that the harassment being related to race was a necessary ingredient of the claim pursued and queried whether in these circumstances the allegation was pursued. The claimant in the end decided that he did not wish to withdraw the allegation because, after a further passage of cross-examination, he said that Mr Smith for the respondent had "reminded me of my witness statement, you have shown me all of my complaint".

    60.2. Secondly, he repeatedly declined to comment on matters that he clearly could have commented on in a way that resulted in him being evasive during cross-examination.

    60.3. Thirdly, he tended to adopt a literal or pernickety approach to questions when the meaning was obvious. For example, he insisted that "technically" he had not cancelled rooms booked by Mr Poole (see [78.1] below) when it was perfectly obvious that the point was that he had *instructed* that they be cancelled.

    60.4. Fourthly, his oral evidence was at times clearly inconsistent with the contemporaneous documentary evidence. For example, he argued that his emails with Mr Brocklehurst considered at [78] and [79] were just "banter", but

that is not what either the emails themselves, or what the claimant said about them when interviewed by Mr O'Flynn (pages 271-272), suggest.

61. **Mr Hull:** we found Mr Hull to be a generally credible witness – that is to say that we found him to be doing his best to recall accurately events that had happened a number of years ago. He was prepared to give evidence that was not always helpful to him – for example, that he had received coaching in relation to appropriate email style at the end of the disciplinary process against the claimant considered below. However, we find that at times he had a tendency to describe things as being perhaps more clear-cut than they would have appeared at the time and, also, a related tendency to exaggerate slightly. For example, whilst we accept that Mr Hull would have been "pleased" (as he put it) that Mr O'Flynn, in upholding the claimant's appeal against the performance review grading for 2019-2020 (considered below), made it clear that there were behavioural issues, Mr Hull cannot have been "pleased" that the appeal was, overall, upheld, however muted a success this was, realistically, for the claimant. Nevertheless, Mr Hull was, taking his evidence in the round, a much more credible witness than the claimant.

Chronological findings

2018 - October 2019: claimant working with Team Leader David Jennings

62. Dr Jennings was the claimant's manager from March 2018 and continued to be his line manager until October 2019. We find that Dr Jennings' experience of managing the claimant included the claimant getting into confrontations and difficulties with colleagues and that he regarded the claimant as being largely to blame for this state of affairs.

63. This was reflected, for example, in the mid-year review of the claimant between pages 205 and 211 for 2018 and 2019. At page 206, that document states:

During the year I have attended a number of clear the Air meetings with Yinka.

- *April 18. With Andy Robinson and his line manager James Liney. Note in May 18 Andy left the EA for Thames Water.*
- *September 18 with Stephanie Henderson and her line manager Blake Jones (ncpms).*
- *October 18 to Jan 19. With Tim Poole. Mike V Clark did an excellent job hearing and helping bring the issues to a conclusion.*
- *Feb – March 19, with Barbara Andrea. Ongoing at the time of writing.*

64. The "Summary" section of the mid-hear review (page 206) makes it clear that the claimant's quality of work is "excellent" but that, in Dr Jennings' view, he did not always deal well with colleagues:

Yinka does some excellent work for SE Meica, leading on statutory compliance (Loler) and is the SE Meica lead for Thames and SSD…

… Less positively, Yinka has been involved in 4 clear the air meetings with different members of staff.

65. In broad terms, the claimant made clear during the Hearing that he did not accept that he was to blame for difficulties with colleagues. For example, he suggested that the minutes of the mediation meeting with Mr Robinson dated 23 March 2018 (page 201) showed Mr Robinson giving an "apology" and "thanking me". We find that that is a wholly unrealistic reading of the minutes. Overall, they show the claimant telling Mr Robinson that he and Mr Robinson did not have a working relationship, suggesting that he had "no issues" with other colleagues, disagreeing immediately with significant parts of what Mr Robinson is recorded as saying, and asking Mr Robinson irrelevantly (given that it was a mediation) about his qualifications. The minutes show the claimant to have taken an antagonistic approach to Mr Robinson during the mediation meeting.

66. By contrast, Dr Jennings' analysis of the claimant's performance generally was more balanced. In light of this, and our findings of fact generally about the claimant's credibility, where necessary, we preferred the evidence of Dr Jennings to that of the claimant in relation to the difficulties the claimant had with his colleagues.

67. Taking the evidence in the round, we find that Dr Jennings honestly believed that the claimant had difficulties with colleagues and that it was the claimant who was largely to blame for his difficulties with colleagues. Further, we find that his experience of the claimant justified these beliefs.

68. The real significance of Dr Jennings to the complaints as set out in the list of issues is in fact what he said about the claimant to Mr Schmidt (who was the investigator in disciplinary proceedings brought against the claimant) on 23 February 2021 and to Mr Back (who was the investigator in a grievance brought by the claimant) on 21 January 2022 in relation to matters which had led him to serve the respondent's code of conduct on the claimant on 6 August 2019.

69. We find that the immediate reason for Dr Jennings meeting with the claimant on 6 August 2019 was how the claimant had communicated with colleagues about the Godalming FAS project ("the Godalming project"). However, we also find that this was against the background of Dr Jennings having experienced what he regarded as inappropriate behaviour by the claimant to other colleagues.

70. The relevant communications in relation to the Godalming project included the highly sarcastic and inappropriate email of 19 July 2019 (page 215-216) which had significantly upset the target of its sarcasm, Mr Poole, who had complained (his email complaining is at page 215).

71. We find that at the meeting on 6 August 2019 Dr Jennings formally reminded the claimant of his obligations under the code of conduct, in particular that he should "uphold high standards in work situations, actions and communications, by being professional, proportionate, reasonable, courteous and respectful of others". Following the meeting, Dr Jennings emailed the claimant on 9 August 2019 (page 218). The email refers to the meeting, the relevant part of the code of conduct and the Godalming project. It does not suggest that the claimant has been subjected to any formal disciplinary sanction.

72. Dr Jennings spoke to Mr Schmidt in February 2021. There is no written record of that conversation but Dr Jennings subsequently emailed Mr Schmidt on 23 February 2021 (page 412). The relevant section of the email read as follows:

> ***4. June 19 – Godalming FAS conflict between Tim Poole and Yinka***
> *Yinka was verbally very demanding of Tim who was providing instrument control input in to the project.*
>
> *The project team has not fully integrated the electrical, instrument, control aspect of the work. Information needed for Tim to do his job was either late or missing.*
>
> *Tim was reliant on another engineer, Steve Carman, for support.*
>
> *It was over this incident that I met Yinka, discussed and gave Yinka the Environment Agency code of conduct. Explaining what the Code of Conduct required of him. In fact of all Environment Agency staff.*
>
> *Around May 2019, I sought advice from a HR specialist.*
>
> *Over a period of 19 months 4 significant incidents.*

73. We find that the email's description of Dr Jennings giving the claimant the conduct code in August 2019 and referring to other incidents that had preceded it reflected Dr Jenning's honest and reasonable view of what had occurred.

74. Dr Jennings met with Mr Back on 21 November 2022. The relevant part of the record of the interview is at page 528 and is as follows:

> *DJ - Yes I have a question in relation to the information you sent me via email. In terms of the issue [9th August 2019] in regards the Godalming project and Tim Poole. This was not a minor conduct issue. I served Yinka with the Code of Conduct. This was due to a culmination of what Yinka had been doing for 18 months. I was in communication with Danielle Russell from HR - I had opened a file on Yinka. I didn't see this as a minor issue - I have never read the Code of Conduct to anyone in my ten years as a line manager except for Yinka. I've line managed hundreds of people. I had to pick out a section about his behaviour - so I don't see this as a minor issue. When I managed Yinka I managed a team which spread across Thames, SSD, Kent and Hertfordshire. Geographically it was enormous. In Thames there were personnel issues - some relate to Yinka and people he was clashing with.*

75. The claimant accepted in cross-examination that Dr Jennings had never said to him in August 2019 that what was being considered was a "minor conduct issue". However, he contended that it must have been because the way that Dr Jennings had dealt with it reflected the provisions of section 1.4 of the "Principles of the disciplinary policy and procedure" at page 941.

76. We find that there is no inconsistency between: (1) the way Dr Jennings described matters to Mr Schmidt in his email of 23 February 2021 and/or in his conversation

with Mr Back on 21 November 2022; and (2) how he dealt with matters in August 2019. Focusing in particular on what Dr Jennings said to Mr Back, which seemed to be of most concern to the claimant, it is correct to say that the disciplinary policy and procedure at section 1.4 suggests a classification of some conduct matters as "minor" and sets out how minor conduct matters may be dealt with. However, what Dr Jennings did in the meeting of 21 November 2022 is to describe how he saw the claimant's behaviour at the time in light of the background to the meeting of 6 August 2019. In summary he did not regard the claimant's behaviour over a period of time as a "minor issue". In this context, the inclusion of the words "This was not a minor conduct issue" are insufficient to generate an inconsistency between how Dr Jennings behaved in August 2019 and what he said in November 2022.

October 2019 to 18 March 2020: working with Team Leader Neil Hull

77. Mr Hull became the claimant's line manager in October 2019 when he became the Team Leader of the newly formed MEICA Supra Area Team (West). There is an organogram of the team at page 257. The claimant was a member of the team and Mr Hull was initially very impressed by his attitude. We find that whilst Dr Jennings, as the previous team leader, had told Mr Hull that there was an ongoing HR referral, Mr Hull took a decision to wipe the slate clean.

78. We find, however, that Mr Hull soon became concerned about the way in which the claimant would on occasion deal with colleagues. For example:

78.1. **Mr Tim Poole:** Mr Poole found it very difficult to work with the claimant. We accept the evidence of both Dr Jennings and Mr Hull that he was scared of the claimant. Mr Poole was, however, the same level of seniority as the claimant, being a MEICA advisor. He had taken to booking meeting rooms so that he would not need to work in the same physical space as the claimant. The claimant asked Defra Facilities to cancel all of Mr Poole's booked meeting rooms and told Mr Poole about this in an email of 15 November 2019 (page 235). Dr Jennings took the view that the claimant should not have done this. The claimant apologised to Mr Poole for this.

78.2. **Mr Dan Brocklehurst:** the claimant and Mr Brocklehurst had exchanged a number of emails on 11 February 2020 (pages 245 to 251). The claimant adopts a pompous and confrontational tone. For example, at page 245 he writes:

> *I am very unhappy with your statement "The reality is whether you like ECS or not..."; I believe it is a false accusation and innuendo, close to a goal of deformation [sic] of professional character of an Incorporated Engineer with the Institution of Mechanical of Engineers (IMechE). I would be grateful for your supporting evidence as to why you have said this to me.*

78.3. At the time, Mr Hull commented as follows to the claimant:

> *For once can you try to diffuse rather than fuel an issue that is clearly heading down a most inappropriate path.*

> *People will use your diary to book your time, this is not a power struggle, I implore you to sort this out as quietly and amicably as possible. Use Dans offer of help, privately between you first to plan the corrective task and repair healthy relations with our contractor.*
>
> *I really do not need another escalated molehill turning into a mountain.*
>
> *I support your challenge but keep things simple, no need to play e-mail tennis with David and I copied in. Phone Dan and sort it.... PLEASE.*

79. The claimant contended in cross-examination that his emails had been "banter" with Mr Brocklehurst, but we reject that suggestion. That is not how they read and does not reflect Mr Brocklehurst's reaction to them. It is also not how the claimant portrayed the email exchange at his meeting with Mr O'Flynn on page 271-272 in relation to his appeal against the outcome of the 2019-2020 performance review.

