EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
MR I E SANYANG	**AND**	**SECOND STEP LIMITED**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 6TH / 7TH / 8TH / 9TH / 13TH / 14TH OCTOBER 2025

EMPLOYMENT JUDGE MR P CADNEY (SITTING ALONE) **MEMBERS:**

APPEARANCES:-

FOR THE CLAIMANT:- **MS A SIBLEY (LAY REPRESENTATIVE)**

FOR THE RESPONDENT:- **MR C CROW (COUNSEL)**

JUDGMENT

The judgment of the tribunal is that:-

The claimant's claims of:

1. Direct race discrimination (13 Equality Act 2010);
2. Harassment related to race (s26 Equality Act 2010);
3. Victimisation (s27 Equality Act 2010);
4. Discriminatory Constructive Dismissal (s39 Equality Act 2010);
5. Public Interest Disclosure Detriment (Employment Rights Act 1996);

6. Automatic Unfair Dismissal (s103A Employment Rights Act 1996);

Are not well founded and are dismissed.

7. Respondent's Costs Application - The respondent's application that the claimant pay some or all of its costs is dismissed.

Reasons

1. By this claim the claimant brings claims of direct race discrimination (s13 Equality Act 2010), harassment related to race (s26 Equality Act 2010), victimisation (s27 Equality Act 2010), and discriminatory constructive dismissal (s39 Equality Act 2010); and public interest disclosure detriment, and automatic constructive unfair dismissal pursuant to s103A Employment Rights Act 1996.

2. The tribunal has heard evidence from the claimant, and read a witness statement from Ms Sibley (in the circumstances described below.) The respondent has served witness statements from Mr Elias Ramirez Mesa, referred to before me as Mr Ramirez, Mr Andrew Warren, and Ms Collete Allaway. The claimant took the decision not to challenge or cross examine any of the respondent's witnesses, and so their statements have been taken as read (see below).

3. In addition there is a bundle of 614 pages to which I have been taken and considered.

Background / Summary

4. The respondent is a mental health charity focussing on providing housing needs and support, based in Bristol and the surrounding area. The claimant was employed as an Equality, Diversity, and Inclusion Officer from 1st November 2022 to his resignation on 25th June 2023. He was part of the Specialised Community Forensic Team (SCFT) which was a newly created team, to support people in secure in-patient units back into the community, working in partnership with Avon and Wiltshire Mental Health Partnership NHS Trust. The claimant worked mainly at Fromeside Medium Secure Psychiatric Unit. The purpose of the claimant's role (although there is a dispute as to its ambit as set out below) was to provide guidance to the SCFT as to how best to support service users within the EDI framework. The claimant's line manager was Mr Ramirez. Mr Warren was Deputy CEO of Second Step; and Ms Allaway was an HR Business Partner.

5. The primary events in dispute which led to the claimant's resignation and form the basis of the claims set out below are:

   i) The respondents requirement that he work with / provide guidance as to protected characteristics other than race to and on behalf of service users;

ii) AdS continuing to be permitted to work with black service users and /or not being suspended/dismissed;
iii) The alleged cancellation of the music/food festival;
iv) The extension of the claimant's probation period;
v) The manner in which the respondent dealt with his complaints between 11th May 2023 and 11th June 2023.

6. Each of these is discussed in detail below.

Procedural History / List of Issues

7. The claim form was presented on 23rd June 2023 and I heard the first TCMPH on 19th December 2023. I set out a summary of the claimant's claims (repeated below), and also set out my detailed analysis of the claimants claims, as I understood them to assist the claimant (since then the allegations of disability discrimination have been withdrawn).

In Box 8.2 the claimant sets out the following propositions:

i) He was employed to improve the outcomes for mainly black service users who are mental health inpatients at secure units;

ii) In early February 2023 he complained to his line manager (R4) that a colleague (unidentified in this document but referred to in the Amended Claim form as AdS (see below)) was both "being racist", denying racism exists, and refusing to work within the Equality Act; but was protected by R1 and permitted to continue to work with black service users;

iii) When he raised his concerns they were ignored by R1/ R2;

iv) He raised further safeguarding/racism concerns; complained that R4 was racist and that R1 was failing all black staff members and service users;

v) He raised a whistleblowing complaint to "the whole team, the Senior Leadership Team and the Board of Trustees but I have been completely ignored";

vi) As a result he went off sick both because of cancer and/or depression;

vii) R1 has ignored findings of institutional racism, ignored recommendations and breached the Equalities Act "on an industrial scale", "have a white supremacist way of managing and ensure nothing changes"

8. The case came before EJ Bax on 7th November 2024. He set the case down for this final hearing, and in respect of the List of Issues set them out and gave both parties time (until 29th November 2024) to correct them if necessary. The claimant provided Further Information as to which disclosures were set out in which of the emails. The respondent added this information to the List of Issues which is before me. However, in the course of cross examination the claimant contended that he had never seen

the List of Issues, and Ms Sibley stated that it was not agreed, and was in fact the respondent's list. As the respondent pointed out it is now nearly a year since the TCMPH at which the issues were agreed and there has been no hint since that they were not agreed, or any application to vary them. Apart from discussion of the accuracy of the List of Issues in respect of which emails are said to contain which disclosures, I have not been informed by the claimant of any way in which the List of Issues is not accurate, either in the claims advanced or any that have been omitted; and there has been no application to amend (except in relation to which protected disclosure were made in which emails, in respect of which agreed variations were made during the hearing). .

