Case Numbers**: 2409263/2023**

EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr S Khan	**v**	**AQA Education**

Heard at: **Manchester** On: **7, 9, 10 and 11 April 2025**

Before: **Employment Judge Kenward**
Ms S Howarth
Ms V Worthington

Appearances
For the Claimant: **In person**
For the Respondent **Mr M Smith, Counsel**

WRITTEN REASONS

JUDGMENT and oral reasons having been given at the hearing on 11 April 2025, with Judgment having been sent to the parties on 2 May 2025, and written reasons having been requested by the Claimant on 15 May 2025, written reasons are now provided, as set out below.

Judgment

1. The Judgment of the Tribunal was as set out below.

   (1) The Claimant's complaints of direct discrimination on the grounds of sex and / or race, contrary to Equality Act 2010 section 13, are not well-founded and are dismissed.

   (2) The Claimant's complaints of harassment related to sex and / or race, contrary to Equality Act 2010 section 26, are not well-founded and are dismissed.

Background and proceedings

2. These proceedings arise out of the Claimant's summary dismissal from his employment as a Temporary Post Results Administrator on 7 September 2023 after just over three weeks of a two-month contract. Within these proceedings, the Respondent has relied upon conduct as the reason for dismissal. The Respondent says that it took this step after a number of incidents of unprofessional behaviour on the part of the Claimant in interacting with other members of staff including rudeness and negative comments. The

Claimant disputes the accuracy of the descriptions of these incidents and claims that he was being treated differently as a South Asian male. After the last incident, the Respondent told the Claimant that it was terminating his contract and escorted him off the premises without any meaningful process or ascertaining the Claimant's version of events.

3. The Claimant's case is that his treatment during his employment, the decision to dismiss him and the way in which he was dismissed amounted to discrimination on the grounds of sex and / or race or harassment related to sex and / or race contrary to the Equality Act 2010 sections 13 and / or 26.

4. The Claimant had also sought to bring a complaint under Equality Act 2010 section 14 of discrimination on the grounds of the dual characteristics of sex and race, but the Tribunal has concluded that such a complaint is outside the jurisdiction of the Tribunal as Equality Act 2010 section 14 is not yet in force.

5. The Claimant's complaint of unfair dismissal contrary to Employment Rights Act 1996 had previously been dismissed as he lacked the requisite qualifying service of two years to bring a complaint of unfair dismissal about the termination of his employment.

6. In order to be able to commence proceedings, the Claimant complied with the requirement to notify ACAS of his prospective Claim for the purposes of early conciliation and an early conciliation certificate was issued on 11 September 2023. The ET1 Form of Claim was received by the Tribunal on 15 September 2023. Accordingly, this is not a case where any issues arise as to non-compliance with the time limit for bringing proceedings.

7. A preliminary hearing took place for case management purposes on 23 January 2023 before Employment Judge Batten. The resultant Case Management Orders identified that the Claimant was bringing complaints of race discrimination on the basis of direct discrimination and harassment related to race as well as sex discrimination on the basis of direct discrimination and harassment related to sex.

8. Employment Judge Batten also recorded that the Claimant had indicated that he was seeking to complain about discrimination due to the dual / combined protected characteristics of sex and race, pursuant to section 14 of the Equality Act 2010. She noted that "*I explained to the Claimant that this provision had not yet been brought into force, so cannot be pursued, and that he should check the position*".

9. Employment Judge Batten also recorded that the "*claim form gives little indication of the circumstances which the Claimant says gave rise to each of the complaints (whether sex or race discrimination and, in turn, whether direct discrimination or harassment)*". As such, she recorded that "*I told the Claimant*

that he must now consider each of his complaints and give further particulars of them".

10. The Case Management Orders of Employment Judge Batten was specific as to the information to be provided in that it was stated that for each incident of discrimination about which the Claimant was complaining, the Claimant was required to provide, in chronological order, the information set out below.

"*10.1 identify the date of the incident;*

10.2 identify the words used or the action taken which amounted to act(s) of discrimination;

10.3 identify who harassed and/or discriminated against the Claimant on each occasion;

10.4 identify where the incident took place; and

10.5 identify any witnesses to the incident".

11. Paragraph 11 of the Case Management Orders then stated that, for "*each incident in the above list, the Claimant must also identify whether he contends that the incident amounts to (a) direct sex discrimination, or (b) harassment because of sex, or (c) both of these and/or (d) direct race discrimination or (e) harassment because of race or (f) both of these*".

12. Paragraph 12 of the Case Management Orders then stated that for "*those incidents which the Claimant contends amount to direct discrimination, he must also state the name of any comparator(s) relied upon*".

13. At the end of the Case Management Orders, Employment Judge Batten then provided a draft List of Issues. This List of Issues was drafted on the basis that the Claimant was "*to supply details of all incidents*" of direct sex discrimination, direct race discrimination, harassment related to sex, and harassment related to race "*in chronological order*", so that these details could be inserted at paragraphs 1.1.1, 1.1.2, 2.1.1 and 2.1.2 respectively, whilst the draft List of Issues provided for the names of any comparators supplied by the Claimant to be inserted at paragraph 1.2.

14. Thus, the process for finalising the List of Issues was set out at 54 and 55 of the Case Management Orders as set out below.

"*A first draft list of the issues the Tribunal will need to decide at the final hearing is set out below. Following the receipt of the Claimant's further information and also the amended response, the parties shall add to the list where appropriate:*

54.1 At section 1.1.1, to indicate in chronological order the incidents of direct sex discrimination relied upon;

54.2 At section 1.1.2, to indicate in chronological order the incidents of direct race discrimination relied upon;

54.3 In section 1.2, to confirm the names of each and every comparator relied upon, or to state that no actual comparators are relied upon;

54.4 At section 2.1.1, to indicate in chronological order the incidents of harassment because of sex relied upon; and

54.5 At section 2.1.2, to indicate in chronological order the incidents of harassment because of race relied upon.

55. By no later than 14 days before the first day of the final hearing a copy of the revised list shall be sent by both parties to the Tribunal. At that stage, any points of dispute shall be notified to the Tribunal with an explanation of what it is that the parties are unable to agree and why".

15. The Claimant subsequently sought to comply with the Case Management Orders of Employment Judge Batten by providing a document headed "*Further Information*" and dated 5 March 2024. In the preamble to this document, he explained that he had sought to list the "*incidents of discrimination / harassment to the best of my knowledge, understanding, and application to the following three categories*" with the three categories being those of sex race and dual discrimination.

16. In seeking to pursue his complaint of discrimination on the basis of dual characteristics, the Claimant appeared to rely upon explanatory guidance provided by the Government Equalities Office in 2009 regarding the protection that this provision would provide.

17. Section 2 of the Further Information was headed "*description of events*", but it was not straightforward extracting the particulars as to the factual allegations from the commentary which was also provided.

18. The Respondent subsequently filed and served amended Grounds of Resistance, as had been provided for in the Case Management Orders. The amended Grounds of Resistance stated at paragraph 13 that the "*Respondent has discerned the following alleged potential acts of discrimination / harassment from the Claimant's further and better particulars*", with each allegation which had been identified then being listed from paragraphs 13 to 19 of the amended Grounds of Resistance.

19. At the same time, the Respondent provided a revised List of Issues dated 28 March 2024. The List of Issues identified the allegations of direct discrimination on the grounds of sex and/or race, as set out below.

