



EMPLOYMENT TRIBUNALS

Claimant: Mr A Lewis

Respondent: North Northamptonshire Council

Heard at: Cambridge **On:** 17 and 18 September 2025

Before: Employment Judge Davey

Representation

Claimant: In person

Respondent: Mr A McGrath, counsel

RESERVED JUDGMENT

1. The complaint of unfair dismissal is dismissed upon withdrawal by the claimant.
2. The complaint of breach of contract is dismissed upon withdrawal by the claimant.
3. The complaint of direct race discrimination fails and is dismissed.
4. The remedy hearing listed for 10 December 2025 is vacated.

REASONS

Introduction

1. The claimant worked at the respondent, a unitary authority combining the functions of district and county council, from around late May/early June 2023 until 21 December 2023, as a gas engineer.
2. The claimant was not directly employed by the respondent. He was supplied by an employment agency and employed by Umbrella.co.uk, an umbrella company. The claimant's work is referred to as an 'assignment.' The term used in his contract of employment with Umbrella.co.uk (R54).

3. The assignment was terminated with immediate effect on 21 December 2023. This happened during a conversation between the claimant and Mr Stewart Bowley, the claimant's supervisor.
4. On 23 December 2023, the claimant presented a civil claim against Mr Bowley to Money Claims Online (MCOL) for £3,115. He used the respondent's address for service. Mr Bowley was himself an agency worker and was the claimant's supervisor at the respondent. The respondent defended the MCOL claim on behalf of Mr Bowley arguing that in dismissing the claimant, Mr Bowley was acting within the scope of his authority at the respondent and was therefore it was vicariously liable for the acts of Mr Bowley. The claimant disputed this and argued that in stepping in to provide legal services to Mr Bowley, a white man, and not provide him, a black man, with the same support, was direct race discrimination.
5. Early conciliation commenced on 29 February 2024 and ended on 15 March 2024. The claimant presented his claim form on 5 April 2024 for direct race discrimination, unfair dismissal and breach of contract. The respondent defended the claim. It also questioned whether the Tribunal had jurisdiction to determine the discrimination complaint in accordance with s108 Equality Act 2010 (EqA).

Preliminary and procedural matters

6. There was a preliminary hearing on 28 April 2025 before Employment Judge Skehan, who confirmed the claim was for a single complaint of direct race discrimination, agreed the issues in the case with the parties and made case management orders. Employment Judge Skehan asked the claimant to confirm within 14 days of receipt of the orders whether he intended to pursue his unfair dismissal and breach of contract complaints and if so, on what grounds given that it was common ground between the parties that the claimant was never employed by the respondent. The claimant made no representations about this. During the case management hearing Employment Judge Skehan concluded potential jurisdictional issues relevant to s108 EqA would be determined at a final hearing. The hearing was listed for two days so for practical reasons, evidence relevant to all the issues, except for issue 1.2 – Estoppel/Res Judicata which was dealt with as a preliminary issue, was heard together.
7. At the commencement of this hearing, the claimant confirmed his claim was for a single complaint of direct race discrimination. I dismissed the claimant's complaints of unfair dismissal and breach of contract on withdrawal by the claimant.
8. The respondent's name is changed to North Northamptonshire Council on the consent of the parties.
9. Mr McGrath and Mrs Delavaloire both confirmed the settlement reached with reference to the MCOL claim did not prevent the claimant from pursuing the present claim in the Employment Tribunal. The claimant did not dispute this. I concluded the issue of estoppel, res judicata and/or abuse of process did not arise.

10. Prior to this hearing, the Tribunal received correspondence from the claimant about disclosure. The respondent acknowledged it had 'run behind' with compliance with case management orders and eventually provided the claimant with a paper version of the bundle on 4 July 2025. The respondent's position was that it had complied with disclosure requests. The claimant argued the disclosure bundle was disputed and refused to open it. He brought it to the Tribunal unopened. The claimant confirmed he had 'glanced' at the PDF version of the respondent's bundle, supplied on 8 August 2025, though he could not confirm if it was the same as the unopened bundle. The Tribunal had a spare copy of the respondent's paper bundle so provided it to the claimant for his use during the hearing.
11. The claimant sought disclosure of the financial and legal support offered to Mr Bowley with reference to his MCOL claim against Mr Bowley which was not provided in the respondent's disclosure bundle. The fact support was provided in the form of legal advice and representation is not disputed by the respondent. The detail of the legal support provided to Mr Bowley may be subject to legal professional privilege, so protected from disclosure without consent, even to a court or tribunal. I concluded the nature of any relevant financial support offered to Mr Bowley could be established in cross-examination.
12. The claimant also requested evidence relevant to the respondent's decision to support Mr Bowley. This was relevant to the claimant's complaint. The respondent's position was that it complied with this request and that information was disclosed and was in its bundle, which the claimant had not opened (paper bundle) or briefly reviewed (PDF version). Mr McGrath told the Tribunal the paper bundle and PDF bundle were identical.
13. The claimant provided his own bundles, sent to the Tribunal and the respondent the day before this hearing.
14. I explained to the parties that it was not unusual for the parties not to agree bundles and for each to prepare their own bundle and that I would work from all bundles.
15. Neither party placed an application for adjournment before me at the commencement of this hearing and I concluded it was in accordance with the Overriding Objective at Rule 3 of the Employment Tribunal Procedure Rules 2024 (the Rules) to continue with the hearing today and the parties agreed.
16. Part way through the hearing, the claimant referred to sickness (on 19 December 2023) and stated he had referenced this to the respondent at the material time. Mr McGrath submitted this hearing was the first time the claimant had argued he was sick on 19 December 2023.
17. At the commencement of day two, I allowed the claimant's application for late disclosure of this evidence, which was limited to a single page, the respondent did not object to this application. Mr McGrath also conceded, upon review, that the claimant had referenced his sickness with the respondent on 19 December 2023, prior to this hearing.

