



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Hameed

**Respondents:** Newday Cards Limited (1)

Ms S Allison (2)

**Heard:** Leeds **On:** 26 June 2025

**Before:**

Employment Judge JM Wade

## Appearances

For the claimant: Mr O Ogunwanyo, legal consultant

For the respondents: Mr H Zovidavi, counsel

## JUDGMENT

- 1 The claimant's complaints of direct discrimination because of race are dismissed.
- 2 The claimant's complaint of victimisation succeeds to the extent set out below.

## REASONS

### Introduction

- 1 The claimant worked for the respondent credit card business. He has now left its employment. Dismissal/resignation was not part of his allegations in this case and there was no application to amend. The claimant identifies as of Pakistani nationality and he brought very clear allegations of direct discrimination and victimisation as follows:

*"10 The Claimant relies on the following less favourable treatments:*

*a. Intense scrutiny and undue man-management by Sarah Alison including:*

*i. Requesting a colleague to spy on the Claimant to determine the time in which he logged off in May 2023;*

*ii. An outburst by Sarah Alison on 2/2/24 berating the Claimant about his working patterns and an incident of lateness by two minutes;*

*iii. Picking on the Claimant and marking him negatively for allegedly*

*preparing low-quality slides relative to his colleagues despite that the Claimant always worked within teams and his teammates were not subjected to similar assessments;*

*iv. Sarah Alison's decision to reject the Claimant's request for a thirty minute holiday on 21/2/2024.*

*b. Sarah Alison's decision to refuse the Claimant's request for a thirty minute lunch break and insist on an hour of unpaid lunch break.*

*c. Contrary to its policies, the Respondent's failure to initiate care calls and regular absence review meetings during his period of sickness absence between March 2024 - August 2024.*

*11. The Claimant would rely on the following comparators:*

*a. Rebecca Marshall;*

*b. Daniel [Hayward];*

*c. Todd Watkins;*

*d. Other teammates of the Claimant in the relevant time;*

*e. A hypothetical comparator.”*

- 2 He also presented a victimisation complaint relying on allegation c) above and a grievance and grievance appeal as the protected acts.
- 3 A case management discussion and subsequent agreed list of issues identified six clear factual allegations as the totality of the detriments alleged and they appear as headings below. The parties agreed that the Tribunal must find facts – did these things happen – and then decide whether they amounted to less favourable treatment because of race, and, in the case of the last allegation, detriment, because of the grievance/appeal.
- 4 I had an agreed hearing file and witness statements were taken as read. I heard the parties' cases put to the claimant, Ms Allison the second respondent, Ms Sumner, her manager, and Ms Fisher, who decided the grievance, by the respective advocates. I heard oral submissions at the close of the evidence.

### The Law

- 5 Section 39(2)(d) of the Equality Act 2010 (from which all provisions below are taken) prohibits an employer discriminating against an employee by subjecting him to “any other detriment”. Any other detriment means objectively viewed unfavourable treatment, rather than a subjective and unjustified sense of grievance.
- 6 Section 39(2) describes specific types of detrimental treatment at work: terms and conditions of employment, access to opportunities and benefits, and dismissal. Section 39(2)(d) is the catch all.
- 7 Section 39 (4) similarly provides that an employer must not victimise an employee.

- 8 Race is a protected characteristic within Section 4 and “race” includes nationality.
- 9 Section 13 relevantly provides that a person discriminates against another “if, because of a protected characteristic, A treats B less favourably than A treats or would treat others”.
- 10 Section 27 relevantly provides that a person victimises another person if “A subjects B to a detriment because ...(a) B does a protected act”. It was not in dispute in this case that by raising a grievance on 21 February 2024 and a grievance appeal on 25 April 2024, both alleging race discrimination, the claimant had done protected acts.
- 11 This was a case in which the claimant felt discriminated against. There was no communication which had direct racial content. He made a subject access request for communications (including Teams chats) where he was mentioned. He invited me to infer the reason for less favourable treatment – if I found less favourable treatment, was his race.
- 12 Section 136 relevantly provides:-  
*(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.*
- 13 This is a two stage process: it is for the claimant to prove facts from which the Tribunal could conclude an act of discrimination has occurred before the respondent is called to provide an explanation. In examining those primary facts, poor treatment is not enough. See in particular Madarassy v Numora International Plc [2007] IRLR 246 para 56, per Mummery LJ: “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”.
- 14 The well established principles relating to direct discrimination are as follows. If the tribunal is satisfied that the prohibited characteristic was one of the reasons for the treatment in question, this is sufficient to establish direct discrimination. It need not be the sole or even the main reason for that treatment; it is sufficient that it had a significant influence on the outcome: Lord Nichols in **Nagarajan v London Regional Transport [2000] 1AC501** House of Lords at 512H to 513B. Significant in this context means not trivial. Where an actual comparator is relied upon, there must be no material difference between the circumstances relating to each case.
- 15 Direct evidence of discrimination is rare and frequently tribunals have to infer discrimination from all the material facts: Elias J (President) in Ladell: “Where the applicant has proved facts from which inferences could be drawn that the employer treated the applicant less favourably [on the prohibited ground], then the burden moves to the employer” ... then the second stage is engaged. At that

stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on a prohibited ground. If he fails to establish that the tribunal must find that there is discrimination”.

- 16 Underhill J in Martin v Devonshire Solicitors [2011] ICR 352, para 37 said: “Tribunals will generally not go far wrong if they ask the question suggested by Lord Nichols in Nagarajan, namely whether the prescribed ground or protected act had a significant influence on the outcome”. In Igen Limited v Wong [2005] IRLR 258CA the guidance issued in Barton in respect of sex discrimination cases and was said to apply and approved in relation to race and disability discrimination.

## Findings of Fact

### Background

- 17 The respondent’s business includes operating credit cards for high street stores. It operates a customer contact centre and the claimant joined that part of the business in February 2018 as a team leader. He subsequently became a manager. He was encouraged by his manager to further develop his career.
- 18 In 2023 the claimant applied to join the continuous improvement part of the respondent. He had been seeking promotion to a project management role. He was unsuccessful in that application, but then applied to the vacancy the successful candidate freed up. That was as a “specialist” in the business improvement team, reporting to Ms Allison. The role had no line management responsibilities for people, and he knew it would be a learning curve to operate in a very different, specialist role. It required the successful candidate to lead and deliver change requests for different operations, collaborating with internal and external people, considering change impact assessments and a raft of other information.
- 19 There were internal and external candidates for the role. Ms Allison ultimately decided to appoint the claimant, and she sought a pay rise for him. They exchanged warm messages in advance of him joining the team.
- 20 At the time, in spring 2023, six business improvement specialists were managed by two managers, Ms Allison and Ms Crayston. There was racial diversity in the specialists, but the managers were both White British. The teams were split across London and Leeds, and, with the managers, comprised eight people.
- 21 The claimant assumed the hours for the post were 9 to 5 – he had previously worked earlier and later hours in the contact centre. The standard hours for business improvement were 9 to 5.30 with an hour for lunch. Ms Allison told him by email: “we are very flexible as a team so if you are moved to the standard 37.5 hour contract wording and need to start early/late finish early/late we are totally open to this as long as you work your diary around this. Not sure if People Team spoke to you about this or what working they put in your offer letter.”

- 22 The claimant's practice was to put "good morning" or similar in his team's chat when he started work in the morning, and to put "good evening" or "bye" or similar to denote he was finishing work at the end of the day. Everyone could see when he started and finished work.

*Allegation 1: In or around May 2023 Ms Allison requesting a colleague to spy on the Claimant to determine the time he logged off from work each day relying on the email at page 563;*

- 23 The message relied on by the claimant was not an email, it was part of a teams chat, taken out of context. The circumstances are as follows.
- 24 The claimant was unwell in the first week of his new post, but Ms Allison was not concerned about that because she was very busy - she would have had to make time to work with him on induction and it suited her that he was not there that week – there was nothing sinister about a message she sent to Ms Crayston to that effect.
- 25 Within a week of the claimant starting, he had asked about finishing early on a particular day and Ms Allison was true to her word, saying "don't worry about making it up now – swings and roundabouts."
- 26 On 17 May 2023 Ms Crayston messaged Ms Allison to ask her, if she was in the office, "to prod someone to respond to Mandy" (Mandy was Ms Sumner, their respective manager).
- 27 The respondent had a working from home policy which enabled colleagues to spend 50% of their working time at home – Ms Allison expected two days one week, and three days the next, as a pattern for office attendance. Ms Sumner also operated flexibility across her teams and was content provided two days in the office were regularly achieved by people.
- 28 Ms Crayston observed (there being no one in the office available to respond to Ms Sumner) - it felt as if "everyone finishes at 5 now". She further observed, although the office hours were 9 to 5.30 - "but Saj [the claimant] logs off at 5 every day".
- 29 That was true because the claimant believed (and Ms Allison had not corrected that belief) that if he took a shorter lunch break he was still completing his working hours by finishing at 5. Ms Allison told Ms Crayston she was not tracking his hours, but had noticed he was not logged on at 8am - Ms Crayston had observed his diary recorded a thirty minute lunch every day and he often ate at his desk.
- 30 Ms Crayston's view at that time was that "people were not putting in a shift", and the managers discussed reminding people of their hours in one to one discussions. Ms Allison reported she had also "had words today with one of the "offenders" - not about this - but keeping tabs on things.