"*a) Georgia Giles repeated intimidating remarks suggesting ownership and dominance over the Claimant in the workplace. These remarks were delivered*

in a threatening and intimidating tone which likened the Claimant's position to that of a subordinate or 'slave'; and

b) The Claimant was the only individual conspicuously excluded from a meeting to discuss promotion opportunities within the organisation; and

c) The Claimant was accused of displaying poor work ethics and lacking commitment to the Respondent; purportedly due to his sex; and

d) Wayne misinterpreted that the Claimant's "banter" as serious discourse; and

e) Wayne trusted the Respondent's female managers; and

f) The Claimant was made to feel like an immigrant".

20. Effectively, these were the allegations which had been discerned as being made by the Claimant and which had been set out as paragraphs 13 to 19 of the amended Grounds of Resistance.

21. There was no separate list in the revised List of Issues setting out the allegations of treatment alleged to amount to harassment related to sex and /o r race. However, the amended Grounds of Resistance, as set out above, had proceeded on the basis that the same allegations which had been extracted from the Claimant's Further Information amounted to both allegations of direct discrimination and allegations of harassment.

22. Paragraph 1.1.1 of the revised List of Issues had formulated the issue of identifying any actual or hypothetical comparator relied upon by the Claimant. However, the revised List of Issues had highlighted that this still needed to be confirmed by the Claimant.

23. The Further Information provided by the Claimant had not clearly identified any actual comparator or formulated any hypothetical comparator being relied upon for the purposes of the complaint of direct discrimination. Thus, this was highlighted as still needing to be confirmed in the List of Issues.

24. Although the Case Management Orders had provided (at paragraph 55 as set out above) that a revised List of Issues, which was either agreed or with any points of dispute identified, was to be sent to the Tribunal no less than 14 days before the Final Hearing, this did not appear to have happened. The List of Issues in the Bundle was that drafted in March 2024 but with no indication that the issues which had been identified as needing to be determined were in dispute, although comparators had still not been identified and formulated.

25. As a result, the List of Issues was discussed at some length at the start of the hearing. It was established that the Claimant's references to "Wayne" at (d) and (e) were in error, with these references being corrected to refer to Ying Dong in respect of (d) and Ryan Wellings in respect of (e).

26. An additional complaint was identified as needing to be included at (g) which was that the "*decision as to dismissal was made without taking the Claimant's version of events into account whereas the version of events of Georgia Giles and Ying Dong was*".

27. It was also recognised that the List of Issues omitted the allegation of a discriminatory dismissal (which Employment Judge Batten had clarified was part of the Claimant's case) and so "*dismissing the Claimant*" was added as (h).

28. In terms of comparators, the Claimant confirmed that that, for the purposes of the complaint at (g) as to making the decision as to dismissal without taking the Claimant's version of events, the comparators relied upon were Georgia Giles and Ying Dong (or in the alternative, a hypothetical comparator). For the purposes of the complaint at (b) as to being the only individual conspicuously excluded from a meeting to discuss promotion opportunities within the organisation, the comparators were Aiden Barker, Jennifer Anokwu and Hannah Bismillah (or in the alternative, a hypothetical comparator). Otherwise, in relation to all of the complaints, the Claimant relied upon being treated less favourably than the Respondent would have treated a hypothetical comparator.

29. When the Respondent's penultimate witness, Nick Colman came to give evidence, he was asked about the lack of any disciplinary process having been followed and sought to justify this on the basis that this was not necessary where an employee was at week three of a temporary contract and that the Respondent's disciplinary procedure would not apply within an employee's probationary period. At this point, the Claimant pursued a line of questioning which involved putting to the witness the point that a lot of temporary staff members may come from "marginalised" groups so that such a policy might amount to indirect discrimination. The Respondent objected to this line of questioning on the basis that such a complaint was not before the Employment Tribunal. After a break for the Respondent to take instructions as to the position in respect of any disciplinary policy, the hearing proceeded without the issue of indirect discrimination being pursued any further in questioning.

30. When it came to closing submissions, the Claimant produced written submissions which referred to having experienced indirect discrimination, although without setting out the basis for this. The tribunal queried the reference to indirect discrimination on the basis that such a complaint had not been identified as being a complaint to be determined by the tribunal. It was indicated by the Tribunal that if the Claimant wished to pursue such a complaint, he would either need to satisfy the Tribunal that such a complaint had been raised by way of his pleaded case or that permission should be granted to allow him to amend his case to pursue such a complaint. The

Respondent intimated that it would oppose any such application for permission and that it would consider making a costs application if such a complaint was introduced into the case in that, if granted, the inevitable consequence would be that the case would be adjourned. In the event, the Claimant did not seek to pursue the point by way of seeking to persuade the Tribunal that it should treat such a complaint has already been before the tribunal or allowing the Claimant to amend his claim to pursue such a complaint.

Evidence

31. In terms of documentary evidence, the Tribunal was provided with a Bundle of 98 pages (including an additional page added by the Claimant during the hearing).

32. In terms of witness evidence, the Tribunal had a Statement of Evidence from the Claimant who also gave evidence orally.

33. The Claimant also relied upon a written Statement of Evidence from his wife, mainly as to the impact on the Claimant of the alleged treatment. Additionally, the Claimant also relied upon a Statement which amounted to a character reference setting out the opinions of the author as to the Claimant's various qualities including his trustworthiness. The Respondent indicated that it was not seeking to question the authors of these Statements so that the Tribunal accepted their Statements as read. The additional page added to the Bundle by the Claimant was a further character reference.

34. The Respondent relied upon a Statements of Evidence from five witnesses who all gave oral evidence, namely Georgia Giles (Team Coordinator), Ilyas Abdullahi (Reconciliation Team Leader), Ying Dong (Post Results Team Leader), Ryan Wellings (Operations Manager) and Nick Colman (Assessment Quality Manager).

35. Within the documentation, the Claimant had made frequent references to Wayne, when these references were mostly references which were clearly intended to refer to Ryan Wellings. It was agreed that the Tribunal would proceed on the basis that references to Wayne should be read as references to Ryan Wellings unless it was established that the reference should be to someone else (as per example in relation to complaint (d) whether the reference to Wayne was established as being a reference to Ying Dong).

36. This was a case where the various relevant events were largely undocumented by way of any contemporaneous evidence. The various witnesses were in the position of seeking to recall events from approximately 18 months previously. This meant that it was not always possible to establish clearly what had happened. Over the course of the hearing, various inconsistencies and mistakes were identified. However, the Tribunal generally

found the evidence of the Respondent's witnesses to be factually orientated and reliable. They were willing to make concessions which may not have assisted the Respondent's case whereas the Claimant's evidence often seemed to be driven by the needs of his case and the case theory being put forward. Both the Claimant's written evidence and his oral evidence contained a lot of commentary which he was seeking to apply retrospectively to events. When clear questions were put to him based on the versions of events of the Respondent's witnesses, the Tribunal found that the Claimant often struggled to provide a clear version of events by way of an answer, or else defected questions by asking questions himself about the other version of events.

37. The gist of the evidence of the Respondent's witnesses related to the impressions which they had all formed regarding the Claimant having conducted himself, in the workplace, in a way which could be described as unprofessional. Whilst the Tribunal recognised that there was inevitably an element of the impressions of the Respondent's witnesses feeding into each other in that the concerns or issues had been fed back or escalated up the management chain at the time, the Tribunal found that the witnesses were seeking to give an honest account of events and that their various testimonies were, to a degree, corroborated by the evidence of the other witnesses for the Respondent, in that the picture of the Claimant's conduct and attitude in the workplace was fairly consistent across the evidence of all of these witnesses.