18. The claimant was provided with regular breaks during this hearing. I am grateful to the parties for their cooperation with reference to working within the two day time frame for this case. There wasn't enough time for the parties to present oral submissions at the end of evidence, nor was there time for me to review the evidence and provide an oral judgment. The parties were ordered to provide their written submissions by 4pm on 19 September and I am grateful to them both for their compliance with this order. The claimant provided a second set of submissions to the Tribunal which he called 'rebuttal application' with further submissions' at 4.18pm and 5.53pm on 19 September 2025, his rationale for this was because he did not have the opportunity to review the respondent's submissions before the 4pm deadline because the respondent provided its submissions at 3.56pm. In the absence of any objection from the respondent, I added the further submissions to the claimant's first set of submissions for consideration.
19. Mr McGrath took 4 hours and 30 minutes to cross examining the claimant. He had initially anticipated 2 to 3 hours. The claimant's position was that he needed 45 minutes to one hour with each of the two respondent witnesses. He confirmed the same on day two. He said 'I will try to be as quick as I can' and I told him to 'ask his questions appropriately and please take your time'. I did not want to limit the claimant's cross examination of the relevant issues. After Mr Sabadi's evidence, I asked the claimant if he had enough time to cross-examine Mrs Delavaloire. All witnesses, other than the claimant who preferred to finish at 4pm, told the Tribunal they could stay later if necessary. I told the claimant that if he started cross examination of Mrs Delavaloire, he must finish today as I did not want to leave a witness part heard and under oath until a later hearing date. The alternative would have been to adjourn part heard and relist which the claimant did not want to do. The claimant confirmed he would have enough time to cross examine Mrs Delevaloire and could stay later if necessary and to his credit, he managed cross examination within the time estimates he had originally given for each witness.

Evidence and witnesses

20. We heard evidence from the following witnesses who also provided witness statements:

For the claimant

20.1 Mr Ashley Lewis (claimant)

For the respondent

20.2 Mr Goran Sabadi (Gas Team Leader);

20.3 Mrs Louise Delavaloire (Senior Lawyer)

Bundles were not agreed. The Tribunal had three bundles. These were as follows:

20.4 The respondent's bundle totaling 258 pages;

20.5 The claimant's supplementary bundle totaling 32 pages; and

20.6 The claimant's supplementary email bundle totaling 35 pages.

Issues

21. The issues for the Tribunal to decide were as follows:

1. Post employment detriment

1.1 Does the employment tribunal have jurisdiction to hear this complaint of post termination discrimination in accordance with section 108 of the Equality Act 2010.

2. Estoppel/Res Judicata

2.1 Should the respondent, on completion of their amended ET3 responding to the claim as it is now understood, consider that an issue of estoppel, res judicata or abuse of process exist, arising from the claimant's previous settlement with the respondent, the list of issues should be duly amended.

3. Direct race discrimination (Equality Act 2010 section 13)

3.1 The claimant describes himself as black Caribbean.

3.2 Did the respondent do the following things?

3.2.1 'Step in' or provide legal advice including the assistance of counsel to Mr Bowley in response to the money claim online issued by the claimant.

3.3 Was this less favorable treatment?

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

The claimant says that the comparator is Mr Bowley.

The respondent considers Mr Bowley to be an inappropriate comparator. The respondent submits the correct comparator is a hypothetical comparator being a white ex-worker of the respondent who has issued a money claim online in the same way as the respondent had.

3.4 If so, is this because of race?

4. Remedy for discrimination?

4.1 What financial losses has the discrimination caused the claimant?

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

4.3 Should interest be awarded? How much?

Findings of fact

22. The relevant facts are set out below. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. Most of the relevant factual issues were not disputed.

23. Where I have referred to evidence in the bundles, I have included the relevant page number. The respondent's bundle is preceded by an R and the claimant's bundles are preceded with C for the supplementary bundle and CE for the supplementary email bundle.

24. The claimant's assignment with the respondent commenced late May/early June 2023, neither party could provide an exact date which is not relevant to the issues to be determined. The claimant's services were provided via an employment agency, the respondent says the agency was Niyaa People and the claimant could not remember, again, this is not relevant to the issues to be determined. The claimant was employed by an umbrella company called Umbrella.co.uk (R52-71). During his assignment with the respondent, the claimant was a contract worker within the meaning of s41 EqA. This was common ground.

25. The claimant is a gas engineer. He was placed within the respondent's gas team. Mr Bowley was the claimant's supervisor and also an agency worker (supplied by Hayes). Mr Sabadi is the gas team leader, is an employee of the respondent and is himself a gas engineer. The gas team manager is Mr Phil Doherty. The gas team is part of Housing Property Services at the respondent. Mr Daniel Hannam was the interim lead for Housing Property Services at the material time. The claimant acknowledged during cross examination that Mr Bowley was his supervisor and he was answerable to him.

26. On 6 December 2023, there was a call enquiry from the tenant at a council property in Kettering (the Property), who requested the reconnection of the gas supply from the boiler to the cooker point in the floor (R130). This job was allocated to the claimant.

27. On 15 December 2023, the claimant attended the property to undertake the allocated work. The claimant confirmed in cross examination that the reference 're-installed cooker gas pipe supply, which was cut and removed by boiler installer. Responsible person to arrange for private gas engineer to connect the gas cooker' was made by him (R130). He told the Tribunal 'I will accept that if that is what is on the system'. This is confirmed in his statement to Mr Bowley about what he did on 15 December 2023 (R146). The claimant's evidence was that he did a '26/9 check' after the work he carried out and was satisfied there was no leaking gas.

28. On Sunday 17 December 2023, the tenant reported a smell of gas, the emergency gas service, Cadent, attended the Property, found a gas leak from the pipework by the meter installation and disconnected the supply of gas from the meter for safety reasons (R144).
29. On 18 December 2023, a job was put out for the claimant to investigate the gas escape at the Property. The claimant attended and spent approximately two hours at the Property making calls to Cadent to establish what the Cadent engineer had done the previous day and why (R132-138). He was unable to get a detailed response about this whilst at the Property so he left. It was common ground he did not investigate the leak, carry out any repairs or contact the respondent for assistance with the same.
30. None of the above facts detailed above, with reference to events between 15 and 18 December 2023, are in dispute.
31. On 19 December 2023, the claimant sent the respondent a text message detailing he was unable to work that day because he was sick. Mr Bowley attended the Property to investigate the gas escape reported by Cadent. He removed the disc from the meter and carried out a tightness test and found a full loss of pressure (a full drop indicating a serious gas leak). He sought assistance from Mr Ian Marshall to assist with finding the leak. Between them, they found a leak on a compression cap end fitted to a redundant gas pipe beneath the gas meter and replaced the fitting and tested again but still found a full drop, indicating a second leak or the leak was elsewhere. This was traced to a leak on the pipework in the concrete floor feeding the cooker point which Mr Bowley suggested was close to where the claimant had connected a pipe (R169). In his evidence to the Tribunal, the claimant did not dispute this work was carried out by Mr Bowley and Mr Marshall but disputed there were two leaks because Cadent professionals identified one leak. He went on to say the job was ultimately more complex than anticipated and required two gas engineers.