- 31 There appeared no targeted animosity or ill will in those exchanges – they were observations by managers on the efforts and working hours of their team. Pre covid, such observations may have happened over a coffee, but like much communication, it had moved on line. At times (subsequent disclosure revealed), the way in which both Ms Crayston and Ms Allison discussed matters in their online chats denoted a lack of respect for colleagues.
- 32 In contrast, around this time the claimant publicly thanked Ms Allison for her support and Ms Marshall, his colleague, for her help in his new role. Those warm words he described as “playing the game”, which he had been advised was necessary for career development – in short, ingratiate yourself with your boss and colleagues if you want to succeed.
- 33 The second working week the claimant notified he was working from home because of a plumbing issue, and Ms Allison warmly asked him just to do more time in the office the following week.
- 34 On a different topic she privately observed to Ms Crayston she needed not to be letting him coast – nothing untoward about that comment, it was a flippant observation about making sure the claimant had enough to do, conscious the work being allocated to him gradually did not have immediate action required.
- 35 On 26 May there was a mistake made by the claimant in relation to a change in process going live without sufficient consultation with a supplier – the issue was resolved and no harm done in the end, although there was something of a panic, and Ms Allison described it to him as a lucky escape. In their one to one they discussed attention to detail and Ms Allison considered he needed more support from his colleague who was mentoring him.
- 36 Ms Allison reported that issue to Ms Sumner in her own one to one meeting – she summarised “[the claimant] not performing brilliantly”. On the day of the mistake there was also online chat between Ms Allison and Ms Crayston, where Ms Crayston appears to be unimpressed with the claimant’s mistake and they again share reflections.
- 37 In June, the claimant’s colleague, Ms Marshall, was complaining to Ms Allison because the claimant had made a couple of mistakes, and another colleague considered he should have had his out of office on. Ms Allison considered Ms Marshall was overreacting and Ms Allison cautioned her about that - and was supportive of the claimant. Again Ms Allison shared those details with Ms Crayston, saying she was going to “throttle Becky in a minute”.
- 38 For completeness, on 29 November 2023 Ms Allison asked “is Saj at this desk please? He’s showing off line”, to which Ms Marshall replied “no not been here for a while” and then “he’s just coming back” a few minutes later.
- 39 In summary:
- 39.1. The team was busy;
  - 39.2. The managers were prepared to be flexible - and Ms Alison was initially flexible with the claimant - provided work was done;

- 39.3. A degree of trust was required when colleagues worked partly from home and trust that work was being done built up over time;
- 39.4. Online teams “chat” was commonplace, replacing in person communication and observation amongst colleagues when some were working remotely;
- 39.5. In May 2023 Ms Crayston, felt that colleagues were not putting in sufficient time and that concern was not limited to the claimant;
- 39.6. Ms Allison had some concerns about the claimant’s start, both in attention to detail and days spent in the office.
- 39.7. Ms Allison did not ask anyone to spy on the claimant to determine his log off time – she did not need to – it was utterly transparent when the claimant was finishing work each day.
- 39.8. Ms Allison did enquire after his whereabouts in November 2023, but that was innocuous in the circumstances at the time. She also commented later that she “would monitor” but that, in context, was simply about the need to carefully manage his workload when allocating new work – again there was nothing untoward about the “monitor” message.