9. Late Admission of Evidence Applications - The claimant has made two applications for witness evidence to be admitted late.

10. Ms Nabeela Akhtar – On 1st October 2025 (three working days before the start of the hearing) the claimant supplied a witness statement from Ms Akhtar, together with an application to admit her evidence. Ms Akhtar was employed by the respondent between February 2024 and March 2025. She was not therefore employed at the same time as the claimant, and has no direct evidence as to the issues in dispute before me. However her line manager was Mr Ramirez and she alleges acts of race discrimination against him; and the failure of the respondents to take her allegations sufficiently seriously. The claimant therefore submits that her evidence is sufficiently similar to his allegations against Mr Ramirez, and of the respondents failure to take those allegations seriously, to make it sufficiently probative to admit. It is evidence which if accepted would support the claimant in any factual dispute and allow that factual dispute to be decided in the claimant's favour; and was evidence from which the tribunal could draw inferences as to Mr Ramirez's behaviour. There is little or no prejudice to the respondent in that Mr Ramirez is already a witness in this case and will have sufficient time before he gives evidence to be able to prepare his responses to the allegations made by Ms Akhtar. He therefore invites me to conclude that although disclosed late that the evidence should be admitted.

11. The respondent objects to the admission of the evidence not simply because it was disclosed late; although it does contend that the respondent is being ambushed by the late disclosure of this evidence. Ms Akhtar also has a claim before the tribunal against the respondent arising out of her employment, part of which includes the allegations of discrimination against Mr Ramirez. That case has not yet been heard and there has been no disclosure or exchange of witness statements in it. Until 1st October Mr Ramirez had not seen Ms Akhtar's evidence as to the allegations against him. The respondent submits that what the claimant is inviting the tribunal to do is to try one part of Ms Akhtar's claim in advance of the actual trial at which the issues will be determined; and then to use its conclusions, having determined one part of her claim, to apply them to this claim. The respondent submits that that is transparently inappropriate to do so in this hearing, not least because it would, at least potentially, create issues of issue estoppel / res judicata in respect of any findings of fact or conclusions which would be binding on the final tribunal in Ms Akhtar's case. In addition it is profoundly prejudicial, in that other than the evidence of Mr Ramirez himself, they will not be able in this hearing to adduce any other witness evidence

which may or may not be available to them at the final hearing to counter Ms Akhtar's allegations. Looked at overall the respondents submits that it would be wholly inappropriate to admit the evidence, and attempt in effect to conduct a trial within trial in advance of Ms Akhtar's own hearing, and that it would necessarily be prejudicial to the respondent. The prejudice to them outweighs at any probative value, not least because Ms Akthar cannot give any direct evidence as to the issues which are before this tribunal in any event.

12. In my view the respondent is correct that prejudicial effect of admitting the evidence would outweigh the probative value, and I determined that I would not allow the application to admit her evidence.

13. The matters set out above reflect my reasoning for refusing the application at the start of the hearing. Later during the hearing the claimant took the decision not to challenge any of the respondent's witnesses, for the reasons set out below. Had, at the time this application was made, it been known that the claimant was not in fact intending to challenge the respondent's witnesses, and in particular Mr Ramirez, the basis for calling Ms Akhtar would appear in any event to have fallen away.

14. Ms Sibley – Ms Sibley is the claimant's representative, and has been throughout all the hearings in this case. She had not supplied a witness statement prior to the hearing, or given any indication that she would seek to give evidence prior to the hearing. Day one was predominantly a reading day and the claimant gave evidence and was cross examined for most of days two and three. At the close of day three Ms Sibley indicated that she had had one to two hours of re-examination and the case was adjourned until 10.00 am day four. On the morning of day four Ms Sibley made a number of applications. She was visibly upset, and stated that she had not been able to sleep, and had not understood how difficult it would be to represent the claimant, or to understand the legal niceties of the case. She was exhausted and not in a fit state to carry on and either re-examine the claimant or cross examine the respondent's witnesses, and applied for an adjournment.