Termination of the claimant's assignment

32. Mr Sabadi's evidence was that on 20 December 2023, he and Mr Bowley discussed the recent job at the Property and other previous concerns and decided to terminate the claimant's contract subject to how the forthcoming meeting with the claimant went.
33. At Mr Bowley's request (C16/CE13), the claimant provided two statements about what he did during his visits to the Property on 15 and 18 December (R146-R148).
34. The claimant's assignment was terminated by Mr Bowley on 21 December 2023. The claimant's claim form says the dismissal was 'done in front of colleagues'. According to Mr Sabadi, Mr Bowley told him there were no witnesses to the conversation. The claimant told the Tribunal the manner of the termination was humiliating, and it would have been obvious to those around him what was happening. He went on to say he was taken upstairs so not in the main area in front of colleagues though he had to walk past them to access the upstairs room.

35. Turning to the disputed evidence leading to the termination of the claimant's assignment:

35.1 The claimant's evidence, in summary was that an unauthorized third party caused the gas leak, that the tenant of the Property had arranged for an unauthorized person to connect an unsafe second cooker in breach of regulations and the respondent's policy, that Cadent should have repaired the leak on 17 December but failed to do this, that he (the claimant) acted responsibly on 18 December by making the Property safe and without intelligence from Cadent, was unable to inspect and make good the leak and that he is the 'fall guy' being blamed.

35.2 The respondent's evidence, in summary, was that the claimant possibly caused the leak on 15 December 2023, failed to inspect and repair the leak on 18 December and/or call for assistance from the gas team as Mr Bowley had, that it was the respondent's responsibility to deal with internal pipework and not Cadent's responsibility and that there was no evidence an unauthorized third party had fitted an unsafe second hand cooker at the Property.

36. The claimant considered the allegations made by Mr Bowley during the conversation on 21 December to amount to defamation. The claimant told the Tribunal he did not think Mr Bowley had the authority to dismiss him as he was not his employer. He also stated Mr Bowley was a contractor and 'not linked to the council in any way. Nothing to do with the council at all' and that he was not acting in the course of his role as a supervisor when he dismissed him and he lied and this matter was nothing to do with the respondent.

37. The complaint before me relates to alleged post termination discrimination. I am not obliged to determine whether the dismissal itself was lawful nor make findings about the disputed facts in paragraph 35 above as these are not relevant to the issues I must determine. Further, there is a significant evidential overlap with reference to the circumstances of the dismissal and the MCOL claim that was settled.

38. What I am tasked to do with reference to the dismissal is determine whether Mr Bowley was acting in the course of his agency with the respondent when he dismissed the claimant as this is relevant to the allegation of post employment discrimination.

39. It is hard to reconcile how, according to the claimant, Mr Bowley (or himself) as contractors were not linked to the respondent 'in any way'. Both were assigned to the respondent to carry out the respondent's work in the respondent's gas team and this is not disputed by the claimant.

40. I have concluded that Mr Bowley, as the claimant's supervisor, had authority to dismiss him and that he dismissed him for the reasons stated in paragraph 35.2 above. I accept Mr Bowley had authority to dismiss the claimant because Mr Sabadi confirmed the same in his evidence and Mr Sabadi is the team leader of the gas section (so Mr Bowley's supervisor) and would be able to confirm Mr Bowley's given authority at the respondent.

Further, in his earlier evidence to the Tribunal, the claimant confirmed Mr Bowley was his supervisor and had authority over him. It does not follow that because the claimant disagrees with Mr Bowley's reasons for terminating his assignment, he did not have the authority to do this and/or was not acting in the course of his agency with the respondent. It is clear from the narrative above with reference to events between 6 December and 21 December that the claimant and Mr Bowley were carrying out their respective roles at the respondent as gas engineer and gas engineer/supervisor respectively and that Mr Bowley's decision to terminate the claimant's assignment was done in the course of that role and in response to the events described above. Further, Mr Sabadi confirmed that Mr Bowley had the authority to terminate the claimant's contract without his input. I accept this and note that the claimant did not challenge this in his cross examination of Mr Sabadi.

41. The claimant made a subject access request on 3 January 2024. He argued this is required for his defamation (MCOL) claim (R152-153).

MCOL claim

42. On 23 December 2023, the claimant presented a claim against Mr Bowley through the MCOL service (R149). It was common ground that the claimant considered this claim to be for defamation and he confirmed this in cross examination. The claim refers to most of the disputed facts in paragraph 35 above.
43. The claim was issued on 3 January 2024 (R149). The claim form was addressed to Stewart Bowley NNC, Mr Stewart Bowley, 4 Robinson Way, Telford Industrial Estate, Kettering, NN16 8PP, the respondent's depot. The claimant claimed £3000 plus court costs of £115 and told the Tribunal this was for lost income due to the termination of his assignment.
44. The claimant told the Tribunal he issued the claim against Mr Bowley because in his view, this was a matter between two individuals and 'nothing to do with the council at all'.
45. The respondent's position, disputed by the claimant, is that it first had sight of the civil claim on 10 January 2024, when Mr Bowley told Mr Sabadi he had received a claim form (the previous day) addressed to the respondent's Robinson Way depot. Mr Sabadi confirmed this in cross examination when it was asserted by the claimant that this statement about notification on 9 January 2024 was false. Mr Sabadi then contacted Mrs Delavaloire (senior lawyer at the respondent) to establish what steps needed to be taken. Mrs Delavaloire then emailed Mr Sabadi on the same day at 10am with instructions (R155) and a referral form (R157). Her email states:

Good morning Goran

Thank you for your call this morning advising there is a potential new instruction for legal services and providing a brief background.

As discussed, please complete the attached referral with as much information as possible. It would be useful to include:

The names of the parties involved and who they are e.g. tenant, employee

(permanent/agency)
Address of the incident
Chronology of events
Copies of all documents and correspondence relating to the matter.

Please send your referral to legalservices@northnorthants.gov.uk where it can be allocated to a member of the team to review and advise.

Kind regards

Louise Delavaloire

46. The claimant conceded in his evidence that there was no indication of his ethnicity in this correspondence although with reference to whether Mrs Delavaloire was aware of his ethnicity he stated 'I have no idea what she was aware of'.

47. Mrs Delavaloire told the Tribunal that it was common for the legal department to receive claim forms addressed to individuals and the respondent concluded, on receipt of the claim form, addressed to Stewart Bowley NNC at the respondent's address that it was likely to be a claim against the respondent and not Mr Bowley in his personal capacity.

48. Mr Sabadi's evidence is that he completed the form and emailed it on the same day at 3.55pm to Mr Daniel Hannam who was the interim lead for Housing Property Services (R159). That email states:

Hi Dan,
As discussed I've done a brief description of the incident below. Please review attached litigation referral and forward to legalservices@northnorthants.gov.uk

Stewart Bowley (our supervisor) have received yesterday attached claim for loss of earnings from the court. The claim was raised by gas engineer Ashley Lewis that was working with us and we had to let him go on 21st December 2023.