The 2019-2020 performance review

80. The claimant's end of year performance review for 2019 to 2020 took place on 18 March 2020 (page 253). The review was complimentary in relation to the claimant's work ("a great effort was made on Yinkas part to keep many balls aloft as it were"), but it raises behavioural issues including that he "often felt the need to get the last word in or the upper hand in activities with others", that he would escalate issues and argue in emails inappropriately, and his interactions with Mr Poole (including the cancelling of the meeting rooms). The document concluded as follows:

> *To summarize – Yinka is a very capable individual delivering excellent work at times, very much offset overall by unnecessary complication. The positive in all of this is Yinka's willingness to discuss the issues and improve going forwards. In this he has my full support.*

81. The performance review document also records the following:

> *This led to a discussion with him highlighting him often feeling prejudice towards himself. It was explained that in the EA of all places this is not acceptable and Yinka was asked if he wanted to escalate anything particular. He stated that there was not.*

82. The claimant put to Mr Hull in cross-examination that including the words "often feeling prejudice" was a way of him accusing the claimant of "playing the race card" and that the performance review document did not accurately reflect what he had said in the meeting. The claimant put it to Mr Hull that he had told him about the "racism he was experiencing in relation to Mr Poole and others and that he had also said to Mr Hull that they could see how they got on, because Mr Hull had only just arrived, but he was bringing to Mr Hull's attention the racism he was experiencing in the workplace".

83. Mr Hull denied that this was what happened. He said that it was the claimant who had referred to "feeling prejudice", and that they had had a discussion in which they both referred to feeling that people were looking down on them when they walked into a room. Mr Hull had explained that he had this feeling because he had worked his way up from the shop floor. Mr Hull's evidence was that the claimant had not expressly referred to race and that, if the claimant had, as a new manager within the team he would have referred the matter to HR and to his "grandfather manager". We prefer the evidence of Mr Hull in relation to this issue for the following reasons:

    83.1. We found him to be a more credible witness than the claimant;

    83.2. He did not suggest that Mr Hull had mis-portrayed their conversation in his grievance (page 488);

    83.3. When discussing the performance review meeting in the appeal meeting with Mr O'Flynn on 12 July 2020 the claimant is recorded as saying (page 270):

    YA: Refers to the Tim Poole matter and how Dan spoke to me & others. It is not racism but prejudice. I don't mind racism.

    JOF: The Environment Agency does.

    YA: Racism doesn't hide, it is tangible and I'm not afraid of it. Prejudice is hidden. Dan said to Yinka 'You are a risk the Agency' I consider this prejudice…

    What he says does not as such suggest that he would previously have described himself as experiencing "racism" in relation to Mr Poole.

84. However, we also find that there was an implication by the claimant in the conversation with Mr Hull that he felt race might negatively affect interactions with other employees. We find – as he said several times during his own cross-examination – that he was reluctant to label behaviour or attitudes towards him as being racist and that what he did in the performance review meeting with Mr Hull was hint at racism but then say, in effect, that there was nothing that he wanted pursued or investigated.

85. The performance review resulted in a score for 2019-2020 of "approaching expectations".

The 2019-2020 performance review appeal

86. The claimant appealed his performance review score. That appeal was dealt with by Mr O'Flynn and the notes of the meeting held on 12 July 2020 are at page 270. We find that the claimant generally refused to accept any criticism of his own behaviour in this meeting, for example when Mr O'Flynn pointed to difficulties with the claimant's email style.

87. The outcome of his appeal was in an email from Mr O'Flynn to the claimant dated 7 July 2020 (page 263). The appeal was upheld and the claimant's rating was upgraded to "met expectations". However, we accept Mr O'Flynn's unchallenged evidence that the reason for this was that he had received advice from HR that, because behavioural issues had not been recorded and managed formally in "MyPerformance", "on paper" the claimant had not been given time to improve his performance. This is consistent with the email itself which states:

> *My decision is to uphold your appeal. Your performance decision will therefore be amended to 'met expectations'.*
>
> *I have asked your manager to take action to amend your performance record in SOP.*
>
> *In order to give staff the time to improve their performance or ways of working, they need to know about this formally during the year. For a number of reasons, this did not happen. It is not fair on you or your new team leader to effectively start this process in November which is why I have decided to uphold your appeal.*
>
> *Despite delivering a considerable output and successfully supporting new/junior members of staff, I felt that some of your interactions during 2019/20 did not consistently support the organisation, your customers and colleagues.*
>
> *Your previous team leader discussed our code of conduct with you regarding your interactions with another colleague, you cancelled a number of meeting room bookings a colleague had made without discussing it with them and there were email interactions where your communication seemed to escalate issues rather than resolve them.*
>
> *I have therefore asked your team leader to identify an objective for you in 2020/21 to help improve this aspect of your work and support you to demonstrate the behavioural leadership we expect from a senior technical member of staff.*

88. There was, as such, nothing in the appeal outcome which suggested that Mr O'Flynn disagreed with the behavioural concerns raised by Mr Hull in the performance review and we find that he did not. Further, we note that, although those concerns had not been recorded in MyPerformance, there is no doubt that the claimant was aware of concerns of the kind raised by Mr Hull, given Dr Jennings had formally "served" the claimant with the code of conduct in September 2019.

89. On receipt of Mr O'Flynn's email, the claimant wrote to him on the same day (page 275) stating:

> *However, I believe, as described during this stressful period for all involved: we must separate the workplace matters from the performance rating. The workplace matter involves myself and Neil Hull, and unfortunately today has resulted in what I believe is a breakdown in our working relationship. I am truly saddened by this and apologises for this ongoing matter.*

I however am now affected by this matter and wish to raise a grievance in the hope of resolving what I belief is bias of some nature from Neil Hull towards me in the workplace.

The grievance procedure asks that the people involved seek an informal process or mediation towards a resolution. And, only when all has failed is the grievance process the final solution.

I have been here 6 years, loving it all, but these last three months have been a nightmare working for and with Neil Hull, I have never been this belittled in my entire career. I have a bit left in the tank for an informal or mediation process, hence, I would like to start here.

90. We find that the claimant did not accept that the behavioural issues raised first by Mr Hull and then by Mr O'Flynn were relevant to the question of his performance rating. We find, however, that in light of the respondent's procedures, behavioural issues were relevant to the question of performance ratings, and indeed it would have been surprising if they were not. Technical ability only gets any employee so far in their work.

91. An informal grievance process then took place but Ms Banfield concluded that it would not be possible for matters to be resolved informally and wrote to Mr Hull accordingly on 10 December 2020 (page 393).

June to October 2020: the deterioration of the claimant's relationship with Mr Hull

92. A number of further issues arose in relation to the claimant's work over the summer of 2020. He unilaterally announced that he would cease carrying out his LOLER role (page 268) but Mr Hull persuaded him to carry on the role for up to a further 6 months (page 265). Mr Hull warned the claimant that his actions were "heading into misconduct territory".

93. In July 2020 Ms Garside of DEFRA Estates complained about the claimant's behaviour in a telephone meeting (page 278). Her complaint included that he had acted aggressively and "just didn't appear to listen". We find that her concern was shared by two other DEFRA employees who had attended. We find that Mr Hull persuaded Ms Garside not to complain formally on the basis that he was already working with the claimant in relation to his manner. This is reflected in his email to Mr O'Flynn of 16 July 2020 (page 281) in which Mr Hull writes "At present Di is happy to leave it with me". We find that Mr Hull would not have done this if he had 'had it in' for the claimant by that date.

94. Shortly afterwards Mr Hull raised the matter with the claimant in a pre-arranged phone call, and Mr Hull's record of that is at page 282. The claimant told Mr Hull that the complaint by the DEFRA employees was "bias" from them. We find that the claimant did not engage with the criticisms made by the DEFRA employees but became agitated and shouted "this is bias" at Mr Hull a number of times before the call ended. To the extent that this finding requires us to prefer the evidence of Mr

Hull to that of the claimant, we do so because we found him to be a more credible witness.

95. Whilst Mr Hull had tried to smooth things over with the DEFRA employees, the claimant took a different view of Mr Hull's actions in his email of 21 July 2020 (page 284) in which he wrote:

> *But, I suspect that if the matter is an exaggeration you intend to have this as a weapon to hold against me for ever, and justify your misplace assessment of my capability as an engineer and my nature as a person.*

96. This reflects what we find to have been an increasingly inflammatory and antagonistic attitude of the claimant towards Mr Hull following the 2019-2020 performance review.

97. When the claimant returned from leave in early September he had to deal with an email that Mr Hull had sent his team relating to their home office workstations. He sent Mr Hull several emails whose tone was inappropriate and disrespectful, given the subject matter of the emails and the fact that Mr Hull was his manager (pages 302 to 305), for example, asking Mr Hull "why are you so jumpy?" in the email of 7 September 2020 (page 302).

98. The deterioration in the relationship between the claimant and Mr Hull was evidence clearly in the claimant's email to him of 17 September 2020 (page 308) in which he wrote:

> *I have made a decision that all my interactions with you are to be recorded or witnessed by others.*
>
> *Our email correspondences are naturally a recording of our interactions; however, one-to-one telephone conversations or face-to-face meetings do not provide me with comfort or protection in my interactions with you.*
>
> *Hence, the meeting with you I initially accepted I have now declined. I will also not answer your telephone calls, and I will not attempt to record our conversations. I know what it is like to be recorded without permission, it is a form of harassment; I have recently and continue to experience.*

99. The claimant as such refused to speak to Mr Hull unless a third party was present. This was a clear indication of the fact that by this date their relationship had broken down. We find that this breakdown was largely due to the claimant taking a very blinkered approach to his interactions with Mr Hull. For example, he was apparently incapable both then and at the Hearing of recognising that his success in his appeal against the 2019-2020 performance review rating did not result automatically (or, indeed, in light of the details of Mr O'Flynn's decision, at all) in Mr Hull's assessment of his behavioural issues being incorrect.

100. On the same date that the claimant had written to Mr Hull saying that he would not speak to him alone or by telephone, Mr Hull had asked the claimant to update him on work relating to the Caversham Wet Boat Shed (page 314). This was work

the claimant had previously taken on but which had been put on hold because the river was swollen. The claimant said the project now "sits with Tim Poole" (page 314). Mr Hull replied saying that he wanted the claimant to finish "what you started" and noted that Mr Poole was not "CDM approved". The claimant replied on the same date (page 312), indirectly referencing the effect of the performance review on him:

> *This project is not one I can take on at the moment. I'm ashamed to say that all this workplace issue, since March 2020, is now a strain on me.*

101. Further emails concluded with the claimant stating "I'm not doing Caversham Wet Boat shed".

The disciplinary process September 2020 to June 2021

102. Mr Hull, after discussion with Mr O'Flynn, decided that the claimant's conduct should result in disciplinary proceedings. He wrote to the claimant accordingly on 29 September 2020 (page 333) setting out allegations that the claimant had breached the conduct code. These allegations included one relating to his emails of 7 September 2020 and another relating to his refusal to undertake the Caversham Wet Boatshed project.