15. In addition she sought permission to give evidence herself. She stated in her application that the claimant was at a serious disadvantage in that it was "*impossible for the claimant to present his case in the current format….This extraordinary situation has arisen because the claimant's Afrocentricity is causing the claimant a serious disadvantage. He is unable to appreciate the questions being posed to him, and cannot understand them in an Afrocentric way. This leads to him being very confused and giving answers to a different question, when he is expected to be able to understand all of his evidence*". She went on to couch her application in remarkable terms stating "*If the claimants application is granted his representative needs to forewarn that those who will be present to hear this evidence may need to prepare themselves. It is likely to become emotional, distressing and shocking, but ultimately it will be exhilarating and enlightening. This will be something never experienced before or ever forgotten….Neither the claimant or his representative have ever had this opportunity before and he has waited 40 years finally to be listened to..".*

16. She sought permission to draft a witness statement and be given permission to give evidence herself. The respondent did not object to the application for an adjournment as Ms Sibley was clearly not in a fit state to continue, and stated that until it had seen the evidence Ms Sibley proposed to give it could not either consent or object to the application. The case was adjourned until Monday morning for Ms Sibley to produce a witness statement and for the issue to be decided.

17. She supplied a witness statement in accordance with the directions; and the respondent indicated that whilst it viewed it as nearer to a written submission than a witness statement, particularly as she played no part in the factual events underlying the dispute, that if the claimant wished it to be admitted it did not object. It did not seek to cross examine Ms Sibley and I admitted the witness statement.

18. Respondent's Witnesses – As part of the application set out above Ms Sibley indicated that the claimant had taken a decision not to challenge or cross examine the evidence of the respondents witnesses. It was explained to her that if she chose not to challenge the evidence of any of the witnesses they would not be called, and that as a general proposition the tribunal was likely to accept their evidence unless there was a very good reason not to. She stated that the claimant understood this and the risks to his case that this course posed. On the morning of Monday 13th October, when the adjourned hearing re-commenced I asked Ms Sibley if this was still the claimant's position, and she confirmed that it was. As a result it was not necessary to call the respondent's witnesses to give evidence.

Primary Assertions / Points in Dispute –

19. There are a number of events/ assertions which are central to the claims which I will deal with first before discussion of the individual claims.

20. Afrocentricity / Eurocentricity – Central to the claimant's claims against the respondent, and also his complaints as to the law and the tribunal process itself, is that it is constructed from and in a Eurocentric, and not an Afrocentric perspective. Part of the basis for the claimant's application to allow Ms Sibley to give evidence was that it would allow the tribunal to understand his contentions as to Eurocentricity / Afrocentricity, and would mean that it was not necessary to cross examine the respondent's witnesses as it would explain the issues as to the respondent approaching the underlying disputes in a Eurocentric manner, which is central to the assertion of prejudice towards and discrimination against the claimant.

21. The claimant in his witness statement sets out that this Afrocentric approach requires that "*Black people must be seen from a Black perspective in a way they relate to, not in a Western or Eurocentric approach white people understand…I use my knowledge of authentic Alkebulan / African history before and after slavery as a starting point to explain the context of racism*".

22. The claimant asserts that some of the consequences of the application of a Eurocentric approach to Black service users, is that all twenty other staff members needed anti- racist training which he could provide; and that without this training

"*there would be no understanding of racism when they make important clinical and other decisions about Black in patients*.." He describes the work of AWP clinicians as having "*an overly clinical, outdated approach being used that was risk averse and over-medicating Black in patients* ..", and gives examples of Black patients he believes were over medicated.

23. In her witness statement Ms Sibley defines Eurocentrism as ".. *a worldview, a rigid mindset, or rhetorical orientation that centres on white ways of knowing and a superior way of thinking*". In contrast "*Afrocentric thinking recognises all Black people originated in Africa. Originally Africa was one big place called Alkebulan. ….Being Afrocentric is the deep understanding of African culture and traditions, it elaborates Africa's rich and immense African history from a Black perspective.. This is what is missing in Anti- Racism training in this country, it never appreciates essential historical context and what Africa was like before slavery…That has affected all black people ever since. The black race has always been oppressed by the white race, never the other way round."*

24. The claimant and Ms Sibley do not shy away from asserting that requiring the claimant to fit his claims within the straightjacket of the Equality Act and / or Employment Rights Act; or to abide by the rules and procedures of the Employment Tribunal in determining his claims are in and of themselves acts of racism as they require a Eurocentric approach to those legal issues. Ms Sibley complains that adopting the approach the respondent has taken of conducting a detailed examination of the specifics of the issues underlying the claims fails to allow the tribunal to see that the claimant was right and that all of his complaints about events while employed by the respondent, and in relation to the legal claims are rooted in the failure to approach those issues from an Afrocentric perspective.