49. The email then goes on to set out a brief account, referencing the gas leak and the respondent was in the process of reporting as RIDDOR to the HSE. None of this is in dispute (other than reference to the claimant spending the whole day at the property when it was common ground he spend around 2 hours). The email ends with:

As a consequence of the incident and previous issues, we had to let Ashley go. Stewart had carried out the discussion with Ashley and obtained 2 signed statements (attached).

Not sure why Ashley has raised the claim but it needs to be responded to ASAP.

If you need any more information, please do not hesitate to contact Stewart or me.

Thank you

50. Mr Hannam then emailed the respondent's legal department on the same day at 16.46 and requested for the case to be allocated to a legal officer (R161). The email states:

Hi,

Please can this case be allocated to a Legal Officer to defend the council's position in this matter accordingly.

Many thanks

Dan

51. This email includes the completed referral form (R163-164). This is dated '10/01/2024' and states that 'Agency gas engineer submitted the claim form' and it required 'Action against the claim' and details it includes a copy of the claim form (received on 9 January 2024), the two statements written by the claimant and a cover email. The referral is approved by Mr Hannam.

52. On 11 January 2024, Ms Kamilla Coulsen-Patel (chief lawyer), emails Mr Eugene MacLaughlin (R165). She says:

Good morning Eugene,

We have been notified of a new claim against the council (details attached). Please can you progress the instruction, confirm your file reference and next steps to the instructing officer Dan Hannam.

Kind regards,

53. The claimant's evidence was that he did not understand this email and when asked to elaborate he said 'it doesn't make any logical sense, it is strategic and is muddying the waters'. The claimant's evidence about the email chain generally was that he did not understand it and when he was asked to confirm this was the process the respondent went through to instruct its legal department he said 'no'. The claimant did not dispute that his race or ethnicity was not detailed on this correspondence though his consistent evidence to the Tribunal was that he did not know what those involved through this process knew about his race or ethnicity.

54. On 23 January, the claimant sent Mr Bowley a text message referencing the damage caused to him and his company 'as a result of your false and defamatory report to NCC' about the Property (C15/R170). The remainder of the text message states:

'The courts today have issued a default judgment against you for £3,115.00 for failing to respond to the court.

The amount must now be paid immediately, failing this the courts will approve bailiffs to remove property from your home to satisfy the judgement.'

The claimant then provides his bank details in the rest of the text message.

55. The claimant disputed this message was malicious and asserted Mr Bowley had made an 'entirely false statement' about him.

56. Mr Bowley emailed a copy of the text to the respondent's legal department on the same day (R170). It states:

Hello legal department,

Hope you are all well, just wanted to let you know that I received this text this morning. Just wondering if there is advice you can give me.

Kind regards,

57. Mrs Delavalloir's evidence was that this was the first direct contact Mr Bowley made with the respondent's legal department but not the first time the legal department became aware of the civil claim. Her evidence was that the respondent (and herself) became aware of the civil claim on 10 January 2024.
58. There is no evidence a default judgment was issued and in cross examination, the claimant acknowledged he had applied for default judgment on 24 January 2024. On the same day Mr Maclaughlin filed an acknowledgement of service on behalf of Mr Bowley (CE16/R171). He used his email address at the respondent.
59. On 25 January 2024, Mr Maclaughlin filed the defence (R172) defending the claim.
60. I prefer the respondent's account that it first had sight of the MCOL claim on 10 January 2024 and not 23 January 2024, because it is supported by contemporaneous documentary evidence in the form of email correspondence between 10 and 11 January 2024 and confirmed by Mrs Delavalloire and Mr Sabadi in their evidence to the Tribunal. The claimant would not have been aware of the referral of his claim to the respondent's legal department at the time. The claimant relies on the proximity of his text message and the acknowledgement of service to evidence that the respondent only learned about the claim on 23 January 2024. He also relies on the email from Mr Bowley to the respondent's legal department detailed above (R170). The email states 'I received this text this morning'. This email does not reference Mr Bowley received the claim form that morning.
61. With reference to the decision about who provided Mr Bowley with legal services, Mrs Delavalloire explained the decision was part of a chain of events and the practice was that legal matters are kept under review by the caseworker and line manager in the case. Mrs Delavalloire's evidence was there is not a record of the decisions taken to provide Mr Bowley with legal services. I accepted Mrs Delavalloire's evidence about the way the decision was made to provide legal services to Mr Bowley because it is supported by the email correspondence in the respondent's bundle with Mr Hanam approving the referral for legal support to the respondent's legal department and Ms Coulsen-Patel concluding legal support should be provided by referring the matter to Mr Maclaughlin.
62. The claimant's first communication with Mr Maclaughlin is on 31 January 2024, at 11.47am chasing his subject access request (C23). He sent a further email at 2.20pm about the subject access request (C20/R176). He goes on to say in the email:
- 'NB: With your involvement (NCC Barrister), in what started as a personal civil dispute between myself and contractor, Mr Bowley has NCC now assumed vicarious liability, which may transition into a tribunal Discrimination claim, Equality act 2010'.
63. The claimant's evidence to the Tribunal was that he emailed Mr Maclaughlin because he was surprised the respondent had stepped in. He was particularly incensed that a barrister was involved. When asked about the contents of this email with reference to NCC now assuming vicarious liability he said he could not remember several times. When asked whether

he focused on vicarious liability because he understood that the council had stepped in on the part of an agent, he stated 'I can't remember'.

64. The claimant then sent Mr Maclaughlin two emails on 9 February 2024. The first is sent at 9.46am (R184). This email is with reference to the civil claim, part of which says:

'I do not understand your deliberate and direct involvement in this matter, can you please explain, as your action and that of the NNC, I believe amounts to direct race discrimination, under the Equalities' act 2010'.

65. Mr Maclaughlin responds at 10.19am the same day. Part of the response tells the claimant he should seek independent legal advice. He goes on to say:

My involvement is quite simple and indeed, in my experience, quite routine in cases such as the one you have brought against Mr Bowley. As I understand, he was acting as an agent and/or employee for the council. He advised us of the claim against him and I have taken over conduct of the litigation against him as it affects the council, the resident of the property being the tenant of the property owned/controlled by the council.

66. The claimant stated he 'could not remember' whether this was the first time he had alleged race discrimination in his correspondence.

67. The claimant's second email is sent at 14.08 (R182). Part of which says:

You have now placed on record, that NNC, using your legal services are directly (representing) another self-employed contractor, who has made misleading and false allegations against me which has caused direct, loss and damage to both me and my business.

You have placed on record that, that NNC, which I believe has committed an act of direct racial discrimination, by providing a white person with employment protection and support, which has not been provided to a black employee, by this action, I have been made to feel like a second class employee or less value and worth, this is not what councils should be doing, as they should support and represent the wider community all as equals.