*Allegation 2: on 20 September 2023 Ms Allison refusing the claimant’s request for a 30 minute unpaid lunch break and insisting that he take a one hour unpaid lunch break instead in accordance with the existing terms of his contract.*

- 40 Around the end of June 2023 the claimant had completed his own personal development plan setting out how he would achieve his induction and learning objectives, and he noted he was progressing. He took on an increasing workload of change requests and was making progress. He had one to one meetings or workload catch ups, typically with Ms Allison, on a regular basis.
- 41 In July 2023 a new team member was recruited to work in London, Mr Watkins, and the claimant provided feedback to Ms Crayston, Mr Watkins’ manager, on how the induction programme Ms Allison had put together for him, could be improved. Ms Crayston responded by a “heart” emoji - warmly thanking him for that. He further commented that he did not get any value from attending meetings (when things went over his head) at the beginning of his induction. Ms Crayston then forwarded his thoughts to Ms Allison and Ms Sumner with a smiley face and “Saj’s nuggets of wisdom coming in”.
- 42 I did not hear from Ms Crayston and she was not interviewed in a later grievance investigation. This comment was to forward on the claimant’s comments for colleagues’ information – it indicated some doubt about the value of that feedback, but there was no reaction from Ms Allison or Ms Sumner, or joining in to denigrate the claimant, and I accept Ms Allison’s evidence that the feedback was respected as valuable and Mr Watkins’ induction was adjusted.
- 43 In August 2023 the claimant discussed informally adjusting his hours for family reasons. His evidence that Ms Allison was disrespectful and belittling in comparison with a black male colleague was not put to her on behalf of the claimant, and I make no finding about it. Even if true, it could not reasonably be a basis to infer race played any part in her thoughts, but simply she was dismissive of the needs of a secondary school age child versus primary age or younger children.

- 44 Ms Allison was relatively new to people management in this team, and she consulted Human Resources about the claimant changing his hours. Ms Marshall (white British) worked four long days (8 till 5:30), via an approved flexible working request. Ms Allison was advised to do the same for the claimant – formalise the working hours via a flexible working request - bearing in mind she had asked the claimant when the job was offered whether he wished adjusted hours, but he had not wished to do so at that time.
- 45 The claimant then presented his request formally - and after some negotiation – he was asked to re-submit it - Ms Allison granted an 8am to 4.30 pm day on two days (with 9am - 5.30pm on three days), but refused to permit 8am till 4pm or 9am to 5pm. Even if the claimant took a short lunch, he told her he also took two 15 minute cigarette breaks as well as a thirty minute lunches. In all the context above, she wanted to maintain core hours cover to 5.30pm on the standard days and that was reasonable and generates no inference of any racial treatment.
- 46 The claimant's case was that Ms Marshall, also a smoker, took cigarette and other breaks when she liked, and he should have been permitted less break time to enable an earlier finish at 5 on three days. He also observed other white colleagues taking breaks for hot drinks and other reasons during the day as they saw fit, which he did not.
- 47 Ms Marshall's typical attendance on her office days was around half an hour before her start time, typically leaving fifteen to twenty minutes after her 5.30 finish time. The claimant's typical similar attendance was around ten minutes before his start time and five to ten minutes past his finish time. In simple terms, he operated more precisely around his working hours and that was observed by Ms Allison, Ms Marshall and others.
- 48 The claimant has not established less favourable treatment in relation to this allegation. He, like Ms Marshall, was required to formalise hours which were different to the core office hours of 9 to 5.30 in a formal flexible working arrangement. Like Ms Marshall he was required to work until 5.30 (save that on two days it was a 4.30 finish for him because he was permitted an 8 am start). There was no basis to conclude that other colleagues who were not Pakistani would have been allowed to change their core contractual hours by agreeing not to avail themselves of an hour's worth of breaks (whenever and for whatever purpose taken) within those core hours.

End of Year Appraisal score

- 49 In August 2023 the claimant had taken on responsibility for a monthly "slide deck" of power point slides which was presented to senior management. It was a task he was keen to do. Initially the task came directly from Ms Sumner, and he developed it and provided it back to her. She found she was spending too much time providing her input or corrections, and she then asked Ms Allison and Ms Crayston to quality assure the deck (for errors) before it came to her.
- 50 The claimant also tore his calf in August 2023 and had some absence, about which he felt Ms Allison was unsympathetic and didn't believe him, such that he

sent her a photograph of his clinic attendance. She replied, “oh dear, hope u get sorted” and there were no chat messages from that time indicating she had not considered the injury genuine (and likely there would have been given the nature of the chats with Ms Crayston generally).