103. At this point, by agreement, the claimant was transferred to Paul Levitt's team in Asset Performance. We find that at the time the intention was that this would be a temporary transfer whilst the disciplinary proceedings were under way, and in light of the grievance the claimant had intimated on 17 July 2020. We find that the intention was that the claimant should return to Mr Hull's team once the disciplinary and grievance procedures had concluded. We find that it is wholly unsurprising that the temporary transfer was agreed – indeed, it is difficult to see how at this point the claimant could have continued in Mr Hull's team given that he had said that he would not speak to him by phone or, unless someone else was present, in person.

104. Mr Schmidt carried out an investigation into the disciplinary allegations, during the course of which he interviewed both the claimant and Mr Hull. He produced a lengthy report (page 421) and the disciplinary hearing took place on 27 May 2021 before Ms Theaker.

105. During the course of his investigation, Mr Schmidt interviewed Mr Hull on 21 December 2020. Two things that Mr Hull said in that meeting became significant in the subsequent grievance raised by the claimant and, also, are significant to this claim.

106. First, at page 388, there are questions about the working relationship between Mr Schmidt and Mr Hull in around September 2020:

> *ES: Were you aware or did you believe your working relationship with Yinka was very much broken down at this point (Sept 2020)?*
>
> *NH: yes, this is the time when he called me a liar and he would scream at me on the phone.*

107. Secondly, also at page 388, there is a question to Mr Hull about trust between the claimant and Mr Hull:

> *ES: Does he think you don't generally listen or trust him?*
>
> *NH: Yes that is evident, my trust for him is strained. I trust all the reasons for him to keep working but it is when he starts 'hustling' (What he calls it) and making unacceptable accusations and trouble to discredit me, then I do not trust him. Yinka doesn't meet deadlines, he never delivers on any one else's requirement – he always has to shift deadlines – it is a control thing and I recognise it so work with him as best I can but it remains extremely frustrating.*

108. The claimant has made the use of the word 'hustling' central to his claim and we make the following findings in relation to it. First, Mr Hull had also used the word hustle in his interview with Ms Banfield on 2 November 2020 (page 372), the purpose of which was to see if the claimant's grievance against Mr Hull could be resolved informally). In describing how the claimant interacts with others, Mr Hull is recorded as having said:

> *Yinka says to colleagues that he likes to hustle. In his 121 in October I advised him not to be too strong when speaking to people and he agreed to this.*

109. We find that on both occasions when Mr Hull is recorded as having used the word hustle he is describing how the claimant describes his own actions. We accept the evidence of Mr Hull that he did not hear the claimant describe his actions in this way but that this was how Steve Carman, a colleague with whom the claimant got on well, had described the claimant to Mr Hull, saying "He likes to duck and dive and he likes to hustle". We accept the evidence of Mr Hull that he did not believe or even suspect that the word had racially derogatory undertones. We further find that in English as spoken in the United Kingdom "hustle", "hustling" or "hustler" do not have racially derogatory undertones..

110. We note in this respect that the Collins English Dictionary, relied upon by the claimant, whilst giving derogatory meanings for both words, does not suggest that either has racial undertones. It gives four possible meanings for "hustle". One of these is "*US & Canadian slang* (of a prostitute) to solicit clients". It gives one definition of "hustler"; "*US informal* a person who tries to make money or gain an advantage from every situation, often by immoral or dishonest means".

111. We note similarly the definitions of "hustle" in the Penguin Concise English Dictionary, also relied on by the claimant, whilst suggesting that the word may have derogatory meanings, particularly in North America, do not suggest that the word has racial undertones.

112. The claimant also relied in this respect on two short videos which were CNN footage of the US congressional investigation into the events of 6 January 2020. President Trump is recording as describing a black election worker, Ruby Freeman, as a "professional vote scammer and hustler". In the second video, an unseen journalist or commentator is apparently heard describing President

Trump's comments as "racist terror", saying that his language was "not even thinly veiled", and another speaker notes that "he called them hustlers…". There are several points that we wish to make about this footage. First, the speakers in the second video do not expressly say that the word "hustler" has racial undertones – the fact that President's Trump's comments are described as "racist terror" are not sufficient for this to be the clear intention of the speaker. Secondly, the short videos relate to a highly charged and highly political event in North America. Even if the word "hustler" has the meaning contended for by the claimant in that context, that would not mean that it has the same or a similar meaning when used in the UK. It is self-evidently true that a vast number of words have different meanings and undertones when used in US English when compared to their meanings and undertones in UK English.

113. In his oral evidence Mr Hull said he thought the description of the claimant by Mr Carman was a good one and that is why he used it. We find that he thought it was a good one because he thought it reflected the way the claimant would deal very robustly with colleagues and contractors in order to get things done, as reflected in what he said to Mr Schmidt at page 385:

> *… I wanted him to improve in, interactions with people and email altercations. I understand that Yinka comes from a heavy hard contracting background but I advised him to be mindful when dealing with others….*
>
> *… YA challenges hard for outcomes he wants but breaks relationships with people along the way such that many people confidentially tell me they are now working with him on guard…*

114. So far as the comment "the claimant never provided a report on time" is concerned, we find that, whilst there may have been a degree of hyperbole, it was in broad terms true, as the claimant himself accepted in relation to "requests" during his meeting with Mr O'Flynn about his performance review appeal (page 271).

115. Ms Theaker sent the claimant her decision on 2 June 2021. She concluded that the email sent amounted to an act of minor misconduct. She concluded that no reasonable request had been made of the claimant in relation to the Caversham Wet Boatshed project (page 467) and found that his conduct in that respect did not therefore amount to misconduct. She issued the claimant with a first written warning to last for 6 months. She also recommended some training in relation to "what is appropriate email content in the workplace" for the MEICA team "including the team leader" (page 468). We observe that it is unsatisfactory that such minor conduct allegations took such a long time to resolve.

6 August 2021 to November 2022: the formal grievance process

116. As noted at [89] above, the claimant raised what may reasonably be described as an informal grievance on the day he received the outcome of his appeal against his performance review appeal. No informal resolution was possible.

117. The claimant then brought a formal grievance against Mr Hull on 6 August 2021 (page 488). He complained about:

117.1. **Bullying:** in relation to (1) what Mr Hull had said in the performance review document ("a few wobbles on the way"); (2) what Mr Hull had said to Mr Schmidt about the claimant making some technical errors and being wrongly granted technical Electrical Authorisations; (3) what Mr Hull had said about the Caversham Wet Boatshed project to Mr Schmidt.

117.2. **Victimisation:** in relation to Mr Hull making allegations that the claimant had breached the conduct code "in response to" the claimant's "workplace concerns" regarding Mr Hull.

117.3. **Mr Hull violating the principle of honesty:** he said that, when interviewed by Mr Schmidt, Mr Hull had been untruthful when the notes record "In September 2020, Yinka called Neil a liar and he would scream at Neil on the phone". He had also provided "numerous false narratives of events and false statements…".

118. Mr Back unpacked these allegations into 14 more detailed allegations (page 610 to 612).

119. We note that the grievance did not complain about racial bias or any prejudice on the part of Mr Hull, despite Mr O'Flynn's recommendation (considered at [184.2] below) that any such allegations should be spelt out. Nor did it refer to Mr Hull have used the word "hustling" when interviewed by Mr Schmidt.

120. Mr Back conducted an investigation into the grievance. We accept the evidence of Mr Russell that the investigation report (page 607) and its appendices ran to 2 to 3 lever arch files and that he spent more than a week preparing for the grievance hearing which took place on 7 May 2022 (page 658). He then produced a detailed hearing report – the grievance outcome – on 30 June 2022 (page 702) dealing with the 14 allegations individually.

121. The claimant's allegation that Mr Russell had dismissed his grievance "without properly considering the evidence" as explained at the Hearing focused above all on two issues and so we focus on those same two issues. First, that Mr Russell had not dealt in the grievance with Mr Hull's use of the word "hustling" in his interview with Mr Schmidt.

Use of the word hustling

122. The claimant's grievance (page 488) did not in fact raise the use of the word hustling. However, under the heading "Violating the principle of Honesty – You should be truthful" it refers to "Evidence 3 and Evidence 4". Mr Russell accepted in cross-examination that he would have received "Evidence 3 and Evidence 4" (and so much is clear from the list of appendices at page 635). "Evidence 3 and Evidence 4" are a document originally prepared by the claimant in the course of the disciplinary proceedings against him (<u>not</u> the grievance). The document was at

pages 444 to 454 of the bundle and raised 22 separate points. Point 19 relates to the use of the word hustling. The claimant stated (page 453):

> *NH statement is of serious concern.*
> *The use of the word "hustling" comes from American referencing of street drug dealers and pimps as Black men.*
>
> *YA, clearly aware of the racial prejudice behind this wording, would never use this in refer to himself.*
>
> *This is a shameful comment from NH. And, hurtful to YA to read. This is an unacceptable statement.*

123. We find, however, that the reference to "Evidence 3 and Evidence 4" in the grievance is not sufficient to import into it as matters of complaint all 22 points raised in that document. At best, and if explained clearly, it would be evidence to support the allegations made on page 490, which do not include that the claimant found language used by Mr Hull to be "of serious concern".

124. The question of race was nevertheless touched upon twice during the grievance hearing. First of all, at page 664 the following is recorded:

> *BR: So, Neil was 2 weeks into the role, and are you saying that Neil came in with an agenda or one that took 2 weeks?*
>
> *YA: Both. The day he met me, saw me, he said 'people like me'*
>
> *BR: We need to be careful here. What do you mean by this?*
>
> *YA: I don't want to go into racism.*
>
> *BR: Nothing that I see here that suggests a race issue.*
>
> *YA: No but by week 2 he had already made the decision. After 14 days he created a folder. What did I do in 14 days to start him doing this? He hasn't brought it, he collected it. The first time any of us has seen it. He has been collecting information since October 2019. What for? What made him create a folder? You need to ask him. I don't want to label it racism, just want to understand it.*

125. Then, close to the end of the meeting (page 675):

> *TS: Also, I know we aren't going down the racism route but to highlight the wider context, it was an unfair performance review. There is a bias in B.A.M.E employees being lower marked. They are more likely to be approaching and not met. For someone here who has always been consistently rated as exceeding expectations, then a new manager comes in and doesn't take a liking to him and then puts him as approaching. This was rightly found unfair. Yinka challenges this and then this happens. Things being held over his head. Yinka doesn't want to say it, but it is relevant.*

BR: We just need to be really careful here. I looked through this and there is no accusation of that and to bring it in? What you are saying is that it is an organisational position, that it is not directly attributable to this case.

YA: I disagree. When you look later on, I use a phrase. I say to a lot of my black friends, do not call people racist. In the workplace I say don't label it. If you do, it shuts the conversation down. That's what I wanted. Let's talk. They shut that down. They were having none of it. The racial side is here but I left it at that. I was one of the first to go on the unconscious bias training. I heled set up that training. People were in tears in that room. We are here so that we can change the conversation. We have to talk about it. It is here but let us just have that in the back of our heads.