68. In cross examination, the claimant acknowledged Mr Maclaughlin was an in-house barrister. Ms Delavaloire confirmed he was part of the respondent's legal team so there was no additional expenditure for his involvement as there would have been if he was instructed from chambers.

69. When asked in cross examination whether he thought the respondent would have stepped in and provided legal assistance to Mr Bowley if it was a white ex-contractor who submitted a MCOL claim against Mr Bowley, the claimant stated initially 'no, it is not about black man and white man, it is about Mr Bowley'. He went on to say 'there is no way of determining that because there is no way of looking into the future. I don't know'.

70. When asked if he would have brought the claim in similar circumstances, if he had still been employed, he said he would have had no reason as he would still be employed.

71. There was a meeting at the respondent's Corby offices between the claimant, Mr Maclaughlin, Mr Sabadi, Mr Bowley and Mr Doherty on 22 February 2025 (R193-R231). This has been referred to as a pre-mediation meeting with a view to settling the claimant's MCOL claim.

72. During the meeting, the claimant raised concerns about the respondent supporting Mr Bowley with the MCOL claim and not him and puts this down to race discrimination. The claimant asks for free legal advice 'Eugene, can I ask you one question? Can I have free legal advice?' Mr Maclaughlin tells the claimant he could not act for him. He says I work for the council legal services. I could not take a direct instruction from you'. He goes on to say 'But the problem would be there would be a conflict of interest particularly good' (R222). The claimant's response is that he knows this, that he could have seen this coming a mile off and this is what confuses him (R222). In his evidence, the claimant acknowledged asking for legal advice though stated he could not remember much else that was said with reference to his claim and Mr Maclaughlin's involvement.

73. The claimant emailed Mr Maclaughlin on 4 March 2024 and asks for the respondent to fund an independent barrister (R233). He says:

You mention on several occasions I should seek legal advice as mentioned in our meeting 22/02/2024, it is evident that the council has provided legal advice (Barrister) for Mr Bowley, who is white, but the council has not provided me with the same legal support, as I'm black, this to a reasonable person can be clearly seen as direct race discrimination.

I would like to take you up on your advice of obtaining legal advice, however, the council will have to adhere to their published equality policy see attached, I await your confirmation that I can be provided NNC with the contact details of a barrister I can use, which will be fully funded like Mr Bowley.'

74. These two paragraphs summarise the claimant's position with reference to his complaint to the Tribunal. The claimant sends a similar email to Mr Maclaughlin on 5 March 2024, again asserting the respondent has discriminated against him and again requesting the respondent pay for him to instruct an independent barrister (R238). He also says:

'I fully understand that it may create a conflict of interest in the true sense for you to represent us both in these matters, however, I was shocked and it on record that intervened to represent Mr Bowley.'

75. In his evidence, the claimant acknowledged he said this and understood the conflict. When asked why we were here by Mr McGrath he said 'Direct race discrimination, the council were bound by legal governance and the use of public funds. That this is a public hearing and the public needs an explanation. This has to be brought to a public domain'. He went on to say that is why he asked the respondent to pay for him to have an independent barrister. He disputed this was 'ultra virus' when asked, stating the claim was against Mr Fowley and not the respondent.

76. The claimant confirmed his reliance on Mr Bowley as his comparator. He argued they were both contractors and that the MCOL claim was between them as two individuals so they were both in exactly the same position. He stated the only difference between them was that he is black and Mr Bowley is white and he made this point during about 80% of his communications with Mr Maclaughlin and it was neither acknowledged nor did Mr Maclaughlin 'push back' and a reasonable person would see that.

77. There is further similar correspondence between Mr Maclaughlin and the claimant. There is also a separate conversation in these emails about

settling the MCOL claim not referred to here. On 14 March 2024, Mr Maclaughlin emailed the claimant and refers to the claimant's request for free legal advice (R245). He says:

'You have said in previous correspondence that you believe the council should provide you with access to free legal advice on the same basis as Mr Bowley. The council do not have to provide you with free legal advice. The reason for this is that you have brought forward a claim against the council and it is for you to take all steps to progress the matter from your end, and that would include engaging your own legal advisor. The council have not discriminated against you by not providing you with free legal advice. I would suggest that if you wish to consider obtaining legal advice you can instruct your own solicitor and, it may be, that you can approach a Citizens Advice Bureau or Law Centre.'

This summarises the respondent's position with reference to this complaint.

78. Mr Maclaughlin left the respondent on 15 March 2024. The matter was reallocated to a junior lawyer, Madeline Homer.

79. I accept Mrs Delavawoire's evidence that Mr Bowley was supported by the respondent's in-house legal team so did not charge for services (i.e. that no billing took place) and that instead, employees and agency/contract workers are paid salaries so there was never a decision about the authorisation of public funds where the respondent's in-house team are case working, as happened with Mr Maclaughlin undertaking case management for defending the MCOL claim.

80. Mrs Delavaloire told the Tribunal that as the respondent was defending the MCOL claim it could not have assisted the claimant by providing legal support, either internally or by funding a barrister for him because it would be a conflict of interest to fund action against itself.

81. The claimant's MCOL claim settled at a mediation session on 23 May 2024. I was told by Mrs Delavaloire, who attended that session on behalf of the respondent and settled the MCOL claim, that the settlement did not prevent the claimant from continuing with this complaint in the Employment Tribunal, which was presented on 5 April 2024. The claimant did not dispute this. The claimant stated the settlement is between two individuals and not the respondent. Mrs Delavawoire confirmed that while the MCOL claim was between two individuals the respondent was clearly vicariously liable and she confirmed the settlement payment was made by the respondent.

82. It follows from my finding that Mr Bowley was acting in the course of his agency when he terminated the claimant's assignment at the respondent and not as an 'independent contractor' as asserted by the claimant that the respondent was vicariously liable for Mr Bowley's decision to terminate the claimant's assignment. This is also supported by the respondent's emails on 10 and 11 January 2024, particularly Mr Hannam's email to the respondent's legal department where he states 'Please can this case be allocated to a Legal Officer to defend the council's position in this matter accordingly' (R161) and Ms Kamilla Coulsen-Patel email to Mr Maclaughlin stating 'We have been notified of a new claim against the council' (R165). Mr Hannan was interim strategic lead for housing property services and Ms Coulsen-Patel was the respondent's chief lawyer. I accept that both had authority to make the decision to support Mr Bowley because they

considered the council to be liable, as set out in their respective emails. Mr Maclaughlin also referenced defending the claimant's claim against the council in his email dated 14 March 2024.