38. The Tribunal considered the possibility that these witnesses may have colluded or conspired to give a false impression of the Claimant whether as a result of bias or misplaced loyalty to the Respondent, but ultimately concluded that these were honest witnesses seeking to assist the Tribunal and that it was significantly more likely than not that the picture which emerged from their evidence was the correct picture. As a result, save where otherwise indicated, the Tribunal generally preferred the evidence of the Respondent's witnesses to that of the Claimant.

39. As such, for our findings of fact, the Tribunal took the factual matrix put forward by the Respondent unless we were satisfied that, in relation to a particular area of dispute, there was a reason not to do so.

Findings of fact

40. The Claimant was employed on a seasonal basis as a Temporary Post Results Administrator under a temporary contract which was intended to be of two months' duration.

41. The Bundle contained the Respondent's standard Temporary Contract of Employment. The preamble stated that this "*contract should be read in conjunction with the offer of employment email and joining instructions which contains further information*". Clause 5 stated that subject "*to clause 6, both parties are required to give either side a minimum of one calendar weeks'*

notice to terminate this contract". Clause 5.3 stated that "*AQA may terminate this contract immediately if it reasonably considers that you have committed any serious breach of its terms or committed any act of gross misconduct*".

42. Clause 15 was in the terms set out below.

"*A copy of AQA's Disciplinary Procedure can be found on the Hub (company intranet). AQA's Disciplinary Procedure is not contractual. If you are dissatisfied with any disciplinary decision relating to you, you have the right to appeal as detailed in the Disciplinary Procedure*"

43. However, clause 6 stated that the appointment was "*subject to a probationary period of one month which may be extended at the discretion of AQA*" but during "*the probationary period the contract can be terminated by either party without notice*".

44. Clause 16 was in the terms set out below.

"*If you have a grievance relating to your employment you should discuss the matter initially with your immediate line manager. Further steps are governed by AQA's Grievance Procedure which can be found on the Hub (company intranet). This procedure is not contractual*".

45. Ilyas Abdullahi (Team Leader) acted as the Claimant's line manager. Ilyas Abdullahi reported to Ryan Wellings, who was the Post Results Manager at the time. Ryan Wellings reported to Nick Colman who was the Operations Manager at the time. Georgia Giles, as the Team Co-ordinator, and Ying Dong, as the Post Results Co-Ordinator, did not have any direct management responsibilities over the Claimant, but as Co-ordinators they were in charge of making sure that work was completed correctly and to any deadline. In practical terms, the role of Georgia Giles involved making sure that the work of the Claimant, and the team to which he was assigned, was completed, so that she had regular interaction with the Claimant. By contrast, Ying Dong did not have any dealings with the Claimant until she was in the position of delegating urgent work on 7 September 2023.

46. An induction programme took place at the start of the Claimant's employment during which the Claimant made an unfavourable impression on Ryan Wellings by interrupting him to refer to his own experiences whilst at school when he had an exam re-marked by AQA and it had gone badly for him. The Claimant demanded to know why the process was done this way. Ryan Wellings had provided an answer and the Claimant had continued interrupting. Ryan Wellings had found the Claimant's tone "*somewhat aggressive*", although not in the sense of being an issue which needed to be addressed at that stage.

47. Nevertheless, Ryan Wellings specifically remembered the impression formed of the Claimant because it was the subject of a conversation that he had

afterwards with Ilyas Abdullahi, in which Ryan Wellings had commented that this was an individual who was not happy with AQA and Ilyas Abdullahi said that Ryan Wellings had handled the situation well.

48. Georgia Giles also recalled that the Claimant's demeanour was challenging during this training, with him frequently interrupting Ryan Wellings to challenge internal processes. She had found that the Claimant's tone in doing so to accusatory and unprofessional.

49. Ilyas Abdullahi was then involved in dealing with an incident which arose early in the Claimant's employment although he struggled to remember the details and was unclear about the date. However, he recalled, and the Tribunal accepted, that the Claimant had lost his temper and raised his voice to a colleague. Ilyas Abdullahi had taken the Claimant aside and made it clear to him that this type of behaviour was unacceptable in the workplace. The Claimant appeared to acknowledge this and assured Ilyas Abdullahi that this type of behaviour would not happen again.

50. The Claimant seems to have come across Nick Colman at an early stage, possibly when undertaking work at the weekend, as he recalled Nick Colman being complimentary about a piece of work of the Claimant's. Nick Colman did not recall this but accepted that it might have happened. This would not be inconsistent with the comment later made by Ilyas Abdullahi on the Claimant's Leavers Form that there "were moments during his time in post results where Sohrab showed promise and performed really well".

51. The Claimant was sufficiently encouraged by any interaction he had with Nick Colman to e-mail him on 26 August 2023 when he asked Nick Colman to provide a reference for an internal job application he was pursuing. Nick Colman replied to the Claimant that he would be happy to provide a reference and confirmed that should the Claimant be invited for an interview, he would be willing to talk through some potential interview questions with him. This suggests that any adverse feedback had not yet reached Nick Colman, but it also suggests that the Respondent was open-minded about the Claimant at the outset so that something must have happened to change that.

52. However, a further incident of the Claimant losing his temper in the workplace occurred during his second week. The Tribunal accepted the evidence of Georgia Giles that the Claimant had arrived about an hour late and, upon his arrival, did not provide any explanation for his lateness, nor in fact acknowledge it at all, but simply sat at his desk and began browsing the news online.

53. There was some dispute over whether the Claimant had been as much as an hour late, with the Claimant suggesting that it was more like 10 minutes. The Tribunal concluded that it was more likely to have been in the region of an hour. We were satisfied that Georgia Giles had no reason to exaggerate the

extent of the lateness and the incident which then occurred and subsequent developments in relation to that incident would have caused her to remember the circumstances well. The Tribunal found her evidence very clear as to what had happened. The Tribunal also notes that an issue as to persistent lateness had been reported back to Ryan Wellings and it may well have been that the other occasions when the Claimant was late were of shorter duration.

54. Georgia Giles describes being frustrated by the Claimant's lack of awareness of the gravity of the situation, which again suggests that the lateness involved more than just a few minutes. In order to convey her disapproval of the situation, she asked the Claimant whether there was anything good in the news. Given that she was not really expressing a genuine interest as to what was in the news, this amounted to being sarcastic. At this stage, the Claimant reacted by reaching for a newspaper on his desk and tossing this towards Georgia Giles. In his oral evidence, the Claimant suggested that he simply put the newspaper down on the table in front of him out of frustration. The Tribunal thought that it was more likely that it had been tossed in the direction of Georgia Giles, it was clear that it landed on her desk, albeit the Tribunal accepts that there was no malice involved in what was probably just a petulant gesture. Georgia Giles then pointed out that the Claimant had arrived late and was now reading the news and suggested that a better use of his time would have been to assist his colleagues. The Claimant's case is that Georgia Giles said words to the effect of "*this is what AQA pays you for*", the Tribunal thinks it is likely that words to that effect were said. Again, there may have been an element of sarcasm involved in pointing out that somebody is being paid to work when they are not working.