HOLLER is racial profiling. It comes from a French word. In an interview with Ed Schmidt, Neil says Yinka likes to hustle people. He is basically calling me a pimp and a drug dealer.

BR: We have removed the focus of the issue. Where do we see a conclusion, what do you see as the outcome?

126. After the grievance hearing Mr Russell sought advice from HR. He said (page 709) he wanted advice on:

1) The issue of race/racism. Towards the end of Yinka's hearing, Thomas Sale brought up the issue of racism possibly being an issue. Yinka agreed with this and we started down an avenue I had explicitly discussed (and had confirmation that it was not an issue) previously. Also, it was not mentioned in Chris Back's report at all.

I don't feel that I can let this go without explicitly addressing it, but I am not sure how to, without it opening the potential for something much wider. Could you please advise here.

127. We find the reference to "discussed… previously" is a reference to what the claimant had said relatively early in the grievance hearing as set out at [124] above. We find that the reference to "the potential for something much wider" is a reference to a concern of Mr Russell that he will end up considering matters which have not been investigated.

128. The advice Mr Russell received from HR was at page 709, sent to him by an email of 7 July 2022:

I have spoken to Legal in relation to this and we feel there are 2 options on this

1) Acknowledge the issue of racism in his letter - You would need to be careful about how this is done, for example avoid trying to justify any behaviour as not being connected to race when there has been no formal investigation. You could advise Yinka that his comment was noted but any further complaints will need to be raised separately we will cover the issue off, but this of course might

increase the risk of a potential further grievance being raised, particularly considering the outcome of the grievance.

2) Not acknowledge the issue - by limiting the grievance outcome letter to responding to those complaints raised in the grievance you will be correctly following the process.

Ultimately, as decision manager it is for you to decide which of these options to take.

129. In his decision Mr Russell did not address the issue of racism and so chose "option 2" from the advice he head received. He did not therefore consider the use of the word "hustling".

The phone call

130. The second way in which the claimant alleged that Mr Russell had dismissed his grievance "without properly considering the evidence" related to whether Mr Hull had violated the principle of honesty. Mr Russell's conclusion in this respect is at page 707:

This complaint was particularly difficult to determine and much of the evidence presented resolved around a 35 second telephone call on 9 September 2020. As the investigating manager was unable to establish whether a conversation took place and there are differing accounts of this call by Neil and Yinka, I am unable to conclude on this aspect.

131. Mr Back dealt with this issue at section 5.8 (page 630 to page 632). His conclusion was "I have not been able to confirm whether Yinka and Neil conversed on 9 September 2020 during the 35 second phone call or whether this was Neil leaving Yinka a voicemail".

132. The claimant's case, as put forward at the Hearing, was essentially that a proper consideration of the evidence could not have led to this conclusion. He relied on the telephone records at page 650 to page 657 and put to witnesses that they suggested that he could not have spoken to Mr Hull on 9 September 2020 because at the time of the alleged 35 second call he was clearly on the phone to someone else. Mr Russell had not therefore properly considered the evidence.

133. We find, however, that Mr Hull had never said to Mr Schmidt that there had been a call on 9 September or, indeed, any other date in September. What he had said was vaguer than that, as set out in [106] above. He explained in his interview with Mr Back (page 684) that the claimant would not call him a liar directly but would use expressions such as 'fictional narrative or untruths'. Mr Back noted in his report (page 631) that:

In regard to. point 16, the supposed phone call, Neil states that on more than one occasion Yinka would lose control speaking on the phone and that he has called him "a liar quite a few times". Neil does not recall Yinka using the specific word, 'liar' but states that Yinka uses phrases such as 'fictional narrative' and

other descriptive alternatives with the same meaning. Neil could not be specific on when this referenced phone call occurred,

134. Returning to the conclusion of Mr Russell, whilst there is a reference to evidence concerning a phone call on 9 September 2020, Mr Hull had not said that there was a conversation on this date. Equally, point 16 of "Evidence 3 and Evidence 4" did not focus the allegation in that way. We find that the evidence overall in relation to whether there had been a phone call in which the claimant had called Mr Hull a liar and had screamed at him on the phone was indeed unclear and it is therefore unsurprising that Mr Russell had been unable to reach a conclusion on it.

135. As just one example of the evidence being unclear, we note that whilst during the Hearing the claimant said that the call on 9 September 2020 could not have taken place because he had been on the phone to someone else at the time, he had at the time of the investigation said that he had made a decision not to answer the call: "I think I did not answer, and I sent him to voicemail because I would not answer the phone as things got worse and worse" (page 630).

136. Overall, we find that Mr Russell did properly consider the evidence before dismissing the grievance allegations which he dismissed (two of the 14 allegations were of course partially upheld). He did not, however, consider the use of the word "hustling".

137. The claimant appealed against the grievance outcome by email on 19 July 2022 (page 710). The appeal email did not refer to the use of the word "hustling" or contain any allegation of race discrimination. It had a more detailed 11-page document attached to it. The appeal was dealt with by Mr Day. We accept his evidence that he spent two days reading all the materials prior to the appeal hearing and that he had before him the documentation previously provided to Mr Russell and additional documents provided by the claimant.

138. The grievance appeal took place on 9 November 2022 (page 731). The claimant's case in relation to the appeal has focused on the same two points as his case in relation to the initial decision by Mr Russell: complaints about the use of the word hustling and the alleged September 2020 phone call had been dismissed without being properly considered.

139. In the appeal the claimant raises a link between the two stating (page 742):

YA - … Now to come here for a whitewash to be done and more excuses to be made it's not acceptable. I have come back to this call as it's the one that annoys me, this is racial stereotyping. He takes everything personally, if you challenge it's a personal attack on him. Neil has a problem. He has violated the principle of honestly and its nonstop. We cannot keep defending him because he is a team leader. This is not how we do things and I find it disappointing, and I can show you time and again violating the honesty. I cannot accept this.

JD - You mentioned racial stereotyping? I'm aware of your concerns around this from your emails. There is a constraint here. As far as I am aware Chris

Back wasn't told he needed to investigate this aspect, he wasn't told he needed to look into this. I do not want to seem that I am skimming over it but I can't be expected to re-investigate all of the points. I just want to be clear that this is not possible at this late stage.

YA - the conversation was not based on the racial element; Neil has stated before that I hustle. I have submitted a document to you Jonathan that shows "hollering" and "hustle" as racist. I don't want to point fingers and I haven't raised it but a simple apology would have been fine.

140. Mr Day wrote to the claimant dismissing his appeal other than in relation to two points which were partially upheld on 25 November 2022 (page 745). The letter does not deal with the use of the word "hustling" but includes a reasoned conclusion at page 750 in relation to the allegation concerning the phone call.

141. Taking the evidence in the round, we find that Mr Day did properly consider the evidence before dismissing the appeal against the grievance outcome, including that related to the disputed telephone call. He did not, however, consider the use of the word "hustling" as part of his decision.

March 2022 removal from Organogram

142. The purpose of the organogram was to enable internal customers of MEICA to identify the members of the MEICA team. The version from April 2020 was at page 257 of the bundle and identifies the claimant as a MEICA advisor reporting to Mr Hull. We find that the organogram was updated from time to time to reflect changes within the teams shown on it. Its contents simply reflected the factual state of affairs when it was prepared. It was not a document in relation to which there was any consultation with employees.

143. The claimant's complaint is about the organogram at page 696 dated March 2022. The claimant is still on the organogram but he is not shown as reporting to anyone. Rather he appears as follows (page 696):

Yinka Adelanwa
(Not currently in this team)

Meica Advisor

144. We find that this reflected the factual state of affairs at the time the organogram was produced. The claimant was at that time in the team of Mr Russell Long, having been moved there with his consent on a temporary basis in October 2020. The fact that his move to Mr Long's team was temporary is implicit in the fact that he still appears on the organogram at all.

145. The claimant decided not to apply to amend his claim to include an allegation that the respondent made his temporary removal from the MEICA team permanent without consulting with him and taking into account an allegation of racism made by the claimant (see [17] above). However, we consider that it is appropriate to make brief findings about the fact that, when the March 2022 organogram was

issued, the claimant was still not in Mr Hull's team some 18 months after his temporary transfer to Mr Long's team in October 2020 and, also, about what happened subsequently in relation to the claimant's membership of the team.

146. We have found at [103] above that the reason for the temporary transfer was to have the claimant in another team whilst the disciplinary and grievance procedures were dealt with. Those became protracted and, as we have considered above, the appeal against the grievance outcome did not conclude until November 2022. In our view, the grievance procedure including the appeal took too long.

147. The claimant repeatedly referred during the Hearing to what he described as the "The greater degree of separation request". This was a reference to a document that Mr Hull prepared prior to a meeting with Mr Moody which took place on or around 6 January 2022 (page 402). That document refers to the grievance brought by the claimant against Mr Hull and also raises 16 further points which Mr Hull says relate to the claimant's behaviour and which are of concern to him.

148. Mr Hull states that he had health issues directly attributable to the management of the claimant. He describes the claimant's behaviour to him and others as "vexatious and goading". He concludes the preparation note by stating:

I respectfully ask for –

1. *Continued attention to review/act on the Grievance allegations/investigation and close out to prevent the extended months it took for the last HR process to complete.*

149. Pausing there, it is clear from the note that Mr Hull is concerned about the length of time it is took to deal with the disciplinary charges and the length of time it is, as of January 2022, taking to deal with the claimant's grievance against him. The preparation note goes on to record a request for:

2. *Greater degree of separation of YA from myself and my team members by removing him entirely from MIECA activity in the Supra area thus the need to interact with my team and myself. I request this under the duty of care requirements and due to welfare issues arising with my health and the team alike. Please consider doing so as soon as possible. The remaining work he is overseeing will be picked up by my team accordingly.*

3. *The latest bout of aggressive behaviour was 17 Dec 2021 when YA accused two team members of 'Usurping' and racist behaviour. I was prepared to welcome Yinka back into this team from May 2021 (End of HR process) and continued to make attempts but his continued attacks of my team and attempts to discredit me would unlikely deem this possible. I and the team can no longer trust him, feel safe around him or are prepared to have to keep defending ourselves against such conduct.*

150. We find that the reference of Mr Hull to 17 December 2021 is a reference to an email of that date which was added to the Bundle by agreement (see [5.5] above).

In this email to Mr Carman and Mr Jones, with Mr Levitt and others cc'd, the claimant complains that Mr Jones has spoken with Hasmita Kerai. He states:

> *And, importantly, I'm the lead on this project, not Phil Jones. This is called* ***usurping…*** *and our policies and procedures, especially the big conversation on race discusses stopping such behaviours and actions.*

151. The reaction of Mr Jones to this email can be seen in the email above that of the 17 December 2021. He is clearly upset and offended by what he reasonably understood to be an allegation of a micro-aggression related to race contained in the claimant's email. We note here that what Mr Hull wrote in his notes did not include an allegation of race discrimination *against* the claimant; rather it concerned an allegation of race discrimination made *by* the claimant.