- 51 There was time pressure for the production of the slide deck, and each month from September 2023 to December 2023 team members had to feed their information into the template directly – it was around 40 pages. Sometimes they made errors but the claimant was expected to identify and correct those. Ms Allison and Ms Crayston engaged in flippant remarks to the effect that they would be unhappy if they received the pack beyond the deadline set and Ms Allison gave feedback to the claimant about his work on that. She considered it had improved over those months.
- 52 In November Ms Allison complained to Ms Crayston that the claimant was still not doing his 50% office time, but only two days per week. She also reported that Ms Sumner had told her to “pick her battles”, but it nonetheless “grated”.
- 53 Meanwhile the continuous improvement team remained very busy, with the claimant completing a number of projects. He had raised with Ms Allison that one project was hindered by the performance of someone in another team. He met the leader of that team – Ms Allison encouraging him to be more assertive – Ms Allison did not attend that meeting with him, having originally agreed to do so. The feedback from that senior leader was that he had a “blinkered approach, did not listen, and passed on information which was not correct”.
- 54 The respondent operated an end of year appraisal system which the claimant well understood. The earnings related purpose of the appraisal was to distribute a bonus pool of up to 7.5% of earnings. The four ratings were: brilliant, strong, good, and poor. A poor rating resulted in a “manager led development plan” to improve performance.
- 55 The claimant provided evidence in his appraisal and sought a “strong” rating. Ms Allison considered that he would not achieve that and attendance at the office played its part in that (which she chatted to Ms Crayston about), but she considered the improvement meant he should receive a “good” rating.
- 56 In November Ms Allison presented her team’s ratings for calibration to Ms Sumner, who had received the feedback from the senior leader, and had directly experienced the claimant’s work on the slide decks which she considered poor. She had listened to Ms Allison’s feedback about working time in the office and so on. Ms Sumner considered the claimant was a “poor” in comparison with colleagues, but she was persuaded by Ms Allison to put forward “good” for the next level of calibration.
- 57 In December the claimant’s black male colleague was made redundant as part of a restructuring. The selection was not carried out by Ms Allison or Ms Sumner. Criteria had been set by others that anyone who had been subject to a performance development plan in the previous 12 months was to be at risk, in a widespread reduction in staffing levels. Confidential redundancy packages were

to be given. Such an approach had not been taken before, to Ms Sumner's knowledge and the atmosphere was difficult.

- 58 There was a leaving event for that colleague and afterwards, the claimant (who had been told by a different contact about the redundancy packages being given) talked about the packages and the approach. Ms Allison had told him to be quiet and that the matters were private, or words to that effect, not least because his contact's package could be put at risk. She later described to Ms Crayston that things had become a little "moaning" later and she had "told the claimant to shut up" - that was shorthand for the conversation they had.
- 59 On 11 January 2025 the claimant asked Ms Allison if he could leave at 4 (instead of 4.30pm) - he had cancelled holiday to work late the day before because a stakeholder had wanted to meet. Ms Allison refused that and "vented" at Ms Crayston online to the effect that the claimant already had a flexible working arrangement (to finish at 4.30) and he should stick to it. She would tell him this should be the last time and at his end of year appraisal she would tell him 30 mins "lunch & fag breaks does not mean he can finish 30 mins early 3 days a week if wants higher rating".
- 60 On 16 January 2025 Ms Sumner met three other senior leaders to calibrate more widely performance ratings across departments. One of those people was the senior leader who had given negative feedback about the claimant. The result of that meeting was to downgrade his rating from good to poor, and to lift the rating of Mr Watkins from good to strong. In simple terms, the senior leaders considered the claimant to be below par for a grade D specialist, in comparison with his peers. A number of other grade D colleagues received a poor rating, including white colleagues. The distribution of the bonus pool and the respondent's appraisal system required a number of colleagues to be identified as poor.
- 61 Ms Allison's meetings with the claimant about his workload at the end of January became firmer, both about the workload he had in comparison with others, and the steps he needed to take. She knew from Ms Sumner of the "poor" rating, even though she had not wished that. On 26 January Ms Sumner sent out an email to the claimant's team and others reminding them of the office attendance expectation.
- 62 On 2 February the claimant messaged Ms Allison around 8.40 am in very apologetic tones to indicate he would be a couple of minutes late because of family delays/complications. She tried to call him but he was on route and was not available. He was back at his desk by 9.02.
- 63 By the time they did speak Ms Allison had prepared points she wished to make about his flexible working – this was, in essence – the points she had complained about to Ms Crayston. She set these out in no uncertain terms for the claimant – that he was perceived by the rest of the team and others as not adhering to the business' values, by continuing to log off early or ask for flexibility and that he was expected to pick up work rather than logging off leaving someone else to pick it up. Ms Allison challenged the impression he had given at interview of always working above and beyond, and that the reality was proving different.