55. The Claimant seems to have been unhappy with Georgia Giles making an issue of his lateness and lack of application to his work. The Tribunal accepted her evidence that the Claimant "*completely blew up and raised his voice at me*" and that he "*ranted at me that I had no idea what was going on in his life, and that I had no idea how hard he was working*". The fact also that the Claimant made reference to Georgia Giles having no idea what was going on in the Claimant's life suggested to the Tribunal that this incident of lateness may have been caused by more than simply bad timekeeping on the Claimant's part and so, again, was likely to have involved significant lateness rather than a few minutes.

56. Georgia Giles found this reaction from the Claimant to be extremely unprofessional. It was witnessed by other members of the team who were sat in the vicinity who were also shocked by the Claimant's behaviour.

57. As a result, the Claimant was asked to speak to Ilyas Abdullahi who was effectively his line manager. Ilyas Abdullahi took the Claimant aside and explained that there were professional standards that he needed to adhere to whilst in the office and his communication and behaviour had been poor. He

told the Claimant that if this pattern of behaviour were to continue, it might lead to his dismissal. He got the impression that the Claimant appeared to understand.

58. Once the Claimant had calmed down, and in order to move on from the situation, Georgia Giles gave the Claimant an apology which she described as being for her disapproving tone. When cross-examined, she explained to the Claimant that she apologised as she could tell from the Claimant's reaction that something big was going on in his life and so apologised "*if you were having a hard time*". The Claimant also apologised for his part in the incident. Other than any sarcasm having not helped the situation, the Tribunal did not think that Georgia Giles had done anything for which she particularly needed to apologise. However, it was a diplomatic and mature thing to do given that it would have assisted in seeking to draw a line under the incident.

59. Georgia Giles also informed Ryan Wellings, who was her manager, about the incident in full. He assured her that she had not acted inappropriately, and that the Claimant's reaction was disproportionate.

60. The Claimant alleges that he was deliberately omitted from a team meeting to discuss promotion opportunities among the seasonal staff. The Tribunal found that the position remained a little unclear as to the extent of any meeting or discussions involving members of the Claimant's team and the possibility of progressing within AQA. The evidence of Georgia Giles suggested that around 30 August 2023 there had been discussions to gauge interest from team members regarding an opportunity which was arising as a result of the need to replace the Lead Administrator. This seems to have been restricted to those members of the team who had performed well and shown promise. However, in his oral evidence, Ilyas Abdullahi suggested that he had spoken to all of the members of the team, on a one-to-one basis, to make them aware of the opportunity. Ultimately it appears that only three of the team members were being considered for this position. The three individuals who had been identified as possible candidates were Aiden Barker, Jennifer Anokwu and Hannah Bismillah. Georgia Giles had described the two female candidates as both being of Asian heritage. In his oral evidence, Ilyas Abdullahi described one of the female candidates as being South Asian and the other female candidate as being of African ethnicity.

61. On 31 August 2023, the Claimant contacted Nick Coleman to ask to speak urgently and he responded promptly to set up a meeting. During the meeting, the Claimant told Nick Coleman that he had been overly criticised by Georgia Giles for being late that morning and felt that it was unfair that he had been excluded from an admin team meeting. Nick Coleman explained that he did not feel that Georgia Giles had overstepped the mark and confirmed this to the Claimant. Nick Coleman understood that any meeting had simply been a discussion about replacing the Lead Administrator and the Claimant's

omission would have been because he had not been identified as a suitable candidate based on his behaviour and performance at that time. Although the Claimant was clearly aggrieved, he did not allege or imply any discrimination or seek to pursue the matter as a grievance. The Claimant was specifically asked by Nick Coleman whether he wanted Nick Coleman to take any further action regarding the concerns raised and the Claimant confirmed that he did not. Following the meeting, Nick, also checked with Georgia Giles as to what had happened and as to her well-being.

62. The Claimant's case is that, on 6 September 2023, the team was approached regarding the option of working overtime which he chose to decline. He alleges that he was subsequently accused of displaying poor work ethics and lacking commitment to the Respondent. Paragraph 8 of his Further Information refers to remarks made by Ryan Wellings, Ying Don and Georgia Giles on the basis that this amounted to sex discrimination. In fact, he had had no dealings with Ying Don up to this point and it is not clear that Ryan Wellings had had any conversation with him regarding overtime. In his oral evidence, the Claimant only referred to an incident when Georgia Giles had asked if anyone wanted to work overtime as there was a specific project being undertaken and the Claimant said that he could not do it. In his oral evidence, it was not clear that it was being alleged that any words had been used by Georgia Giles to the effect that the Claimant was displaying a poor work ethic or lacking commitment; rather, the Claimant suggested that Georgia Giles "*made it seem like I was not really committed*". When asked to explain this, the Claimant said that it was just her general body language which was hard to describe, and her tone. The Tribunal preferred the evidence of Georgia Giles who denied having accused the Claimant of displaying poor work ethics and lacking commitment for having declined the opportunity to work overtime. Georgia Giles made it clear that she was aware that the Claimant was the parent of a young child and so it was unlikely that he would have been expected to work overtime. Overtime was offered on a first come, first served basis and no one on the team was expected to work overtime unless wishing not to do so.

63. By 7 September 2023, Ryan Wellings had become aware of multiple behavioural issues involving the Claimant, including persistent lateness (although on questioning, this appears to have been more occasional than persistent), having a confrontational attitude with managers, and poor application to work (he referred to the Claimant's personal browsing of the internet, putting his feet up on his desk, along with slouching in his chair, although this description may well have derived from any report of the incident with Georgia Giles in the second week of the Claimant's employment). As a result, Ryan Wellings had clearly formed a poor impression of the Claimant as an employee of the Respondent who was still in his probationary period.

64. A further incident occurred on 7 September 2023, this time involving Ying Dong. The Tribunal preferred her evidence regarding the incident to that of the Claimant. The Tribunal found her evidence to be straightforward and clear. She was having to co-ordinate an urgent piece of work which was being delegated to approximately 50 members of staff, including the Claimant. She took issue with comments made by the Claimant, within the hearing of other members of staff, regarding the arrangements for the work which were to the effect that, if he finished work quickly, he would be punished for doing so by being allocated additional tasks. She found his comments to be childish and unprofessional and told him that they were not in the classroom, she was not a teacher, and he was "*not a kid*". The Claimant's case was that his comments were not about been punished for finishing quickly but about getting a prize for doing so. In her oral evidence, Ying Dong was willing to concede the possibility of having misinterpreted an attempt at humour by the Claimant but did not think that she had done so at the time.

65. Later that day, Ying Dong informed Ryan Wellings that she had been involved in an altercation with the Claimant, which she described on the basis that she found the Claimant's behaviour childish, unprofessional and not conducive to a good teamworking environment.

66. Given the various issues which he was now aware of having arisen regarding the Claimant during his short time with the Respondent, Ryan Wellings decided that the Claimant was not suitable to continue in post and the best course of action was to dismiss him before the expiry of his fixed term contract. This was on the basis of the cumulative effect of the negative comments the Claimant had been making, the inappropriate and aggressive behaviours he had demonstrated along with his other unprofessional conduct. There seems to have been some discussion with both Ying Dong and Georgia Giles, but the decision was made by Ryan Wellings.

67. It was decided that the decision should be implemented straightaway. Once told his employment was being terminated, the Claimant would need to be escorted off the premises given that the workplace was a secure environment where there is access to sensitive data in relation to examination candidates. Ryan Wellings decided to use the Claimant's dismissal as a development opportunity for Ying Dong who had never been involved in a dismissal process before. Accordingly, Ryan Wellings and Ying Dong met with the Claimant and Ying Dong proceeded to explain that the Claimant's employment was being terminated due to his behaviour and performance to date. It was explained to him that his behaviour was not meeting the expected standards and his outbursts were unacceptable.