152. We find that the claimant's email is just one example of the claimant's tendency to make an allegation without first trying to establish the facts. We find that the claimant had left the job which had ultimately resulted in Mr Jones speaking to Hasmita Kerai to Mr Carman, with whom he had good relations. Mr Carman had gone off sick and then Mr Jones had become involved. Mr Carman had returned but had asked Mr Jones to remain involved and to investigate a particular issue. The claimant had then taken umbrage at Mr Jones' involvement in the terms set out in his email of 17 December 2021.

153. Returning to what Mr Hull wrote in his note preparing for the meeting with Mr Moody, we find that this reflected the view of Mr Hull at the time in relation to his working relationship (and that of his team) with the claimant. We accept his oral evidence that he believed that various of the health problems he was suffering from by January 2022 – including high blood pressure for which he was on medication – resulted at least in part from the stress that his dealings with the claimant had caused him.

154. We find, however, that the meeting between Mr Hull and Mr Moody did not result in the claimant's permanent removal from the MEICA Team. We so find both because that is not what the Organogram suggests and because of our further findings of fact below in relation to the process undertaken by Mr Edlin. It was decisions taken by Mr Edlin that resulted in the claimant's removal from the MEICA Team becoming permanent.

2023 and 2024

Issue 6.1: removal of electrical authorisation

155. The MEICA team included Officers and Advisors from two different technical backgrounds: electrical engineering and mechanical engineering. The organograms (for example, at page 696) show which employee has which technical background by the colour of the outline of the boxes in which their names appear.

156. The respondent's Code of Practice on Electrical Safety (page 817) required Mr Hull as Team Leader to assess the competence and to authorise those within his

team who worked on electrical systems and equipment. This process would result in the issuing of certificates of appointment, a pro forma of which is at page 837. There were two classes of authorisation: "technical competency" and "non-technical competency". We accept the evidence of Mr Hull that in principle "technical" authorisations should only be issued to employees who were trained electrical technicians.

157. When Mr Hull joined the respondent in 2019 he was made aware that the South-East had too many "technical" authorisations – around three times as many as other comparable areas. We find that he gave Mr Carman, an electrical engineer, the task of reviewing the authorisations and establishing who was competent to hold them. We accept the evidence of Mr Hull that this resulted in 120 authorisations being reduced to around 30. Authorisations lasted for three years so, generally speaking, the number of people holding them was reduced by not renewing authorisations when they expired. Mr Hull also took steps to rationalise the non-technical authorisations because, again, there were too many of those.

158. First, the claimant's technical authorisation was removed. Then his non-technical authorisation (page 845) was allowed to expire without being renewed in 2023. At least four other employees in Mr Hull's team did not have their non-technical authorisations renewed before the claimant: Alan Sothcott (Senior Mechanical Engineer), James Flood (mechanical MEICA Advisor), Dave Fowler (mechanical MEICA Advisor) and Ken Frampton (mechanical MEICA Advisor). Like the claimant, they all had mechanical engineering backgrounds and three of the four held the same role – MEICA Advisor.

159. Mr Long, who was managing the claimant in 2023, wrote to him on 8 August 2023 stating (page 857):

> *I spoke to the MEICA team today and I was informed that within this area all electrical authorisation is provided by specifically trained and competent officers and that none of the mechanical engineers were not authorised for electrical works. Accordingly your electrical authorisation will not be renewed…*

160. The claimant replied to Mr Long on 9 August 2023 (page 850). This is worth noting because, we find, it reflects his initial response to the removal of his authorisation:

> *Thank you for your notification that my Electrical Authorisation, which I have held since October 2014 commencement with Environment Agency will not be renewed.*
>
> *This is in-line with SE (West) MEICA team leader, Neil Hull, ways-of-working on electrical MEICA related equipment.*
>
> *I note that the removal of my Electrical Authorisation is not targeted at myself, other longstanding, competent and experienced MEICA mechanical Engineers – Ken Frampton and Dave Fowler – too, as of 2023, have had their authorisation removed.*

161. We find in accordance with his email that the claimant apparently accepted that he was simply being treated in the same way as other employees with comparable professional backgrounds.

Issue 6.2: Mr Edlin requiring claimant to attend meetings in emails of 30 and 31 May 2024

162. Mr Edlin was at the relevant time an Area Director of the respondent based in Lincoln. The job of Area Director is a senior role.

163. For reasons which were, we find, entirely unrelated to the claimant, the respondent's MEICA function was reorganised nationally in July 2023. The reorganisation resulted in the MEICA function nationally being managed by two new MEICA Operations Managers, one in the south and one in the north. Mr Edlin, in his role as Area Director, had control of "MEICA South". Becky Wadd was the MEICA South Operations Manager.

164. As a result of his new responsibilities, Mr Edlin became aware that the claimant had been moved temporarily out of the MEICA SE team into the Asset Performance Team. We find that Mr Edlin was concerned that this "temporary" move convoluted the authorisation process for projects and work allocation, particularly having regard to the national changes to the MECIA function. Mr Edlin concluded that that arrangement was no longer sustainable and, also, resulted in the MEICA SE team being a mechanical engineering advisor down. Mr Edlin decided that the situation needed to be resolved and evidence at [5] of his witness statement was that:

> *Knowing some of the history, I decided to carry out an independent review to ascertain (i) whether there was a permanent, irretrievable breakdown in the relationship between Yinka and Neil Hull or, given the passage of time, whether there was a prospect of conciliation and (ii) whether, if there was an irretrievable breakdown, there was scope to put Yinka into David Jennings' team assuming that a vacancy became available. If neither was feasible, then unless I could find an opportunity for Yinka to work elsewhere in MEICA, I decided that he should be afforded the status of "redeployee" under our existing Managing Change principles which would give him preferential rights to a suitable vacancy.*

165. We find that it was entirely unsurprising that Mr Edlin's evidence was that the "temporary" move of the claimant needed to be revisited in this way given that, by the time he wrote to the claimant about it, the "temporary" arrangement of the claimant being in the Asset Performance Team had lasted for more than three and a half years, particularly in light of the national reorganisation.

166. Indeed, some steps had already been taken to address the issue in that from 1 July 2024 the claimant was to return to MEICA under the temporary line management of Ms Wadd, to whom Mr Hull reported, and who, as noted above, in turn reported to Mr Edlin.

167. We find that Ms Wadd tried to set up a Teams meeting between the claimant, herself and Mr Edlin on 29 May 2024 (page 869). The claimant declined the meeting invitation and emailed Ms Wadd on the same day. His reply suggested that he was suspicious that the meeting was a tactic by the respondent in relation to his Tribunal claim. He wrote:

> *I have received Legal Advice and the recommendation is in-line with my suspicion(s) around a planned tactic, not to aid the 'Grounds of resistance' for or defending the Respondent in my Employment Tribunal claim, to push me (the Claimant) into accepting/signing-up to agreements primarily designed to weaken my position and declare at the hearing that I voluntarily agreed. …*

168. He apparently suggested written communication only between himself and Mr Edlin, going on to write in the same email:

> *If yourself and Leigh Edlin still wish to speak with myself 'Trust' has to be strengthened and reinforced. Towards this I propose written signed letters (no one from the EA has sent me one, but you all want me to sign one to you) or email correspondences, please.*

169. On the 30 May 2024 Mr Edlin wrote the claimant an email explaining the purpose of the meeting (page 871), in which he indicated that the claimant could if he wished be accompanied by his trade union representative. In broad terms, the email describes the purpose of the meeting as being to consider how to move forward given the current working arrangements and set outs an agenda dealing with (a) "The current status"; (b) "The current plan" and (c) "The longer term plan". Mr Edlin said that the meeting invitation would be re-sent and asks the claimant to accept it "as reasonable request by me".

170. We find that the email sent by Mr Edlin was polite and carefully written.

171. The claimant responded on 30 May 2024 (page 873). It is a somewhat confused email and relays a suspicion on the claimant's part that the request for a meeting is in some way linked to the claimant's ongoing Tribunal claim. It includes the following:

> *I have pleaded numerous times before, and again here I do plead.*
>
> *Please give me room to think.*
>
> *I have given you My Word, and it means a lot. I will come back to you both once all my relevant discussions, internally and externally, are complete.*
>
> *If you, or the Environment Agency, truly wish to resolve this matter- and I do Believe it is possible to still do -then the use of the ample Time is key. However, this push for a June/July2024 meeting I know is about the 3 month window given at the last preliminary hearing by the Employment Tribunal.*
>
> *You say you want-wish-intend to separate my work situation from the Tribunal matter, then please allow me room to think.*

172. Overall, the claimant indicates that he does not wish to attend a meeting for the time being. Further emails are then exchanged. In broad terms, Mr Edlin says that the proposed meeting is about how to move forward and is unrelated to the Tribunal claim and that it is reasonable for the respondent to invite the claimant to such a meeting. The claimant, on the other hand, asks for room to think and declines to attend a meeting for the time being.

Issue 6.3: Mr Edlin telling claimant he was in breach of conduct code by his letter of 3 June 2024

173. Following the claimant's refusal to attend a meeting, Mr Edlin wrote to the claimant on 3 June 2024 setting out the points that he said he and Ms Wadd had wanted to cover with the claimant (page 879). He explained why the temporary arrangement was in his view no longer sustainable and wrote:

> *Now that MEICA has moved to the national structure, I have agreed with Russ and Becky that your line management will be brought back within MEICA. This means that, with effect from 1 July 2024, I have decided that you will report directly to Becky. There is no vacancy reporting directly to Becky so this will be an interim position while we decide the next steps.*

174. Mr Edlin went on to explain why the new interim arrangement was unsustainable and went on to say:

> *In view of these circumstances, I need to resolve the issue of whether there is a reasonable prospect of you being able to return to the MEICA SE(W) team, given the strength of feeling between you and Neil Hull. If there is not such a prospect and the situation appears unworkable, then we must consider what alternative opportunities are available to ensure your ongoing employment is preserved.*
>
> *I understand your desire to return to the MEICA SE(W) team. I am very conscious, however, that it is far from straightforward given the circumstances surrounding why you were moved out of SSD MEICA in the first place, which largely relates to the breakdown in working relationship with Neil (as well as your relationship with team colleagues). I must make a decision that properly takes account of all views, and this includes providing you with a fair opportunity of contributing to this process.*

175. He went on to explain that he would carry out his own enquiries in relation to the circumstances which had led to the claimant moving out of Mr Hull's team. He said:

> *I intend to hold a meeting with each to talk about the situation. I will also invite you to meet with me (you would be very welcome to be accompanied to that meeting by your trade union representative or a colleague who is willing to attend and I will arrange for a notetaker to be present). I will also speak with David Jennings to understand from his perspective his views on you reporting to him (in case this becomes a prospective option).*

176. Mr Edlin said that he would issue another meeting invitation to the claimant for 18 June 2024 and went on to say that (page 881):

> *I would comment that, you declining a reasonable management request was a disappointing start to our working relationship. I must point out that this falls short of the standards described in our Code of Conduct…*
>
> *… On this occasion, I will not take this conduct matter further, but do please expect you to observe reasonable management requests or instructions in future.*

177. The claimant wrote to Mr Robinson on 3 June 2024 (page 882), complaining that Mr Edlin's emails of 30 and 31 May 2024 were "coercive and controlling". Mr Robinson rejected that allegation by his email of 4 June 2024 (page 883) stating that "it was not unreasonable for Leigh to expect you to attend an appointment that gave you over two weeks' notice". The claimant did not in fact subsequently attend a meeting with Mr Edlin.