83. The claimant second email to Mr Maclaughlin on 31 January 2024 asked if the respondent assuming vicarious liability and when he was asked to elaborate on why he used this term, he was evasive stating I don't know and I can't remember. I concluded that the claimant understood why he used this term and its meaning which his email to Mr Maclaughlin confirms.

Relevant law

84. The relevant sections of the Equality Act 2010 are set out below.

85. Section 13 Direct Discrimination:

- (1) 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.

86. Section 23 Comparison by reference to circumstances

- (1) On a comparison of cases for the purposes of section 13.....there must be no material difference between the circumstances relating to each case.

87. Section 41 Contract workers:

- (1) A principal must not discriminate against a contract worker—

- (b) by not allowing the worker to do, or to continue to do, the work...

- (5) A "principal" is a person who makes work available for an individual who is—

- (a) employed by another person, and

- (b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).

88. Section 108 Relationships that have ended

- (1) A person (A) must not discriminate against another (B) if—

- (a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and

- (b) conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act.

89. Section 136 Burden of proof:

- (1) This section applies to any proceedings relating to a contravention of this Act.
 - (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
 - (3) But subsection (2) does not apply if A shows that A did not contravene the provisions.
90. Igen v Wong [2005] ICR 931, CA 9 provided guidelines regarding the burden of proof (at paragraph 76). The Tribunal must follow a two stage process. At stage one the claimant must prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant. The outcome of the stage one analysis will usually depend on what inferences, if any, can be drawn from the primary facts. If the claimant gets past stage one, the burden of proof shifts to the respondent who must prove s/he did not discriminate against the claimant.
91. In Qureshi v Victoria University of Manchester and anor [2001] ICR 863, the Employment Appeal Tribunal stated that the function of the Tribunal is to find the primary facts from which they will be asked to draw inferences and then “look at the totality of those facts (including the respondent’s explanations) in order to see whether it is legitimate to infer that the acts or decisions complained of” were discriminatory. Adopting a fragmented approach “would inevitably have the effect of diminishing any eloquence that the cumulative effect of the primary facts might have on the issue” of discriminatory grounds.
92. The Supreme Court in Hewage v Grampian Health Board [2012] UKSC has confirmed “The points made by the Court of Appeal about the effect of the statute in these two cases [Igen and Madarassy] could not be more clearly expressed, and I see no need for any further guidance. Furthermore, as Underhill J pointed out in Martin v Devonshires Solicitors [2011] ICR 352, para 39, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.”
93. Efobi v v Royal mail Group Ltd 2021 ICR1263, SC. With reference to what inferences can be drawn with reference to the burden of proof provisions - whether any significance could be attached to the fact a person had not given evidence depended on the context, the circumstances, whether the witness was available to give evidence and what relevant evidence it was reasonable to expect the witness to give.
94. In Laing v Manchester City Council [2006] ICRT 1519, EAT (at paragraph 74) Lord Justice Elias said ‘Another example where it might be sensible for a Tribunal to go straight to the second stage is where the employee is seeking to compare his treatment with a hypothetical employee. In such cases the question whether there is such a comparator - whether there is a prima facie case - is in practice often inextricably linked to the issue of what

is the explanation for the treatment.'

95. In Madarrasy v Nomura [2007] ICR 867, CA (at paragraphs 56-57) where the Court of Appeal said 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 "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".
96. In Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL. Lord Nichols stated (at paragraph 8) 'No doubt there are cases where it is convenient and helpful to adopt a two step approach to what is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? But, especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two are intertwined.' Lord Scott stated (at paragraph 110) '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'.
97. In Stockton on Tees Borough Council v Aylott 2010 ICR 1278, CA, Lord Justice Mummery stated (at paragraph 42): 'I think that the decision whether the claimant was treated less favourably than a hypothetical employee of the council is intertwined with identifying the ground on which the claimant was dismissed'.
98. Anya v University of Oxford and anor 2001 ICR 847, CA confirmed that unreasonable conduct on the part of an employer might contribute to the factual circumstances that would lead a tribunal to infer discriminatory reasons for a dismissal though on its own, it is unlikely to be enough to shift the burden of proof to the employer.
99. Ford Motor Co Ltd v Elliott and ors 2016 ICR 711, EAT. The EAT confirmed the question the tribunal must ask under s108(1)(a) was whether the alleged discrimination arose out of and was closely connected to the prior employment relationship. A Tribunal must decide whether the allegations in the ET1, if established, show the circumstances between the claimant and their comparator were not materially different to find a claim of discrimination contrary to the Equality Act and this is necessary so as to determine whether a claim falls within s108(1)(b) EqA.
100. Wisniewski v Central Manchester Health Authority [1998] Civ 596, a confirmed that a court may, in certain circumstances, draw adverse inferences from "the absence or silence of a witness who might be expected to have material evidence to give on an issue".

Submissions

101. The claimant's submissions, in summary were:

- 101.1 The respondent failed to comply with procedure and the response should be struck out;
 - 101.2 The respondent failed to provide Mr Bowley's contract with the respondent and/or agency.
 - 101.3 There was an absence of key witnesses and inferences should be drawn from this (*Wisniewski v Central Manchester Health Authority*) and the respondent's witnesses at the hearing were not reliable.
 - 101.4 That the tribunal 'already accepted Mr Bowley as the relevant comparator' and the respondent now sought to substitute Mr Bowley with a hypothetical comparator.
 - 101.5 That the burden of proof had shifted to the respondent because once a claimant raises race discrimination, the burden shifts to the Respondent to provide a clear, non-discriminatory explanation' and 'Once facts are established from which discrimination can be inferred, the burden shifts to NNC' quoting s136 EqA, *Anya v University of Oxford* [2001] ICR 847, *Igen v Wong*; *Efobi v Royal Mail*.
 - 101.6 That the Public Sector Equality duty applies (s149 EqA) and as a public body, the respondent was accountable for the use of its funds.
 - 101.7 That the respondent funded advice, representation and settlement of Mr Bowley, a white contract worker whereas it did not provide him, a black contractor, with the same support.
102. Mr McGraph's written submissions on behalf of the respondent, were presented as an evidential narrative with the respondent's position with reference to key events, as follows:
- 102.1 The claimant's testimony was evasive and obstructive;
 - 102.2 The claimant could not rely on Mr Bowley as his comparator because he was not in exactly the same position as Mr Bowley and he must rely on a hypothetical comparator, being a white gas engineer who addressed his MCOL claim to the respondent and brought his MCOL complaint against his supervisor;
 - 102.3 The respondent conceded s108(1)(a) was satisfied. For the purposes of s108(1)(b) the respondent's position was that while 'this is difficult to hypothesise, at all times the actions of the Respondent were non-discriminatory and therefore the result would have been the same with the claimant needing to seek independent legal advice rather than relying on the respondent'.
103. Returning to the claimant's submissions. I dealt with procedural issues at the commencement of the hearing and the claimant confirmed he wanted to proceed with the final hearing. With reference to the documentary evidence, the fact Mr Bowley was a contract worker was not disputed so it is unclear what benefit disclosure of his agency contract would have added. The respondent did comply with disclosure (albeit late) and provide documentary evidence about the way the decisions relevant to the issues were taken, confirmed by Mrs Delavaloire in cross examination. Neither Mr Bowley nor Mr Maclaughlin were decision makers nor could they speak to the decisions taken by the respondent (other than Mr Bowley's decision to terminate the claimant's assignment which is not the complaint before the Tribunal). I do not draw any adverse inference from the fact neither Mr Bowley nor Mr Maclaughlin attended to provide evidence because their evidence is not relevant to the issues before the Tribunal. The Tribunal has

no jurisdiction to determine a Public Sector Equality Duty complaint. The claimant is not at liberty to expand his complaint to include the circumstances of the respondent's decision to pay the settlement.