68. At this point, the label of gross misconduct was not being placed upon any conduct on the part of the Claimant which resulted in his dismissal. There was no need to categorise the conduct in this way since the contract provided for

dismissal during the probationary period without the need for there to be conduct justifying a summary dismissal.

69. The Claimant was not given any opportunity to respond or speak in relation to the issues or reasons for his dismissal. At the conclusion of the meeting, Ryan Wellings escorted the Claimant to the exit of the building. The Claimant requested access to his laptop to obtain his CV, which was stored on the device. Ryan Wellings told the Claimant that he would not be allowed access to the laptop and told him that he should have his CV saved elsewhere. Before leaving the premises, the Claimant shouted loudly in front of other staff members that he was being sacked because AQA did not like him.

70. In his evidence, Nick Colman confirmed that Ryan Wellings followed the Respondent's usual process for all dismissed staff in escorting the Claimant out of the building. He made the point that there is no way discreetly to escort someone from the building due to the open plan office setting but that doing so was considered important due to the sensitive and secure nature of the office.

71. The Claimant had also asked to speak with Nick Colman following his dismissal, but also not facilitated.

72. Following his dismissal, the Claimant sent e-mails which were clearly intended for Ryan Wellings, Ying Dong and Georgia Giles, which appear to have been sent by way of a reaction to his dismissal, describing them as "*cowards*", "*haven't got much potential*" and had "*zero social skills*".

73. Ilyas Abdullahi completed an early leavers form for the Claimant giving the reasons for the dismissal as unprofessional behaviour in the office (rude towards staff) with "*feedback*" as to the Claimant's employment being provided as set out below.

74. "*There were moments during his time in post results where Sohrab showed promise and performed really well, however this was greatly overshadowed by his unprofessional behaviour. On more than one occasion Sohrab lost his temper. The first time it happened I had a conversation with him and made it very clear this sort of behaviour is unacceptable in any workplace. He acknowledged where he went wrong and assured me this wasn't going to happen again. Unfortunately, it happened again and he was spoken to by senior manager and was let go yesterday. It was also disappointing to hear from other team members that he said things like "I work the hardest" so his teamworking skills wasn't the best. Not to mention he's complained about the workload a few times. Overall I cannot recommend him to work here or any other department*".

75. Again, there was no reference to gross misconduct. Moreover, misconduct only seems to have been given as the reason for the dismissal when the Respondent's solicitors drafted the Grounds of Resistance.

76. In evidence, both Ryan Wellings and Nick Colman accepted that the Claimant's conduct did not amount to gross misconduct.

Relevant law

Burden of proof in discrimination cases

77. Equality Act 2010 section 136 provides for a shifting burden of proof, as set out below.

"*(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".

78. Guidance on the burden of proof was given by the Court of Appeal in *Igen v Wong [2005] ICR 931*. This guidance has subsequently been approved by the Court of Appeal in *Madarassy v Nomura International plc [2007] ICR 867*, and by the Supreme Court in *Hewage v Grampian Health Board [2012] ICR 1054* (at paragraphs 25-32). In *Efobi v Royal Mail Group Limited [2021] ICR 1263*, at paragraph 26, Lord Leggatt made it clear that Equality Act 2010 section 136 had not made any substantive change to the previous law.

79. The burden of proof starts with the Claimant. It is for the Claimant to prove facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant's relevant protected characteristic. At the first stage, when considering what inferences can be drawn from the primary facts, the Tribunal must ignore any explanation for those facts given by the Respondent and assume that there is no explanation for them. It can, however, take into account evidence adduced by the Respondent insofar as it is relevant in deciding whether the burden of proof has moved to the Respondent. If such facts are established, then the burden of proof transfers to the Respondent to establish on the balance of probabilities that the protected characteristic formed no part of the reasoning for the impugned decisions or treatment.

80. The mere fact that the Claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy the first stage of the shifting burden of proof. It may be that the employer has treated the Claimant unreasonably. That is a frequent occurrence quite irrespective of the race or age or other protected characteristics of the employee and will not, by itself,

be enough to shift the burden of proof (see *Bahl v The Law Society [2004] IRLR 799*, and *Zafar v Glasgow City Council [1998] IRLR 36*).

81. In *Madarassy v Nomura International plc [2007] ICR 867*, the Court of Appeal emphasised that there must be something more than simply a difference in protected characteristic and a difference in treatment for the burden of proof to shift to the Respondent. Mummery LJ gave the guidance set out below.

"*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal "could conclude" that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination*".

82. *Madarassy v Nomura International plc [2007]* was approved by the Supreme Court in *Hewage v Grampian Health Board [2012] ICR 1054*, where Lord Hope stated that it was important not to make too much of the role of the burden of proof provisions as set out below.

"*They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other*" (paragraph 32).

83. In *Network Rail Infrastructure v Griffiths-Henry [2006] IRLR 865*, Elias J said (at paragraph 15) that the mere fact that an unsuccessful candidate was a black woman and successful candidates were white men would be insufficient to be capable of leading to an inference of discrimination in the absence of a satisfactory non-discriminatory explanation. To shift the burden of proof, a Claimant must also prove something more. That is, the Claimant must prove facts from which the Tribunal could infer that there is a connection between the protected characteristics and the detrimental treatment, in the absence of a non-discriminatory explanation.

84. It is not necessary in every case for a Tribunal to go through the two-stage procedure. In some cases it may be appropriate for the Tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the shifting burden of proof (see *Brown v Croydon LBC [2007] IRLR 259, CA*, at paragraphs 28 to 39).

85. However, in *Anya v University of Oxford [2001] ICR 847, CA*, the Court of Appeal pointed out (in a case dealing with race discrimination) that very little direct discrimination is today overt or even deliberate so that what the relevant authorities "*tell Tribunals and courts to look for, in order to give effect to the*

legislation, are indicators from a time before or after the particular decision which may demonstrate that an ostensibly fair-minded decision was, or equally was not, affected by racial bias".

Direct discrimination

86. Equality Act 2010 section 13 provides that a "*person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*".

87. Thus, direct discrimination takes place where a Claimant is treated less favourably, because of the relevant protected characteristic, than the employer treats or would treat others. This can involve comparing the treatment of a Claimant with that received by an actual comparator, or comparing the Claimant's treatment with that which would have been received by a hypothetical comparator.

88. Section 23(1) of the Equality Act 2010 provides that on a comparison for the purpose of establishing direct discrimination there must be "*no material difference between the circumstances relating to each case*". In the case of *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL*, Lord Scott explained that this means that "*the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class*".

89. It is not a requirement that the situations have to be precisely the same. The existence of a different decision maker does not prevent the comparison being a valid one (see *Olalekan v Serco Limited [2019] IRLR 314*).

90. In *Virgin Active Limited v Hughes [2024] IRLR 4, EAT*, His Honour Judge Tayler the Employment Appeal Tribunal gave guidance as to the use of comparators (paragraph 61 and 62) as set out below.