178. Mr Edlin wrote to the claimant on 3 July 2024 (page 897) with the outcome of the review he had by then undertaken. He had not interviewed the claimant in that review, because the claimant had declined to attend any meeting with him within the relevant period, but Mr Edlin had taken into account written communications from the claimant. Mr Edlin concluded that it was not possible for the claimant to return to either Mr Hull's or Dr Jennings' team. He concluded that "the working relationships have irretrievably broken down to the extent that there is no relationship of trust whatsoever". He then went on to consider other possible work for the claimant within the respondent. He said that a suitable alternative post would be sought over a 90-day period and that, if no post were found, the claimant's employment would be at risk of being terminated on notice. We find that it was the decision by Mr Edlin conveyed by his letter of 3 July 2024 that resulted in the claimant's removal from the MEICA team becoming permanent.

Conclusions

179. These are the Tribunal's conclusions in relation to the issues that it has had to decide.

Direct race discrimination

The factual allegations

Did the respondent do the following things:

Issue 2.1: Neil Hull said to Mr Schmidt, as included in a report which the claimant saw on 20 Apr 2021: in summary that his trust in the claimant was strained and when the claimant started hustling, he did not trust him; and the claimant never provided a report on time. The respondent accepts this happened.

Issue 2.7: The respondent dismissed the claimant's grievances at first stage and second stage without properly considering the evidence. The respondent denies this. (Previously 97.1.2)

Issue 2.8: In February 2022, the claimant discovered that, on an organogram, the respondent had removed his name from the SE (West) MEICA team without consultation or communication. The respondent needs to take instructions on this. The respondent adds that the claimant was required to report to a different line manager because of the breakdown in working relationships, effectively moving him to a different team. (Previously 97.4.3)

180. In light of our findings of fact above and the admissions of the respondent:

180.1. **Issue 2.1:** the factual allegations are upheld, given that the respondent "accepts this happened". When Mr Hull was interviewed by Mr Schmidt on 21 December 2020, he did therefore say that his trust in the claimant was strained and that when the claimant started hustling he did not trust him and that the claimant "never provided a report on time".

180.2. **Issue 2.7:** in light of our findings of fact above, and in particular those between [116] and [141], the factual allegation is not upheld. The respondent did not dismiss the claimant grievance at either the first or the second stage "without properly considering the evidence". The failure to consider the use of the word "hustling" does not amount to a failure to properly consider the evidence when, in light of our findings of fact, in particular those at [123], that allegation was not part of the grievance.

180.3. **Issue 2.8:** in light of our findings of fact above, and in particular those between [142] and [144], the factual allegation is upheld. Whilst his name is still on the organogram, the wording was as follows (page 696):

Yinka Adelanwa
(Not currently in this team)

Meica Advisor

180.4. We conclude that the wording used means that "on an organogram" the respondent had indeed "removed [the claimant's] name from the SE (West) MEICA team" and there is no dispute that his name was removed from that team on the organogram "without consultation or communication".

The question of less favourable treatment

Was that less favourable treatment?

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

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant says they were treated worse than the other 11 members of the MEICA team and also relies on theoretical comparators.

Has the burden of proof shifted?

181. The claimant had put forward his case before the Hearing on the basis that he relied on the 11 members of the MEICA team as comparators. During the Hearing he did not focus on any individual white MEICA team member whose circumstances he said were comparable. The reality of his submissions is that he contends he would have been treated more favourably if he had been white, and not Black African. We have therefore conducted the necessary comparative exercise on the basis that the claimant relies on a hypothetical white comparator.

182. Turning to the circumstances of that white comparator, we conclude that they would be a white member of the MEICA team who:

182.1. in respect of issue 2.1, had been described during an interview in terms that they found offensive (including because the words used related in their view to their race in a derogatory fashion) by another employee who was reporting how a third employee had described that white comparator and who reasonably did not appreciate that the term used by that third employee was offensive to the white comparator because it related in their view to race;

182.2. and, in respect of issue 2.7, had raised a grievance against their manager;

182.3. and, in respect of issue 2.8, had been referred to as the claimant was on the organogram on page 696 when they were working temporarily outside the team as a result of relationship difficulties with their team manager.

183. We turn now to the question of whether the claimant has proved facts from which we could conclude in the absence of any other explanation that the respondent has committed an act or acts of discrimination against the claimant.

184. We asked the claimant to identify what facts he said he had proved which showed that the burden of proof had shifted. We appreciate that, despite our explanation of the law, this is a conceptually complicated area. The claimant said little in reply other than that the fact that he had in his view proved various detriments clearly shifted the burden of proof. Reviewing the evidence as a whole, we find that there are various matters which are relevant to our analysis of whether the burden of proof has shifted:

184.1. The fact that the disciplinary allegation in relation to the Caversham Wet Boatshed was not upheld. However, we have concluded that whilst the allegation was not upheld there was not, in light of the correspondence

between the claimant and Mr Hull giving rise to it, any obvious unfairness in the matter being considered as a potential disciplinary matter.

184.2. The respondent not pursuing allegations of bias and prejudice more strenuously when they were made by the claimant in an effort to establish whether what was being alleged was in fact racial bias or racial prejudice. For example, the question of "prejudice" was raised in the 2019-2020 performance review meeting with Mr Hull and it was raised again with Mr O'Flynn in the appeal meeting on 12 July 2020. On each occasion the manager had picked up on the comment and on each occasion the claimant said, in effect, that he was not making an allegation of race discrimination (see in particular our findings at [82] to [83] above). On each occasion the manager then left it at that. (However, given that we should consider all the evidence, we also note that, after the claimant had referred to "bias of some nature" on 17 July 2020 (see [89] above), Mr O'Flynn replied the same day (page 276) stating: "In your email, you have used the word 'bias' which could cover a number of areas, some more serious than others. I think it would be helpful for whatever process we follow that you are clear about what you believe this bias relates to". On this occasion, therefore, Mr O'Flynn did encourage the claimant to be clear about exactly what he meant.)

184.3. Mr Russell not considering the question of racism in his grievance decision as found at [129] above, despite the claimant having raised it at the end of the grievance meeting. Mr Russell appears eager to back away from the issue when it is raised as set out at [124]. However, the claimant did indicate at that point in the meeting that he was not alleging racism (see again our findings at [124] above). Further, the grievance did not include allegations of racism (see our findings at [123] above).

184.4. Mr Day not considering the question of racism in the grievance appeal decision, despite the claimant having raised it during the hearing (see page 740). However, we note again that the grievance did not include allegations of racism (see our findings at [123] above).

184.5. Mr Russell and Mr Day not considering the use of the word "hustling" in the grievance and grievance appeal decisions. However, again, the context for this decision was that the grievance did not include allegations of racism. We also refer in this respect to our findings about the meaning of the word hustle above;

184.6. Mr Russell and Mr Day not considering the use of the word "hollers" by Mr Hull (when interviewed by Mr Back *during* the grievance process) in deciding the grievance or the grievance appeal. The context for this is of course that the grievance did not, we have found, include allegations of racism. Further, the word "hollers" does not have a derogatory racial meaning or connotation. The claimant himself uses the word (page 513). The point being made by the claimant is a fairly subtle one: "to holler" means "'to shout', extended to 'say hello' or 'hit on' in Black English" (the claimant's "About the Holler" document at page 730). Mr Hull's use of it is "White appropriation of Black culture" (claimant's particulars of claim at page 24) and by using it Mr

Hull "seeks to legitimise his perception(s) of [the claimant] within the behaviours and cultures of a particular racial group…". We are not at all convinced that the claimant's analysis of the implications of the use of the word "hollers" holds water. However, we do find that it is a word far more commonly used in Black English than in English as spoken in the United Kingdom and that the claimant could reasonably ask why it was being used to describe his behaviour (of course, the answer *might* be because it was a word he used himself).

184.7. The advice that Mr Russell received from HR, as set out at [128] above, can be read as demonstrating a lack of enthusiasm for dealing with allegations of race discrimination, in particular when it advises:

> *You could advise Yinka that his comment [about race discrimination] was noted but any further complaints will need to be raised separately we will cover the issue off**, but this of course might increase the risk of a potential further grievance being raised**, particularly considering the outcome of the grievance.* [Emphasis added]

184.8. The claimant's reaction to the complaint by DEFRA employees was to shout: "this is bias" (considered at [94] above). This does not appear to have resulted in Mr Hull querying whether the claimant was alleging racial bias. Mr Hull's note of the meeting suggests he was also fairly quick to dismiss the allegation of bias;

184.9. The fact that it is clear that the claimant quite regularly made references to "prejudice" but would when questioned say that he was not suggesting racial prejudice. An example of this is the conversation that Mr Hull recorded in his email to Mr O'Flynn of 21 May 2020 (page 259);

184.10. The evidence of Mr Sale. A reasonable criticism of Mr Sale's evidence, given in particular that he is a union representative, is that it is anecdotal rather than forensic, for example referring as he does to an "unacceptably high turnover of BAME staff" and "bias in B.A.M.E. employees being lower marked" without providing any significant hard data. We find that he had concerns in relation to these matters, but in the absence of cogent evidence are unable to find whether they were well-founded;

184.11. The evidence of Mr Long. In his oral evidence he suggested that there were issues relating to the claimant's upbringing and background which should have been factored in by people dealing with the claimant. He suggested, whilst apparently under the incorrect impression that an employer has a duty to make "reasonable adjustments" for disadvantages suffered by people with *any* protected characteristic, that the respondent had not taken into account the claimant's "different culture and background" when dealing with him. We find that Mr Long, a manager of the respondent, therefore believed that managers of the respondent dealt with the claimant with insufficient sensitivity to what Mr Long saw as the claimant's different cultural background.

185. We have considered the question of whether the burden of proof has shifted in relation to each allegation separately and have reached the following conclusions:

185.1. Issue 2.1: [what Mr Hull said about the claimant to Mr Schmidt]: we have found above, in effect, that Mr Hull did not investigate allegations of "bias" by the claimant as much as he could have done – although by no means did he simply ignore them. Equally, we think there is a significant argument to be made that he might not have used the word "holler" to describe the actions of a white man. However, we conclude taking into account all of our findings of fact, that the claimant has not proved facts from which we could conclude in the absence of some other explanation that what Mr Hull said to Mr Schmidt amounted to less favourable treatment because of race, given the nature of Mr Hull's experience as the claimant's manager which we should also take into account. That is to say the claimant has not proved facts from which we could conclude that the hypothetical white comparator would have been treated more favourably.

185.2. Issue 2.7: [the dismissal of the grievances] we have concluded above that the factual allegation is not made out because we have concluded that the evidence was properly considered at both the first and the second stage of the grievance.

185.3. However, in case we are wrong in relation to our conclusion that the failure to consider the use of the word "hustling" did not amount to a failure to properly consider the evidence (in light of our findings of fact at [123] that that allegation was not part of the grievance), we have considered whether the claimant has proved facts from which we could conclude in the absence of some other explanation that this failure amounted to less favourable treatment because of race.