When the claimant explained he did not take a full lunch and asked her why she had not raised the five o'clock finishes sooner, she said words to the effect that he had a contract, and she was not his teacher; she also said he should take a look at himself. The claimant said he had been set up to fail.

- 64 The claimant messaged Mr Watkins that day – who worked in the London office – and asked him whether he considered the claimant to be contributing less than others, or words to that effect, in terms of finishing times and he described Ms Crayston as being very upset with him. Mr Watkins was supportive.
- 65 The claimant's one to one was due to happen on 5 February in any event, and he told Ms Allison it had been very unwelcome and upsetting that she had berated him in this way on 2 February. From the tone of Ms Allison's note, recording the discussion, he was justified in feeling "berated" or "told off". The claimant had apologised for the lateness that morning.
- 66 The discussion on 5 February operated to clear the air. They discussed workload, and Ms Allison sought written feedback from people with whom the claimant had worked after that meeting. Of that feedback, when received, one colleague had given some negative feedback and the rest was overwhelmingly positive. This was discussed together with the senior manager's feedback which had informed the "poor" rating and there was agreement about matters for the claimant to work on going forward.
- 67 The claimant still did not know his appraisal rating and he was working with Ms Sumner on a new project. On 21 February he asked Ms Allison to book half an hour's holiday for the following week to enable him to finish at 5pm. Ms Allison considered this very unusual and asked him what it was for – he replied, to go out with friends – and she said she could not understand why they could not just meet later – she then said she did not think this was in line with their conversation about commitment – he replied with "I've asked you a question Sarah if your answer is no then please say so – I don't have time for games".
- 68 The claimant then presented a grievance about discriminatory treatment by Ms Allison the following day and he also made a subject access request. Ms Sumner met with him a few days later to discuss his rating, and that they would need to implement a performance improvement plan and to try and see an informal way to resolving the grievance.
- 69 On 6 March the claimant declined a one to one with Ms Allison because of his grievance and asked that a meeting with Ms Sumner alone take place because Ms Allison caused him anxiety.
- 70 Ms Sumner wrote to him in firm terms explaining she was responsible for his rating, that she expected him to work professionally with Ms Allison until the grievance was decided, that she hoped for his engagement in a PIP – performance improvement plan – at a meeting the next day. The claimant sought to appeal his performance rating and expected it to be changed by the grievance – he said he certainly was not "poor" and he wished Ms Sumner to await the outcome of that before implementing a PIP. Ms Sumner then cancelled their planned meeting to give her more time to draft the PIP, and she sent her proposals to the claimant on 7 March.

III Health and Grievance

- 71 The claimant felt Ms Allison had undermined his integrity and professional values, that he was not “poor” and that the only explanation for this treatment was discrimination. He visited his GP and was diagnosed with “stress at work” and advised he was not fit for work.
- 72 The claimant’s grievance was addressed by Ms Fisher; she did not interview Ms Marshall or Ms Crayston or any other team members, albeit she had the evidence of Mr Watkins support for the claimant. She was provided with the DSAR teams messaging between Ms Crayston and Ms Marshall and others, and the claimant highlighted the messages which he considered undermined him and were disrespectful.
- 73 She sought further data about the claimant’s and Ms Marshall’s start and finish times, which revealed that in two months Ms Marshall appeared once to have worked a few minutes less than her contractual hours on days when she attended the office, but otherwise the pattern was as described above. In the same period the claimant’s pattern was also as described above, but there were also five occasions on office attendance days when he had worked less than his contractual hours.
- 74 Ms Fisher could not easily use data from non office days, because the system log on and off data was not necessarily an indicator of hours worked. The evidence demonstrated that Ms Marshall was more frequently in the office and was working beyond her contractual hours more frequently than the claimant, and that he operated his hours with precision.
- 75 In an outcome letter in April 2024 Ms Fisher concluded she did not uphold allegations of discrimination, but she did consider there were unprofessional messages, and that the claimant had also been given inconsistent messages, in effect, discouraged from providing flexibility for a stakeholder, when he had been encouraged to deliver for his stakeholders.
- 76 She upheld the “poor” performance rating, on the basis of email evidence of feedback about less than optimal performance – she accepted there had been insufficient documenting of poor performance in one to ones.
- 77 On 5 May Ms Sumner held an absence review meeting with the claimant and with his union representative present. They had a broad discussion and she agreed to forward him BUPA information to enable him access counselling. On 15 May the claimant had a grievance appeal meeting. On 16 May Ms Sumner called him. He did not want to discuss return until his grievance appeal was determined, but they talked for seven minutes. In early June 2024 Ms Sumner sent the BUPA care details to the claimant and at a second absence review meeting on 13 June 2024, the claimant confirmed he had started counselling through BUPA on 8 June 2024.
- 78 The respondent’s sickness absence management policy provided for company sick pay at full basic salary for 13 weeks (for the claimant’s grade). There was also a health income protection plan, but after 13 weeks’ absence the claimant