"*61. In many direct discrimination claims the Claimant does not rely on a comparison between his treatment and that of another person. The Claimant relies on other types of evidence from which it is contended that an inference of discrimination should be drawn, the comparison being with how the Claimant would have been treated had he had some other protected characteristic.*

62. In other cases, the Claimant compares his treatment with that of one or more other people. There are two ways in which such a comparison may be relevant. If there are no material differences between the circumstances of the Claimant and the person with whom the comparison is made (the person is usually referred to as an actual comparator), this provides significant evidence that there could have been discrimination. However, because there must be no material difference in circumstances between a Claimant and a

comparator for the purpose of section 23 EQA it is rare that a Claimant can point to an actual comparator. The second situation in which a comparison with the treatment of another person may provide evidence of discrimination is where the circumstances are similar, but not sufficiently alike for the person to be an actual comparator. The treatment of such a 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 to those of the Claimant would have been treated (generally referred to as a hypothetical comparator). 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 to those of the Claimant".

91. In *JP Morgan Limited v Chweidan [2012] ICR 268*, Elias LJ gave the guidance (at paragraph 5) set out below.

"*In many cases it is not necessary for a Tribunal to identify or construct a particular comparator (whether actual or hypothetical) and to ask whether the Claimant would have been treated less favourably than that comparator. The Tribunal can short circuit that step by focusing on the reason for the treatment*".

92. In every case the Tribunal has to determine the reason for the Claimant having been treated as he or she was. In *Nagarajan v London Regional Transport [1999] IRLR 572*, Lord Nicholls observed that "*this is the crucial question*". He also observed that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.

93. In *Gould v St John's Downshire Hill [2021] ICR 1, EAT*, Linden J made it clear that the Tribunal must consider the reason for the actions of the alleged discriminator, as set out below.

"The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the test is subjective…. For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision… (and) *the influence of the protected characteristic may be conscious or subconscious*".

94. The focus is on the mental processes of the person who took the impugned decisions. In a direct discrimination claim, the Tribunal should consider whether that person was influenced consciously or unconsciously to a significant extent by the Claimant's relevant protected characteristic. The decision makers' motives are irrelevant.

95. If the Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial (see *Nagarajan v London Regional Transport [1999]* and *Igen v Wong [2005] ICR 931, CA*).

Combined discrimination: dual characteristics

96. Equality Act 2010 section 14(1), which is headed "*Combined discrimination: dual characteristics*", provides that a "*person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics*".

97. However, these provisions have not yet been brought into force.

Harassment

98. Equality Act 2010 section 26 includes the provisions set out below.

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

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

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

(i) violating B's dignity, or

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

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

(a) the perception of B;

(b) the other circumstances of the case;

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

99. The Equality and Human Rights Commission: Code of Practice on Employment (2011) provides the guidance set out below.

"*7.7. Unwanted conduct covers a range of behaviour, including spoken or written words or imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.*

7.8 The word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'. 'Unwanted' does not meant that express objection has to be made

to the conduct before it is deemed to be unwanted. A serious one-off incident can also amount to harassment".

100. Guidance as to the approach to be adopted by the Tribunal in considering whether the conduct complained of was related to the relevant protected characteristic was provided by the Employment Appeal Tribunal in the case of *Tees, Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495, EAT*, at paragraphs 24 and 25, as below.

"*However … the broad nature of the 'related to' concept means that a finding about what is called the motivation of the individual concerned is not the necessary or only possible route to the conclusion that an individual's conduct was related to the characteristic in question….*

Nevertheless, there must … still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be".

101. In order to assess the "*purpose*" of the alleged conduct, the Tribunal must consider the alleged harasser's motive or intention. When considering the "*effect*" of the alleged conduct, the Tribunal needs to analyse the three specific factors set out in Equality Act 2010 section 26(4)(a) to (c). This has both a subjective and an objective aspect. As to the former, the Claimant must have felt or perceived his or her dignity to have been violated or an adverse environment to have been created. As to the latter, if the Claimant had experienced those feelings or perceptions, the Tribunal must consider if it was reasonable for him or her to do so. If a Claimant is unreasonably prone to take offence, there will have been no harassment within the meaning of the section (see *Richmond Pharmacology v Dhaliwal [2009] IRLR 336*, at paragraph 15).

102. In *Richmond Pharmacology v Dhaliwal [2009] IRLR 336, EAT,* a case involving alleged harassment related to race, the Employment Appeal Tribunal provided wider guidance to the effect that whether it was reasonable for a Claimant to regard treatment as amounting to treatment that violates his or her dignity or has an intimidating, hostile, degrading, humiliating or offensive environment is a matter for factual assessment of the Tribunal

having regard to all the relevant circumstances, including the context. The EAT provided the further guidance set out below.

"*Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and Tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct … it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase*".

103. In *Land Registry v Grant [2011] ICR 1390, CA*, in speaking of the statutory language of Equality Act 2010 section 26(1), Elias LJ provided the guidance set out below.

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

104. The Tribunal also notes the commentary in '*Harvey on Industrial Relations and Employment Law*' at paragraph L426.01 as set out below.

"*Even under the broader definition of 'related to', misbehaviour at work - even when it might properly be described as brutal or malicious - will not necessarily fall into the camp of unlawful harassment; it must still be 'related to' a relevant protected characteristic. Ultimately, the protection is against harassment that is, itself, a form of discrimination. Bullying is, of itself, not discrimination, except in the unhelpful sense that involves treating some individuals differently to others. The intention of the legislation is to give effect to the principle of equality. It is no part of the principle of equality that antisocial behaviour in the workplace per se should be punished, however unacceptable that behaviour might be in itself*".

Conclusions

105. Before looking at the specific incidents giving rise to individual complaints, the Tribunal should record that, in considering the various complaints as complaints of harassment related to sex and / or race, we concluded that, based on our findings of fact in relation to each such incident or act about which complaint was made, there were no features of the relevant factual matrix which could properly lead the Tribunal to the conclusion that the conduct in question was related to the particular characteristic in question.

106. Based on our findings of fact, although aspects of the conduct in issue could be said to have been unwanted in the sense of being unwelcome or uninvited, we did not think that it otherwise came within the definition of Equality Act 2010 section 26(1)(b) in terms of its purpose or effect, with the exception of the way in which the Respondent gave effect to the dismissal by escorting the Claimant off the premises which the Claimant found humiliating. We accepted

that the purpose of escorting the Claimant off the premises was directed at the needs of the organisation, and the particular need that data security should not be compromised, rather than humiliating him, but that was its effect. However, any such conduct was not related to his race or sex.

107. Otherwise, in so far as the Claimant's evidence was to the effect that he felt or perceived his dignity to have been violated or an adverse environment to have been created, the Tribunal did not consider that it was reasonable for him to have done so. As such, applying *Richmond Pharmacology v Dhaliwal [2009]*, the Tribunal considered that the Claimant was unreasonably prone to take offence.

108. We turn to look at the individual complaints of discrimination and harassment made by the Claimant.

(a) Georgia Giles repeated intimidating remarks suggesting ownership and dominance over the Claimant in the workplace. These remarks were delivered in a threatening and intimidating tone which likened the Claimant's position to that of a subordinate or 'slave'.

109. Based on our findings of fact, the Tribunal did not accept the premise on which this complaint was being put forward through the wording of the Claimant's commentary which had been included within the List of Issues. The Tribunal was not satisfied that the remarks of Georgia Giles could be said to be threatening or intimidating. In his evidence, the Claimant was not really able to articulate what it was about the tone or manner or conduct or body language of Georgia Giles which might have been said to be intimidating or threatening. The use of these words by the Claimant appeared to the Tribunal to be misplaced. Even any element of sarcasm, which has subsequently been identified as involved in asking the Claimant whether there was anything interesting in the news, was fairly gentle and innocuous. Georgia Giles was effectively seeking to offset the undoubted need to deal with the Claimant's failure to start work on time and work when he had arrived through the use of wry humour, as also in the reference to the reason for AQA paying him. This was not suggesting ownership or dominance over the Claimant or likening his position to that of a subordinate or slave. By definition, the reference to the Respondent paying his wages was a reference to the fact that he was a paid employee with the other side of the wage / work bargain obviously being the need to work.