185.4. *If* it had been necessary for us to consider this, we would have concluded that he had proved such facts. Notwithstanding what we have found about the meaning of the word "hustling", and what Mr Hull reasonably understood by it at [108] to [112] above, the claimant is, by the time it is discussed in the grievance hearing, saying (taking into account what he had written in the "Evidence 3 and Evidence 4" document) that "hustling" had derogatory connotations with racial undertones. We conclude that this, together with the previous approach to the respondent of allegations of bias, and the advice provided by HR, would have been sufficient to shift the burden of proof to the respondent.

185.5. **Issue 2.8: [the organogram issue]** we conclude that the claimant has not proved facts from which we could conclude in the absence of some other explanation that his removal from the organogram was an act of less favourable treatment because of race. There is no evidence of substance that suggests that the organogram was anything more than a document setting out the factual reality of who was working in the relevant team at the relevant time.

The reason why

186. In case we are wrong in our conclusions in relation to the shifting of the burden of proof when we have concluded it has not shifted, and because we should consider this issue when our conclusion in the alternative was that it had shifted, we have reached the following conclusions in relation to what the respondent has proved in relation to the actual reason for the treatment comprising the proved factual allegations.

186.1. Issue 2.1: [what Mr Hull said about the claimant to Mr Schmidt and Mr Back]: in light of our findings of fact above, we conclude that the reason that the Mr Hull told Mr Schmidt that his trust in the claimant was strained and that "when the claimant started hustling, he did not trust him" was that that reflected his honest and reasonable belief given: (1) how he saw their relationship at the time in light of the claimant's behaviour as set out above, in particular at [78] to [79], and [92] to [101] above; (2) how he saw the claimant dealing with other people at work.

186.2. Given the emphasis on the word hustling, we conclude that Mr Hull used this word because it had been used by Mr Carman, a colleague of the claimant with whom the claimant had a good working relationship, to describe him. We conclude that Mr Hull did not regard the word as being racially charged and had no reason to regard it as such.

186.3. We conclude, so far as the comment about reports to Mr Back is concerned, that that may have been a slightly hyperbolic description of the claimant's tendency to invariably produce reports late, and that Mr Hull used the description because he had become by that time frustrated with the claimant and, also, because it reflected what Dr Jennings had said to him about his own experience of the claimant.

186.4. In light of these conclusions, we conclude that race was not a significant or material influence on the treatment complained of. It was in no sense whatsoever because of race.

186.5. Issue 2.7: [the dismissal of the grievances] because the factual allegation was not made out, we make no general findings as to "the reason why": in general terms, we have concluded above that Mr Russell and Mr Day did properly consider the evidence in relation to the grievance both initially and on appeal.

186.6. However, in relation to the use of the word "hustling", we have reached the following conclusion in case we are wrong in our conclusion that failing to consider it did not amount to a failure to properly consider the evidence relating to the claimant's grievance. We conclude that the reason that evidence relating to it was not properly considered either initially or on appeal was because the allegation was not included in the original grievance form at page 488 and because that original grievance form did not contain an allegation of race discrimination. We so conclude in particular in light of the fact that Mr Russell did not simply ignore the allegation when it was made but rather sought advice on it. The way in which he sought advice makes clear that in principle he does not believe that allegations of race discrimination should be ignored. We

therefore conclude that the only reason the allegation was not considered was that it was not part of the original grievance or relevant to it. To put it slightly differently, we conclude that if it had been contained in the grievance form at page 488, or if that grievance form had contained an allegation of racism, then the evidence relating to it would have been properly considered by Mr Russell. Equally, we conclude that if the claimant had raised with Mr Russell matters entirely unrelated to race which had not been included in the grievance form at page 488, and so had not been investigated by Mr Back, Mr Russell would have adopted the same approach towards them and the advice from HR would have been similar.

186.7. We conclude that race was not, therefore, a significant or material influence on the treatment complained of. It was in no sense whatsoever because of race.

186.8. **Issue 2.8: [the organogram issue]:** we conclude that the reason that Mr Hull changed the organogram so that it was as it appears at page 696 was that that accurately reflected the position of the claimant at that point: he remained a MEICA Advisor but was not in "this team". We conclude that race was not a significant or material influence on the treatment complained of. It was in no sense whatsoever because of race.

186.9. It is not necessary for us to reach any conclusion in relation to the allegation which the claimant did not ultimately pursue (in what would have been a substantial amendment to issue 2.8) that "making his temporary removal from the MEICA team permanent without consulting with him and taking into account an allegation of racism made by the claimant" was an act of direct race discrimination. However, if it had been, we would have concluded that in fact his temporary removal was not made permanent because of anything that Mr Hull said or wrote in early 2022, some two years before the matter was considered by Mr Edlin, and that it did not take into account an allegation of racism made by the claimant. Rather we would have concluded that the temporary removal of the claimant became prolonged because of the long period of time it took to complete the disciplinary and grievance procedures and the unresolved difficulties in the relationship of the claimant and Mr Hull following the completion of the grievance procedure.

186.10. We would have then gone on to conclude that the removal became permanent in 2024, following Mr Edlin's conclusion that the claimant's temporary role in Mr Long's department was not sustainable and that the reason for that was the breakdown in relations between the claimant, Mr Hull and other members of Mr Hull's team, which the claimant in effect refused to address by refusing to participate in the process undertaken by Mr Edlin in the summer of 2024, and which was unrelated to race. The conclusion by Mr Eldin that relations had irretrievably broken down was wholly unsurprising. Indeed, it was illustrated by the nature of the claimant's communications with Mr Eldin. We would therefore have concluded that the permanent removal of the claimant from the MEICA team did not take place until the summer of 2024 and that it was in no sense whatsoever because of race. We would have also

concluded that the breakdown in relations which was the cause of the permanent removal was in no sense whatsoever because of race.

187. Returning to issues 3.1 to 3.5, in light of the conclusions set out above, the claimant was not less favourably treated than an actual or hypothetical comparator because of race and so his claim of direct race discrimination fails and is dismissed.

Harassment related to race

The factual allegation

Did the respondent do the following things:

Dr David Jennings, on 23 Feb 2021 and on 21 Jan 2022 respectively, told Mr Schmidt and Mr Back respectively, that the claimant's behaviours in August 2019 were not a minor conduct issue (having previously said it was a minor conduct issue and having been dealt with by extending the probationary period). The claimant found out about the comments to Mr Schmidt when he saw a report in April 2021; and about the comments to Mr Back in a report in May 2022. The respondent accepts these comments were made by Dr Jennings. (Previously 97.5.2)

188. In light of the respondent's position, the factual allegation is made out. However, we refer in this respect to our findings of fact above and, in particular, our conclusion that there was in fact no inconsistency between what Dr Jennings originally said to the claimant and what he subsequently wrote/said to Mr Schmidt and Mr Back.

Whether the conduct was unwanted

If so, was that unwanted conduct?

189. We conclude that it was unwanted.

The proscribed purpose or effect

Did it have the proscribed purpose or effect as set in in section 26(1)(b)?

190. We conclude that the conduct did not have the *purpose* of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In light of our findings of fact above, we conclude that Dr Jennings wrote and said what he wrote and said for the purpose of providing his honest answers to the questions asked.

191. Further, we conclude that it was not reasonable for the conduct to have had that *effect* on the claimant, given that what Dr Jennings wrote and said was his honest and reasonable opinion. The unwanted conduct did not, therefore, have the proscribed purpose or effect.

Whether the conduct related to race

Did it relate to race?

192. We consider this issue in case we are wrong in our conclusions about the proscribed purpose or effect. As we have found at [60] above, the claimant accepted during cross-examination that the conduct he complained of did not relate to race. It appeared at that point that the claimant had not appreciated that, in order to be harassment as defined in the Equality Act, conduct must relate to race. It is not sufficient that it has the proscribed purpose or effect. We therefore conclude, in light of what the claimant said, that the conduct did not relate to race.

193. Further and separately, ignoring the claimant's apparent admission, we conclude that the burden of proof has not shifted as the claimant has not adduced evidence which suggests that the conduct could be related to the protected characteristic of race.

194. Further and separately, even if the claimant had not made this concession, and in the event that the burden of proof had shifted, we would have concluded that the treatment was in no sense whatsoever related to race. We would have concluded that Dr Jennings said what he said because it reflected his honest and reasonable assessment of the claimant's behaviour.

195. The claimant's complaint of harassment related to race therefore fails and is dismissed.

Victimisation

In respect of each alleged detriment (set out below), the protected act relied on is the issuing of the Employment Tribunal claim on 31 January 2023. The Respondent accepts that this amounted to a protected act.

The factual allegations

By making a protected act, did the Respondent subject the Claimant to one or more of the following detriments?

Issue 6.1: The Respondent did not renew the Claimant's electrical authorisation certificate on 8 August 2023 (it is accepted that the respondent did not renew the claimant's electrical authorisation certificate on 8 Aug 2023);

Issue 6.2: Mr Edlin required the Claimant to attend the meeting indicated in his emails of 30 and 31 May 2024 in order to:

6.2.1 consolidate a state of affairs in which the Claimant was 'segregated' from his team;

6.2.2 do so in a way that apparently regularised matters in order to pressure the Claimant into dropping the part of his tribunal claim that related to this (issue 2.8).

Issue 6.3 Mr Edlin told the Claimant that he was in breach of the Respondent's Code of Conduct by his letter of 3 June 2023 (in relation to his refusal to attend a scheduled meeting with him).

196. **Issue 6.1**: there is no dispute that the respondent did not renew the electrical authorisation certificate on 8 August 2023 and so the factual allegation is made out.

197. **Issue 6.2:** in light of our findings of fact at [162] to [172] above, Mr Edlin did require the claimant to attend a meeting. We consider the remainder of the factual allegation below because, realistically, it goes to the reason for the requirement to attend the meeting, not the fact of the requirement.

198. Issue 6.3: there is no dispute that Mr Edlin told the claimant he was in breach of the respondent's code of conduct as alleged. The factual allegation is made out.

Whether factual allegations amounted to detriments

By doing so, did it subject the claimant to detriment?

199. Issue 6.1: A reasonable worker would or might have regarded the non-renewal of the electrical authorisation certificate as a disadvantage or as being to their detriment in the circumstances. The claimant was therefore subjected to a detriment.

200. Issue 6.2: Requiring the claimant to attend a meeting without more was not a detriment in light of the contents in particular of the email at page 871. A reasonable worker would not and might not have regarded being invited to meet for these purposes as a disadvantage or as being to their detriment in the circumstances. A reasonable worker would have seen the meeting as being a potential route to sort out their future with the respondent. However, we conclude that the requirement to attend a meeting would have been a detriment if the reason for the requirement was as the claimant alleges.

201. Issue 6.3: A reasonable worker would not and might not have regarded being told that refusing to attend a meeting was in breach of the code of conduct as a disadvantage or as being to their detriment in the circumstances.

Whether any detriment was because of the protected act

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

202. Issue 6.1: In light of our findings of fact above, we conclude that there is no evidence of significance from which we could infer a causal link between the fact that the claimant had brought a Tribunal claim against the respondent and the withdrawal of the electrical authorisation.