was not entitled to that because he was not permanently incapacitated. He returned to work in August 2024 and resigned in November 2024.

- 79 As for keeping in contact during absence, employees were to maintain weekly contact with managers but if they did not do so, “NewDay will make attempts to contact the colleague instead.... Managers must keep detailed records of all contact, which may be referred to in any subsequent meetings”. The policy also provided that the absence management process may be temporarily suspended in order to deal with the grievance.

### Conclusions

- 80 It will be apparent from the findings above that Allegations 1 and 2 are dismissed because they are not made out in fact. Ms Allison did not ask a colleague to spy on the claimant’s finish time in May 2023 – there was no detriment and no less favourable treatment. There was no less favourable treatment established in connection with breaks/hours/the turning down of a flexible working request (which was, in any event, granted).
- 81 Similarly Allegation 4 - in January to March 2024 the second respondent picking on the claimant by marking him negatively in a series of end of year appraisals and assessments for allegedly preparing low quality Credit Operations Change Requests PowerPoint slides relative to his colleagues – this is not made out in fact.
- 82 Ms Allison rated the claimant “good” in his end of year appraisal - the evidence of that was clear, consistent and likely. The allegation appears to misunderstand the factual landscape. Ms Sumner explained as much to the claimant at the time. His rating was adjusted by her and her fellow senior colleagues – it was not determined by Ms Allison. These are not facts from which I can conclude a contravention taking into account the findings above, and the reason for the end of year rating came down, ultimately, to poor feedback from Ms Sumner and one other senior colleague on whom the claimant had made a poor impression for various reasons. His case would have to encompass race being an influence on the minds of both these two people, which was not alleged, and for which there is also very little evidence.

Allegations 3 and 5: On 2/2/24 Ms Allison berating the Claimant about his working patterns and an incident of lateness by two minutes; on 21 February Ms Allison rejecting the claimant’s request to finish work 30 minutes early on 27 February 2024

- 83 Ms Allison did berate the claimant about his working patterns, and the lateness was the catalyst for it. This was unreasonable conduct by her, because the information he provided was a courtesy, and it did not justify the reaction. It was, however, the straw that broke the camel’s back as far as Ms Allison was concerned.
- 84 These circumstances did not apply to Ms Marshall, or the other comparators pleaded – the other colleagues in the team - and these are not facts from which I could conclude less favourable treatment with a named comparator. I ask the

question, had a similar pattern and events been in place for a non Pakistani colleague who operated his hours as the claimant did, with the performance of the claimant - would Ms Allison have reacted the same way? That is the claimant's hypothetical case – that micro aggressions were directed towards him because of his race - as his advocate put it.