110. The Claimant has effectively sought to suggest that the response of Georgia Giles was the result of stereotypical assumptions about South Asians and men (and South Asian men in particular). This appeared to the Tribunal to be an interpretation placed on events by the Claimant somewhat after the event. It was effectively inviting the Tribunal to make assumptions about the conduct of Georgia Giles for which there was no evidential basis. The Tribunal was

not satisfied that the Claimant had proved facts from which the Tribunal could conclude that there was a difference in treatment between the way Georgia Giles treated the Claimant and the way in which she would have treated a relevant hypothetical comparator, and / or that any such difference in treatment was on the grounds of race and/or sex .

111. Further or alternatively, having heard and accepted the evidence of Georgia Giles, the Tribunal was satisfied that the reason for her treatment of the Claimant, through the remarks made, was because of the lack of application to work which he had demonstrated, and that any relevant hypothetical comparator would not have been treated more favourably.

112. The Tribunal can accept that the conduct involved in pointing out to the Claimant that he was not getting on with his work may well have been unwanted conduct from the Claimant's point of view, but the Tribunal was not satisfied that this could seriously have been said to have created an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. In so far as the Claimant has sought to suggest that this was how he felt about any such treatment, the Tribunal was not satisfied that, having regard to the circumstances and context, as set out in our findings of fact, it was reasonable for the conduct to have that effect. If the Claimant had thought about it rationally, he would have appreciated that Georgia Giles was taking responsibility, as required by her role, for a situation created by his failure to arrive on time and apply himself to his work apply himself to his work.

113. In any event, any remarks involved in the Claimant's treatment by Georgia Giles were not related to his race and / or sex but were related to issues in respect of his work, such as being late and not getting on with his work.

(b) The Claimant was the only individual conspicuously excluded from a meeting to discuss promotion opportunities within the organisation.

114. At the end of August 2023, there seems to have been some kind of informal process or discussions, more on an individual basis than by way of any team meeting, to gauge interest and / or identify suitable candidates to replace a Lead Administrator. Having regard to the fact that, by this point in time, Ilyas Abdullahi had had to speak to the Claimant twice already regarding incidents in the workplace, it was unlikely that he was going to be someone identified as being in the running to replace the Lead Administrator, although Ilyas Abdullahi suggested that he had spoken to all of the members of the team, on a one-to-one basis, to make them aware of the opportunity. Ultimately it appears that only three of the team members were being considered for this position. To that extent, the Claimant was excluded from progression. The three individuals who had been identified as possible candidates were Aiden Barker, Jennifer Anokwu and Hannah Bismillah. Properly analysed, these three candidates were not valid actual comparators. Their circumstances

were different from the Claimant's in a material respect, namely that they were considered to have performed sufficiently well and shown enough promise so as to be thought of as suitable candidates. However, on any view, the preferred candidates were of a range of protected characteristics in terms of race and / or sex. In so far as the Claimant was suggesting that any less favourable treatment was on the grounds of his sex, it is to be noted that one of the preferred candidates shared this protected characteristic with him. In so far as he was suggesting that any less favourable treatment was on the grounds of his race as someone who was South Asian, another one of the preferred candidates shared this protected characteristic with him. In the circumstances, the Tribunal was not satisfied that the Claimant had satisfied the initial burden of showing facts from which the Tribunal could have concluded that any less favourable treatment was on the grounds of sex and / or race.

115. In any event, the Tribunal accepted the explanation put forward by the Respondent as to the candidates concerned being identified as preferred candidates on the basis of the qualities which they had demonstrated in the course of their employment with the Respondent rather than on the grounds of their sex or race.

116. Further, this treatment of the Claimant did not amount to harassment. Based on our findings of fact, the Tribunal was not satisfied that this was related to race and / or sex. The purpose or effect of the treatment was not such as to cause the treatment to come within the definition of harassment in Equality Act 2010 section 26(1)(b). Properly analysed, the Respondent had proceeded on a rational basis for the purposes of considering fulfilling a potential vacancy.

(c) The Claimant was accused of displaying poor work ethics and lacking commitment to the Respondent; purportedly due to his sex.

117. The Tribunal rejected this complaint. Based on our findings of fact, the Tribunal was not satisfied that words to this effect were said, or that Georgia Giles conveyed any such impression through her body language or tone. The complaint relates to an incident where the Claimant's team were being given the opportunity to work overtime. This was available on the basis of team members volunteering. There was no evidence of any pressure to volunteer. Georgia Giles was aware of the Claimant's family circumstances. No adverse view was formed the Claimant as a result of those family circumstances causing him not to want to volunteer for overtime.

(d) Ying Dong misinterpreted that the Claimant's "banter" as serious discourse.

118. The Tribunal preferred the evidence of Ying Dong to that of the Claimant as to the words used by the Claimant which were to the effect that if he finished

the work allocated, he would be punished by being allocated additional tasks. Ying Dong accepted in her evidence the possibility that the Claimant's comments may have been intended by him to be humorous, so that the possibility existed that this attempt at humour had been misinterpreted, but she did not think that she had done so at the time. The Tribunal was not satisfied that the Claimant had proved facts from which the Tribunal could conclude that the Claimant was treated less favourably than someone in the same material circumstances of a different sex and/or race. The Claimant's argument seemed to be that any humour may have been a product of culture, so that misinterpreting the humour involved treating an individual less favourably on the grounds of race than an individual whose attempt at humour was recognised as humour. In any event, the Tribunal was not satisfied that this was an exchange which had been misinterpreted as a result of cultural differences . The risk with any humour is that it may not be understood. Thus, if an individual says something, there is the risk of whatever has been said being taken seriously, even if that was not intended. In any event, even if, for the sake of argument, what was said was intended to be humorous, it was an unhelpful attempt at humour in the circumstances. This was a point in time when Ying Dong was having to co-ordinate a large number of individuals in getting an urgent task completed. In the circumstances, making the comments which the Claimant made, suggesting that he was disincentivised from getting on with work, in the team setting in which the comments were made, was not conducive to getting the work done. The Tribunal concluded that Ying Dong was entitled to view the comments as unhelpful and had similar comments been made by somebody of a different sex and / or race to the Claimant, the Tribunal was satisfied that she would have responded in a similar way.

119. Further or alternatively, the Tribunal accepted her explanation for the treatment of the Claimant as having nothing to do with his sex or race. The treatment of the Claimant was because she genuinely viewed his comments as childish and unprofessional.

120. Similarly, the Tribunal was satisfied that her response to the Claimant was in no way related to his sex or race. Alternatively, the Tribunal was satisfied that the comments did not have the purpose or effect required by Equality Act 2010 section 26(1)(b). Moreover, there was no real evidence of any reaction on the part of the Claimant at the time and the Tribunal viewed any subsequent suggestion that the response of Ying Dong amounted to harassment as an overreaction.

(e) Wayne trusted the Respondent's female managers.