104. I have referred to any further relevant issues raised by the claimant in his two sets of submissions in my findings above and/or conclusions below. The relevant case authorities referred to by the claimant are referenced above.

105. I have referred to relevant issues in the respondent's submissions in my findings above and/or conclusions below. The respondent did not reference any case authorities.

Conclusions

106. Mr McGrath confirmed at the beginning of day one that the settlement reached in the MCOL claim on 23 May 2024, did not prevent the claimant from pursuing the instant case before the Employment Tribunal. This was confirmed by Mrs Delavaloire.

107. The issue of estoppel, res judicata or abuse of process therefore does not arise from the claimant's settlement of the civil claim.

108. The claimant brings a complaint for direct race discrimination that he alleges occurred after his assignment at the respondent ended. Consequently, he must satisfy the jurisdictional requirement of s108 EqA. This requirement is set out in two stages. This does not strictly speaking, require detailed findings of fact about the evidence though as detailed above, this case was listed as a final hearing and not a preliminary hearing so findings and conclusions have been decided on the evidence heard.

109. The first stage is set out in S108(1)(a) EqA. To satisfy the requirement of s108(1)(a) the alleged discrimination must arise out of or be closely connected to a previous relationship between the claimant and the respondent.

110. The respondent conceded that this part of the two-part test was met. The claimant made no submissions about s108 EqA.

111. The wording of s108(1)(a) EqA is broad enough to cover all workplace relationships, including that of the claimant, who was a contract worker, as defined by s41 EqA and therefore entitled to the same protection from discrimination as an employee.

112. The claimant worked as a gas engineer at the respondent from around late May 2024/early June 2024 until his contract was terminated by Mr Bowley. The circumstances arising which led to the termination of his contract with the respondent are the substance of his MCOL claim.

113. While the claimant was engaged by the respondent as an agency worker for approximately six months, the allegation of discrimination arises from the claim presented to MCOL.

114. I have already concluded that the claimant was acting within the course of his agency as a gas engineer with the respondent when he attended the Property on 15 December 2023 and 18 December 2023 and that Mr Bowley was acting in the course of his agency with the respondent as a gas engineer and the claimant's supervisor when he attended the Property on 19 December 2023, concluded the claimant should have inspected and carried out the necessary repairs to what he concluded was a major gas leak and terminated the claimant's assignment.
115. I have also concluded that whilst the claimant submitted his MCOL claim naming Mr Bowley and not the respondent as the defendant in what he concluded was a civil dispute between two individuals, this was not plausible given the claimant's and Mr Bowley's roles at the respondent undertaking work for the respondent on respondent properties which were let by the respondent to its tenants.
116. It follows that the respondent accepted responsibility for Mr Bowley's decision to terminate the claimant's assignment and that while the MCOL claim was in Mr Bowley's name, it accepted it was vicariously liable for Mr Bowley's actions.
117. My conclusion is that the alleged discrimination arises out of and is closely connected to the relationship which used to exist between the claimant and the respondent. In summary, Mr Bowley terminated the claimant's assignment with the respondent and was acting with the respondent's authority when he did this, the claimant's MCOL claim against that supervisor arose from that termination of his assignment at the respondent as did the respondent's decision to defend it on behalf of Mr Bowley, the claimant's supervisor at the respondent. The requirement of s108(1)(a) is satisfied.
118. Turning to the second stage at s108(1)(b) EqA, this requires conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene the Equality Act.
119. The conduct complained of by the claimant is direct race discrimination. Section 13 of the Equality Act 2010 provides that direct discrimination takes place where a claimant is treated less favourably because of a relevant protected characteristic.
120. It was common ground that the respondent both 'stepped in' and provided legal advice including the assistance of its in-house counsel to Mr Bowley in response to the MCOL claim issued by the claimant. It was also common ground that the respondent did not step-in and/or provide the claimant with access to its in-house legal team and refused to pay the claimant to instruct an independent barrister. The claimant submits this was less favourable treatment because of his race. The claimant describes himself as black Caribbean.
121. Section 108(1)(b) requires a Tribunal to examine whether there were any material differences between the circumstances of a claimant and their comparator.
122. On a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.

The claimant relies on Mr Bowley as his comparator because he argues that like him, he was a contractor and like him, he was party to the same MCOL claim and he also asserts the issue was 'not linked to the council in any way and has 'nothing to do with the council at all' which I have concluded is not correct. The respondent argues that Mr Bowley and the claimant's circumstances are materially different so the claimant must rely on a hypothetical comparator.

123. I have concluded that the similarities end at both parties being contract workers and gas engineers at the respondent. The following factors represent material differences:

123.1 During their respective assignments at the respondent, Mr Bowley was the claimant's supervisor with authority over him, which included the authority to terminate his assignment so the claimant and Mr Bowley were not in materially the same positions during their respective assignments at the respondent.

123.2 Mr Bowley did not submit an MCOL claim against the respondent or any of its officers (be they employees or contractors).

123.3 The claimant submitted an MCOL claim against Mr Bowley where the claimant was the 'claimant' in the claim, which he actioned of his own free will whereas Mr Bowley was the defendant in the claim and had no option other than to defend it or face a default judgment. It was open to the claimant to withdraw the MCOL claim should he choose to do so, it was not open to Mr Bowley to withdraw from the MCOL claim unless the claimant agreed to a settlement. In summary, the claimant and Mr Bowley are never in materially the same circumstance with reference to the MCOL claim.

123.4 Further and more significantly, the respondent was not providing Mr Bowley with legal services so he could pursue a claim against his supervisor at the respondent (or any other officer of the respondent), it was providing access to those legal services so it could defend a claim for which it was vicariously liable.