203. In case we are wrong about that, and the burden of proof has shifted, we conclude in light of our findings of fact above that the detriment was in no sense

whatsoever because of the protected act (of bringing a Tribunal claim). We conclude that the claimant's authorisation was removed at the same time and for the same reason as that of a number of other employees holding similar roles to that of the claimant who had not brought Tribunal claims against the respondent. The reason for this was that the respondent took the view that too many electrical authorisations had been granted to people who should not hold them – because they had mechanical engineering rather than electrical backgrounds. It was in no sense whatsoever because the claimant had brought a Tribunal claim.

204. **Issue 6.2:** We approach this issue by first addressing the claimant's factual allegation as to why Mr Edlin required the claimant to attend a meeting. We conclude that the reason Mr Edlin required the claimant to attend a meeting was that, in light of the reorganisation and what had become the extended duration of the claimant's temporary move, he reasonably took the view that new arrangements should be put in place and that he needed to discuss this with the claimant. We conclude that he did not do this in order to "consolidate" a state of affairs in which the claimant was "segregated" from his team. The use of the word "segregated" is inappropriate as the temporary move which had become extended was by agreement. However, and more importantly, Mr Edlin did not, we conclude, wish to "consolidate" the claimant working outside the MEICA team. Rather he wished to consider whether it was possible to re-integrate the claimant into the team.

205. We conclude that Mr Edlin was not in any way motivated by the claimant's Tribunal claim: we find he knew little about it and would have had no reason to suppose that trying to sort out the position of the claimant would put pressure on him to drop his claim.

206. What Mr Edlin wrote and the invitation to the meeting was, therefore, in no sense whatsoever because the claimant had brought a Tribunal claim.

207. **Issue 6.3:** Although we have found there was no detriment, if we had found there was a detriment in Mr Edlin writing to the claimant as he did, we would have concluded that there was no evidence of significance from which we could have inferred a causal link between the fact that the claimant had brought a Tribunal claim against the respondent and the letter of 3 June 2024 stating that the claimant's conduct was in breach of the conduct code.

208. Further and separately, in case we are wrong about that, we conclude that the reason for Mr Edlin saying what he said about the claimant's conduct breaching the code of conduct was that he believed that it had done so. This belief was entirely reasonable. We would have concluded that Mr Edlin wrote to the claimant as he did because the claimant was unreasonably refusing to attend a meeting with a senior manager.

209. Further, we note that Mr Edlin said that he was not going to pursue the matter. We conclude that, if Mr Edlin was really retaliating against the claimant because he had brought a Tribunal claim, he would have been likely to have pursued the matter under the code of conduct. What Mr Edlin wrote was, we conclude, in no sense whatsoever because the claimant had brought a Tribunal claim.

210. In light of these conclusions, the claimant's complaints of victimisation fail and are dismissed.

Other issues

211. In light of the conclusions we have reached above, it is not necessary for us to consider the question of time limits (issue 1) and we do not do so. Equally, the question of remedy (issues 9 to 10) does not arise.

Overall conclusion

212. In light of the conclusions we have reached above, all of the claimant's complaints fail and are dismissed.

_____

Employment Judge Evans

Approved: 23 May 2025

APPENDIX ONE – THE LIST OF ISSUES

Note – this document sets out the List of Issues as identified in the Record of Preliminary Hearing (Employment Judge Kelly) dated 5 January 2024 - starting at para 97. The Respondent was ordered to produce a new numbered List of Issues to replace the incorrectly numbered paragraphs set out in the Record). At the subsequent Preliminary Hearing on 1 November 2024 the Respondent was ordered to add to the document to include the 'victimisation amendment' that was permitted in the same hearing.
The Respondent has identified in **green** those allegations that remain 'live' in these proceedings.

The remaining allegations that are identified in ~~**strikeout**~~ were struck out by Employment Judge Dyal on 1 November 2024 following non-payment of a deposit.

The paragraph numbers in **blue** indicate the reference to misnumbered paragraphs as set out in the Record of Preliminary Hearing (Judge Kelly) dated 5 January 2024.

The Issues

Time Limits (Equality Act – section 123)

Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 30 August 2022 may not have been brought in time.

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

   1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

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

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

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

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

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

Direct race discrimination (Equality Act – section 13)

The claimant identifies himself as Black African

2. Did the respondent do the following things:

2.1 Neil Hull said to Mr Schmidt, as included in a report which the claimant saw on 20 Apr 2021: in summary that his trust in the claimant was strained and when the

claimant started hustling, he did not trust him; and the claimant never provided a report on time. The respondent accepts this happened. (Previously 97.4.1)

2.2 ~~In a disciplinary investigation of 29 Sep 2020 to 22 Mar 2021, the claimant was interviewed by Mr Schmidt who did not properly explain to the claimant what the investigation was about, in breach of the respondent's investigation guidance policy. *The respondent needs to take instructions on this. i*~~ (Previously 97.1.1)

2.3 ~~Dr David Jennings, on 23 Feb 2021 and on 21 Jan 2022 respectively, told Mr Schmidt and Mr Back respectively, that the claimant's behaviours in August 2019 were not a minor conduct issue (having previously said it was a minor conduct issue and having been dealt with by extending the probationary period). The claimant found out about the comments to Mr Schmidt when he saw a report in April 2021; and about the comments to Mr Back in a report in May 2022. The respondent accepts these comments were made by Dr Jennings.~~ (Previously 97.4.2)

2.4 ~~In the disciplinary hearing of 27 May 2021, the respondent relied on the above mentioned August 2019 behaviours which had been dealt with at the time, and now categorised them as gross misconduct. The claimant relies on the minutes of the disciplinary hearing of 27 May 2021. The hearing chairperson, Mrs Theaker, would not listen to the claimant's comments about this in the disciplinary hearing. The respondent accepts that the 2019 behaviours were brought into the disciplinary hearing but does not accept that they were categorised as gross misconduct, nor that Mrs Theaker would not listen to the claimant.~~ (Previously 97.1.2)

2.5 ~~In a grievance brought by the claimant against Mr Hull on 27 July 2021, as part of the grievance, the claimant complained that Mr Hull had falsified evidence as part of the disciplinary proceedings about an alleged phone call from the claimant to Mr Hull. The respondent did not address it in the outcome letter. *The respondent needs to take instructions on this.*~~ (Previously 97.1.3)

2.6 ~~Immediately after he raised a grievance about Mr Hull, the respondent started disciplinary proceedings against the claimant. *The respondent needs confirm its position on this.*~~ (Previously 97.1.1)

2.7 The respondent dismissed the claimant's grievances at first stage and second stage without properly considering the evidence. The respondent denies this. (Previously 97.1.2)

2.8 In February 2022, the claimant discovered that, on an organogram, the respondent had removed his name from the SE (West) MEICA team without consultation or communication. *The respondent needs to take instructions on this.* The respondent adds that the claimant was required to report to a different line manger because of the breakdown in working relationships, effectively moving him to a different team. (Previously 97.4.3)

2.9 ~~Neil Hull said to Mr Back that the claimant often tended to scream down the phone and hollers and gets very agitated. The claimant found out on 16 May 2022. The respondent accepts this happened.~~ (Previously 97.4.4)

2.10 ~~In an email from Russell Long to the claimant of 15 Feb 2023, Mr Long informed the claimant that he would have to work independently and could not use the MEICA team for advice or guidance. The respondent accepts this happened.~~ (Previously 97.1.3)

2.11 ~~Mr *Hull* did not communicate to the claimant the findings of the Newbridge Pump routine inspection on 28 Nov 2023. *The respondent needs to take instructions on this.*~~ (Previously 97.1.4)

3. Was that less favourable treatment?

3.1 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.

3.2 If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

3.3 The claimant says they were treated worse than the other 11 members of the MEICA team and also relies on theoretical comparators.

3.4 If so, was it because of race?

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

Harassment related to race (Equality Act 2010 - section 26)

4. Did the respondent do the following things:

4.1 ~~In an email sent to Mr Long, Mr Hull said that the claimant refused reasonable work requests. The claimant found out this on 14 Jan 2021. The respondent has not seen the email but accepts these comments were included in a mid year performance review.~~ (Previously 97.5.1)

4.2 Dr David Jennings, on 23 Feb 2021 and on 21 Jan 2022 respectively, told Mr Schmidt and Mr Back respectively, that the claimant's behaviours in August 2019 were not a minor conduct issue (having previously said it was a minor conduct issue and having been dealt with by extending the probationary period). The claimant found out about the comments to Mr Schmidt when he saw a report in April 2021; and about the comments to Mr Back in a report in May 2022. The respondent accepts these comments were made by Dr Jennings. (Previously 97.5.2)

4.3 ~~In a disciplinary investigation of 29 Sep 2020 to 22 Mar 2021, the claimant was interviewed by Mr Schmidt who did not properly explain to the claimant what the investigation was about, in breach of the respondent's investigation guidance policy. *The respondent needs to take instructions on this.*~~ (Previously 97.5.3).

4.4 ~~Neil Hull said to Mr Schmidt and included in a report which the claimant saw on 20 Apr 2021: in summary that his trust in the claimant was strained and when the claimant started hustling, he did not trust him; and the claimant never provided a report on time. The respondent accepts this happened.~~ (Previously 97.5.4).

4.5 ~~In the disciplinary hearing of 27 May 2021, the respondent relied on the above mentioned August 2019 behaviours which had been dealt with at the time, and now categorised them as gross misconduct. The claimant relies on the minutes of the disciplinary hearing of 27 May 2021. The hearing chairperson, Mrs Theaker, would not listen to the claimant's comments about this in the disciplinary hearing. The respondent accepts that the 2019 behaviours were brought into the disciplinary hearing but does not accept that they were categorised as gross misconduct, nor that Mrs Theaker would not listen to the claimant.~~ (Previously 97.5.5)

4.6 If so, was that unwanted conduct?

4.7 Did it have the proscribed effect as set in in section 26(1)(b)?

4.8 Did it relate to race?

Victimisation (Equality Act 2010 - section 27)

5. In respect of each alleged detriment (set out below), the protected act relied on is the issuing of the Employment Tribunal claim on 31 January 2023. The Respondent accepts that this amounted to a protected act.

6. By making a protected act, did the Respondent subject the Claimant to one or more of the following detriments?

6.1 the Respondent did not renew the Claimant's electrical authorisation certificate on 8 August 2023 (it is accepted that the respondent did not renew the claimant's electrical authorisation certificate on 8 Aug 2023);

6.2 Mr Edlin required the Claimant to attend the meeting indicated in his emails of 30 and 31 May 2024 in order to:

6.2.1 consolidate a state of affairs in which the Claimant was 'segregated' from his team;

6.2.2 do so in a way that apparently regularised matters in order to pressure the Claimant into dropping the part of his tribunal claim that related to this (issue 2.8).

6.3 Mr Edlin told the Claimant that he was in breach of the Respondent's Code of Conduct by his letter of 3 June 2023 (in relation to his refusal to attend a scheduled meeting with him).

7. By doing so, did it subject the claimant to detriment?

8. If so, was it because the claimant did a protected act?

Remedy for discrimination or victimisation

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

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

11. Should interest be awarded? How much?

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

All judgments (apart from those under rule 52) and any 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/