121. The premise behind this complaint seemed to be that Ryan Wellings was more receptive to the Claimant's managers because they were female. The Tribunal considered that any such premise was unfounded. Whilst it was

certainly the case that Ryan Wellings proceeded on the basis that he trusted the reports made to him by Georgia Giles and Ying Dong, it was also clearly the case that he was also proceeding on the basis of adverse feedback from a male manager namely Ilyas Abdullahi. Similarly, in as far as the Claimant was suggesting that he had been treated less favourably than female comparators, namely Georgia Giles and Ying Dong, in that their version of events had been sought and accepted, and his had not, the Tribunal was not satisfied that this was on the grounds of sex or race. The fact was that Ying Dong shared the same protected characteristic of race relied upon by the Claimant in that she was also South Asian, whilst Ilyas Abdullahi, whose version of events was also accepted by Ryan Wellings, was of the same protected characteristic as the Claimant in terms of sex. In any event, the actual comparators relied upon by the Claimant were not valid comparators, in that their circumstances were materially different. They were in leadership roles with responsibility to feed back to Ryan Wellings regarding any issues of concern noted in relation to employees such as the Claimant. In relation to any hypothetical comparator, the Tribunal was not satisfied that there was any basis for concluding a hypothetical comparator whose circumstances were the same as the Claimant's, save in relation to the relevant protected characteristic, would have been treated any differently.

122. Thus, the Tribunal was not satisfied that facts had been proven by the Claimant from which the Tribunal could conclude that the Claimant was treated less favourably on the grounds of sex and / or race. In any event, the Tribunal accepted the explanation of Ryan Wellings for his treatment of the Claimant in accepting reports which were being made to him by Ying Dong and Georgia Giles, namely that these were individuals whose reports he trusted. The reason for doing so was because of that trust, derived from his experience working with them. It had nothing to do with their gender.

123. Similarly, in so far as this complaint involved complaining that the conduct in issue amounted to harassment, the Tribunal was not satisfied that the treatment of the Claimant by Ryan Wellings accepting what had been reported about him was related to sex and/or race. Nor was the Tribunal satisfied that any such conduct had the purpose or effect required by Equality Act 2010 section 26. There was certainly an argument for dealing with the situation on 7 September 2023 by seeking an explanation from the Claimant before making any decision, but the fact of the Claimant being in a probationary period ultimately meant that it was open to the Respondent to form a view as to his suitability without asking the Claimant to fact check the information relied upon in forming that view.

(f) The Claimant was made to feel like an immigrant.

124. This was a complaint which lacked specificity. In fairness to the Claimant, it had been extracted from the Claimant's Further Information and appeared in

the List of Issues out of context. At paragraph 13 of the Claimant's Further Information, he had stated that the "*way justice was carried* (out) *made me feel that I was an immigrant,* (I) *realised how not being white, and being an expressive man disadvantages you at every step*". In that context, the wording used by the Claimant can either be seen as a complaint regarding the way in which he was dismissed made him feel, in terms of not being able to provide his version of events, or the way in which his treatment by the Respondent generally made him feel. The focus here appeared to be on discrimination on the grounds of race rather than discrimination on the grounds of sex.

125. However, the Tribunal was satisfied that the decision to deal with the situation by way of a summary dismissal was not on the grounds of the Claimant's race (or sex). It was because he was still subject to a probationary period and had conducted himself in such a way as to cause the view to be formed that he was unsuitable for continued employment by the Respondent. If another individual of a different race and / or sex from the Claimant, who was also within his or her probationary period, had conducted himself or herself in the same way as the Claimant, the Tribunal was satisfied that they would have been treated in the same way. The Claimant had not fulfilled any initial burden of proof by proving facts from which the Tribunal could conclude otherwise.

126. Further or alternatively, the Tribunal was satisfied as to the explanation provided by Ryan Wellings for his treatment of the Claimant in dismissing the Claimant on a summary basis, namely the view that he had formed as to the Claimant's suitability in the light of the reports made about the Claimant, so that race and / or sex was not the reason for any difference in treatment.

127. In as far as the Claimant was complaining more generally about his treatment by the Respondent as amounting to race discrimination, the Tribunal did take a step back and looked at the relevant factual matrix as a whole, and in doing so the Tribunal was not satisfied that the Claimant had proved facts from which the Tribunal could conclude that his treatment, as a whole, involved him being treated less favourably on the grounds of his race (or sex).

128. In terms of harassment, this particular complaint does not specifically identify the conduct by which the Claimant was "made to feel like an immigrant". In so far as it was the summary nature of the disciplinary process, the Tribunal can accept that the Claimant would have found it to have been humiliating being dismissed in the way that he was, in particular when this was compounded by being escorted from the premises. However, this was not related to his race and / or sex. Further or alternatively, looking at the Claimant's treatment as a whole, the Tribunal was not satisfied that any such treatment was related to the Claimant's race and / or sex .

(g) The decision as to dismissal was made without taking the Claimant's version of events into account (whereas the version of events of Georgia Giles and Ying Dong).

129. This additional complaint was formulated by the Tribunal to reflect the reliance which the Claimant was seeking to place upon Georgia Giles and Ying Dong as actual comparators who had been treated more favourably than him.

130. However, on further analysis, the Tribunal is satisfied that this complaint is effectively a reworded version of the complaint made at (e) in respect of Ryan Wellings trusting Georgia Giles and Ying Dong rather than the Claimant, with the specific focus being on Ryan Wellings doing so in arriving at the decision to dismiss. It follows that the reasoning set out by the Tribunal in dealing with the complaint at (e) applies in relation to the complaint at (g) as well, and it is dismissed on the same basis.

(h) Dismissing the Claimant.

131. Again, in looking at the complaints set out as (e) and (f) the Tribunal has already given detailed consideration to the issue as to whether the process, reasoning, decision-making and implementation involved in dismissing the Claimant was discriminatory. Based on that reasoning, the Tribunal is satisfied that the Claimant has not proved facts from which the Tribunal could conclude that, in dismissing him, the Respondent treated him less favourably than a hypothetical comparator, in the same material circumstances but of a different sex and / or race, would have been treated.

132. In arriving at this conclusion, the Tribunal recognises that there were aspects to the Claimant's dismissal which understandably caused him to be aggrieved and / or might be viewed as unsatisfactory. He was dismissed with no meaningful form of process being followed. He did not have an opportunity to meet or respond to any case which might have existed for dismissing him. The dismissal was enacted as a summary dismissal when, properly viewed, it was a decision based on his lack of suitability and / or conduct which was not gross misconduct. The Claimant was then escorted off the premises in full view of other employees. Later on, within the Tribunal proceedings, there was a misconceived attempt to justify the dismissal as having been on the grounds of gross misconduct. The Tribunal was satisfied that the grounds for dismissing the Claimant did not amount to gross misconduct. Nevertheless, the decision to dismiss the Claimant was a decision which the Respondent was entitled to make, based on the fact that the Claimant was still within his probationary period and based on the way in which the Claimant had conducted and applied himself within the short period of his employment which had caused a negative view to be formed as to his suitability for continued employment.

133. For completeness, by reason of the provisions of Equality Act 2010 section 14 not having come into force, we were not satisfied that it was open to the Clamant to bring any complaint of discrimination on the grounds of dual characteristics or that any such complaint was well-founded.

Outcome

134. It follows that the outcome is that the Tribunal must dismiss the complaints of the Claimant.

Approved by
Employment Judge Kenward
Dated 12 June 2025

Sent to the parties on
Date: 16 July 2025

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For the Tribunal office