- 85 Firstly, this was direct and robust management – there was nothing “micro” about it. It was unpleasant for the claimant, but on balance I consider Ms Marshall would have behaved in the same way to a non Pakistani colleague in similar circumstances. She and Ms Crayston appeared to work long hours at times, and certainly Ms Marshall worked regularly worked beyond her contractual hours and was regarded as a brilliant performer. The two managers appeared to encourage each other in their oversight of their teams. Ms Allison talked of other in disrespectful terms. Given she also talked of “throttling” Ms Marshall, I find it likely she would have been equally “berating” of any colleague whose operation of their working hours had frustrated her in the way the claimant's had. It might be described as bad management, but the leap to an inference of racial influence, in my view, is unlikely. The warm and flexible start to their relationship, the recruitment of the claimant against competition both internal and external, the generally diverse nature of the team, suggests the “reason why” was not race, but the sense that “give and take” was not being played fairly by the claimant.
- 86 On balance, I have reached the same conclusion about the 21 February refusal – for it was a refusal, whether communicated by message or on the holiday request platform. To suggest that it was not a refusal because the request came in a different form and the less than encouraging reply discussed the employer's “values”, is dancing on the head of a pin.
- 87 There are no comparators, whose circumstances are sufficiently similar, given the involved chain of events above. I therefore ask again whether, had those circumstances applied to a non Pakistani colleague, Ms Allison would have behaved more favourably?
- 88 Ms Allison had asked the claimant to make sure he worked core hours until 5.30pm (or 4.30pm on two days), because that was what the business needed - that is, she was withdrawing the early offered flexibility, or the impression he had that his operation of his breaks/hours was acceptable. The 21 February request, within such a short time frame, to circumvent that instruction by taking half an hour's holiday to socialise with friends at 5pm, appears to undermine the instruction Ms Allison had given. Her frustration gave rise to the unfortunate exchange between them and the claimant's anger was also palpable.
- 89 Frustration, against all the circumstances above, was the reason why, in my judgment and I am satisfied race played no part. The claimant had previously been a manager with control of other people in the contact centre. He was, in contrast, being managed by someone whose approach he found wholly wrong, bullying, and demoralising. However ill advised the refusal of holiday, I do not consider it was influenced by race, or that these are facts from which I could conclude less favourable treatment.

Allegation 6: During the period of the claimant's sickness absence from 8 March 2024 to 11 August 2024, the respondent failing to conduct care calls and regular absence review meetings with the claimant in compliance with its absence policy.

- 90 The claimant's Section 13 case was that weekly care calls were the norm for managers of those on long term sick. That was his experience in the contact centre. He did not give evidence of such circumstances applying where a grievance was also being addressed. These are not facts from which I could conclude less favourable treatment materially influenced by race on the basis of a hypothetical comparator in the claimant's circumstances.
- 91 I accepted Ms Allison's oral evidence that the reason she did not telephone the claimant was because there was a grievance against her. In this, the claimant could have no justified sense of grievance – there was no detriment in Ms Allison not calling him - he had expressed to Ms Sumner a wish that Ms Allison not attend meetings with him because it caused him anxiety and likely contact from her would have been very unwelcome indeed.
- 92 Ms Sumner decided not to exclude Ms Allison from the claimant's line management until the grievance was determined, but Ms Allison removed herself, in effect. The grievance then directed that Ms Sumner assume line management on 16 April 2025. She decided not to hold an absence review meeting until 5 May because that procedure was likely to be stressful, the claimant had hit triggers for such meetings, the claimant wished his representative there, and had said he could not return to work until his grievance was addressed. There were then three absence review meetings (one in May, one in June, and one in July, with the claimant returning to work on a phased return in August). These are not facts from which I could conclude, by reason of a lack of absence review meetings in March and April, detrimental treatment.
- 93 As to welfare calls, the claimant's case can be summarised in this way: had Ms Sumner provided him with regular contact each week, in line with policy and practice, his sense of isolation would have been reduced, and he would have been provided with the BUPA counselling details that much earlier, to support his recovery, through those contact calls. Ms Fisher's evidence was that contact would typically be agreed between a manager and a colleague – she did not recall weekly check in.
- 94 The simple position is that Ms Sumner did not step in to make contact with the claimant in connection with his ill health absence as per policy (whether weekly, which I consider likely practice, or otherwise), or to ask him whether he wished that contact. She only did so after the grievance had been determined and after she had written formally to him to invite him to a review meeting, and she only telephoned him on two occasions throughout the period and the calls were very short. There was no real explanation for that policy failure. I infer from the robust and firm terms in which she wrote to him after his grievance about a performance plan, and her insistence on the continued involvement of Ms Allison, in response to which the claimant became unwell, that she was frustrated by the grievance. I have concluded that she did not wish to extend pastoral care to the claimant in the immediate aftermath of that grievance and because of it. To this extent the claimant's victimisation complaint succeeds.

*JM Wade*

**Employment Judge JM Wade**

**27 June 2025**

Judgment sent to the parties on:

8 July 2025

For the Tribunal

Public access to employment tribunal decisions (judgments and reasons for the judgments) are published, in full, online shortly after a copy has been sent to the claimant(s) and respondent(s) in a case. There is a practice direction about recording in the Tribunal.