124. The Claimant cannot rely on Mr Bowley as his comparator because his circumstances are not the same as the claimant for the reasons detailed above. As confirmed in *Shamoon*, "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'. The circumstances of both the claimant and Mr Bowley are materially different.

125. In his submission, the claimant asserted that the Tribunal 'readily accepted' Mr Bowley as his comparator. The Tribunal made no preliminary determinations about the correct comparator either during the case management hearing before Employment Judge Skehan or at the commencement of the final hearing. The issues relevant to s108(1) EqA and s13 EqA, including the issue of the correct comparator under s23 EqA were to be determined after hearing the evidence of the parties at the conclusion of the final hearing.

126. The respondent contended that the correct comparator would be a hypothetical comparator who was a white gas engineer who was in the same position as the claimant, i.e, who brought a civil claim against the respondent'. The claimant did not rely on a hypothetical comparator in the alternative.
127. If the claimant does not rely on a hypothetical comparator then his claim against the respondent ends as he would not be able to satisfy the requirements of s13 EqA (less favourable treatment) or s108(1)(b) EqA which requires that the circumstances between a claimant and their comparator were not materially different to find a claim of discrimination contrary to the Equality Act (*Ford Motors*).
128. If the claimant relies on a comparator at all, it must be a hypothetical comparator, who is in materially the same position save for the protected characteristic. The correct comparator is a white gas engineer who brings a MCOL claim against his supervisor at his place of work.
129. The claimant made much of the burden of proof provisions in his submissions, asserting the burden of proof had shifted so it is briefly dealt with. Applying the two-stage test, the initial burden of proof is on the claimant to prove facts from which the Tribunal may infer, in the absence of an explanation, that the respondent has unlawfully discriminated against the claimant (*Igen v Wong*). Contrary to the claimant's submissions, the burden of proof does not shift to the respondent simply because he raised an allegation of race discrimination by mentioning this at least 80% of the time. Neither does it shift because of a difference in the protected characteristic and the treatment alone. There must be 'something more' than an allegation of race discrimination for the burden of proof to shift (*Madarrasy*). The fact Mr Maclaughlin did not 'push back' and dispute race discrimination does not satisfy the 'something more' requirement.
130. As the claimant must rely on a hypothetical comparator, I concluded it would be difficult for him to establish if the circumstances between him and his hypothetical comparator, a white gas engineer' who brings an MCOL claim against his supervisor at his place of work, were materially the same without identifying the reason for the respondent's treatment (*Aylott*). As confirmed in *Laing* 'in such cases the question whether there is such a comparator - whether there is a prima facie case - is in practice often inextricably linked to the issue of what is the explanation for the treatment'. This is a case where it is appropriate to ask the reason for the respondent's treatment of the claimant.
131. I am moving to the second stage not because the burden of proof has shifted to the respondent but because I consider it appropriate to ask the reason for the treatment because the claimant must rely on a hypothetical comparator so it is appropriate to look at the totality of the evidence which

includes the respondent's explanation to establish if discrimination occurred (*Qureshi*) and as confirmed by the Supreme Court in *Hewage* 'it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.'

132. Turning to the respondent's decision to 'step-in and provide legal services, it concluded it had no option because Mr Bowley was acting in the course of his agency with the respondent so it was vicariously liable. I have accepted this. This was the reason why the respondent took the decision to 'step in' and provide Mr Bowley with advice and representation and had nothing to do with the claimant or Mr Bowley's race. The respondent would have stepped in and provided Mr Bowley with legal support and representation if a white gas engineer brought an MCOL against him, in the same circumstances and for the same reasons. In summary, the reason for the respondent 'stepping in' and provide legal support is because it was vicariously liable for Mr Bowley's supervision and ultimately, his decision to dismiss the claimant so had no option other than to defend the MCOL claim on Mr Bowley's behalf. Further, there is no other evidence to suggest that decision was tainted with race discrimination. The claimant conceded there was nothing in the documentary evidence that referred to his race. He also stated, when asked about whether the treatment would have been the same if it was a white ex-contractor who submitted the MCOL claim 'no, it is not about black man and white man, it is about Mr Bowley'. He went on to say 'there is no way of determining that because there is no way of looking into the future. I don't know'.

133. The claimant himself acknowledged there would be a conflict of interest if the respondent had acted for him (and Mr Bowley) in the same dispute. It follows that it could not have provided him with legal services, either directly (by giving the claimant access to its in-house legal team, including the services of an in-house barrister) or indirectly (by paying for the claimant to instruct an independent barrister) and to do so would be implausible. Following on from this, the respondent took the position that if the claimant wanted legal advice, it was his responsibility to source his own independent legal advice. In conclusion, the respondent could not have stepped in and provided the claimant with legal support because there was a conflict of interest and this is a reason that had nothing to do with the claimant's race.

134. Section 108(1)(b) requires that conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act. Section 108(1)(b) also requires the circumstances between the claimant and their comparator to be not materially different to find a claim of

discrimination contrary to the Equality Act and this is necessary so as to determine whether a claim falls within s108(1)(b) EqA.

135. The circumstances of the alleged discrimination arise from the claimant's dismissal, so it is difficult to postulate about whether the alleged discrimination would contravene the Equality Act if it occurred during the claimant's assignment at the respondent, particularly as the claimant's own evidence was that he would not have submitted an MCOL claim if his assignment had not have been terminated. However, putting that aside, I must determine whether conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene the Equality Act, in this case s13. If the claimant had submitted an MCOL claim against Mr Bowley (or any other officer of the respondent with authority over him) who was acting in the course of his agency or employment at the respondent whilst he was still working at the respondent, the respondent would still have stepped in and provided legal services in the same way it did to Mr Bowley following termination of the claimant's assignment and for the same reasons which were not tainted with direct race discrimination.

136. Section 108(1)(b) EqA requires that the circumstances between the claimant and their comparator must not be materially different to find a claim of discrimination contrary to the Equality Act (Ford Motors). Mr Bowley is not a suitable comparator because his and the claimant's circumstances were materially different. A suitable comparator is a hypothetical white gas engineer who brings an MCOL claim against his supervisor at his place of work in materially the same circumstances. The decision of the respondent not to step in and/or provide the claimant with legal advice including the assistance of counsel did not contravene s13 Equality Act 2010 and would not have done if the same decision was taken while the claimant was working at the respondent. The requirements of s108(1)(b) EqA are not satisfied.

137. The claimant's claim for direct race discrimination does not satisfy the requirements of s108(1) EqA or s13 EqA so is dismissed.

138. The remedy hearing listed for 10 December 2025 is no longer required and is vacated.

Approved by:

Employment Judge Davey

13/10/2025

JUDGMENT SENT TO THE PARTIES
ON

17 October 2025

FOR THE TRIBUNAL OFFICE