25. As a result, and as I understand it, the fundamental reason why the claimant has not sought to challenge or cross examine the respondents witnesses is that he is not essentially seeking to fit his claims within the Equality Act or Employment Rights Act, but rather to contend that they are pieces of Eurocentric legislation and reflect an approach to discrimination in particular that he does not accept. In relation to the claims of direct race discrimination, where I have to answer the questions of whether there was less favourable treatment in comparison with an appropriate actual or hypothetical comparator, and if so whether this is "because of" race (see below); I am required to determine the reason why, whether conscious or unconscious, the less favourable treatment occurred. Similarly in claims for harassment I am required to identify the unwanted conduct, to ask whether it created one of the proscribed environments, and if the unwanted conduct was related to race. The claimant essentially contends that these are the wrong questions, and that what should be the focus is not why the conduct occurred or whether it is related to race but its effect on him, and its effect on him in the wider context of the history of race discrimination. Thus Ms Sibley in her witness statement contends that for the claimant's probation to be extended ("failed") by a white manager must be placed in the history of slavery and discrimination, and that it made him feel like the "*house negro*" to be "..*told by a white man how to do a "Black experts" job.*" To ask the specific question as to why his probation was failed/extended is the wrong question and fails take into account

the history of slavery and discrimination; and further that it is Eurocentric, wrong and discriminatory to require him to fit his claims into a legal structure which is based on and reflects the Eurocentric approach.

26. One example of the difficulty of the claimant approaching the evidence in an "Afrocentric" manner, whilst being questioned in a Eurocentric one, arose in relation to the claimants expressed view about the appropriate support worker for any given patient. The claimant expressed the view (see the dispute as to AdS below) that only a black person with a full understanding of racism, and who had themselves suffered race discrimination could properly support a black patient. He agreed when it was put to him that the logic of his position was that only a support worker who was themselves gay, and who understood deeply rooted discrimination on grounds of sexuality, and had suffered that discrimination themselves could be an appropriate support worker for a gay patient; and that the same logic applied to anyone, or at least those who possessed any protected characteristic as defined in the Equality Act; which the respondent contends is absurd, impractical and probably itself in breach of the Equality Act. Ms Sibley submitted that was not what the claimant was saying (although it was his evidence), and that the claimant should not be held to any answer he gave in cross examination precisely because it involved the rigid application of a formalistic, legalistic Eurocentric approach. In addition approaching that question from a Eurocentric perspective was to assume that all protected characteristics were equal and logically should be treated in the same way. Applying an Afrocentric approach would be to accept that there is something unique and different about race discrimination. It is certainly true that the claimant did not appear to accept that all protected characteristics should be treated equally; and in answer to questions that it was certainly Mr Ramirez's view that his duties extended more widely than race discrimination stated that Mr Ramirez was always "banging on" about equality and inclusivity; and that he objected to being required to deal with other protected characteristics in part because to do so reduced the primacy which should be placed on race discrimination (which reflects his and Ms Sibley's view that the Equality Act is itself Eurocentric).

27. The respondent accepts that the claimant's beliefs are genuinely and passionately held both by him and Ms Sibley, but submits that the claimant's opinions lead him to some remarkable propositions. As set out above it leads him to determine that clinical decisions are wrong, and individual patients incorrectly medicated, despite him having no relevant qualifications or expertise. As is set out in greater detail below his contentions as to AdS's suitability to be a support worker, led him to recommend suspended or dismissing AdS, and to assert that there was no legal barrier to doing so. If either of those had happened it would have been because AdS failed to comport with the claimant's views as to acceptable views/experiences for a black support worker; and it is difficult to see what defence the respondent would have had to claims under the Equality Act for a number of forms of race discrimination, and potentially other claims. That such a recommendation should have come from the respondent's DEI officer is somewhat remarkable.

28. Similarly in the evidence of both there is reference to the service user (who I will refer to as M) being supported by AdS. After the claimant's complaint he was asked

about continuing to be supported by AdS and stated that he was happy for this to continue. The respondent and AWP accepted this, which the claimant asserts they should not have done. The claimant and Ms Sibley assert as a fact that M only gave that reply because the questions were being posed by white people, and he said what he thought they wanted to hear. The respondent submits that neither the claimant nor Ms Sibley can possibly know in any individual case why anyone gives a particular answer to a particular question; M might in fact simply have been telling the truth that he was happy to continue to be supported by AdS, and the fact that both are happy to make factual assertions, the truth of which they cannot possibly know is both remarkable, and troubling in that it is itself imposing a racial stereotype on M.

29. In the end, whilst the respondent does not dispute the genuineness or fervency with which the claimant holds and expresses his beliefs, it submits that both the respondent and the tribunal are obliged to apply the law as it is and not how he would wish it to be; and if that involves applying "Eurocentric" legislation that is what the tribunal is required to do. The respondent submits that whatever the claimant or Ms Sibley's views, the task for the tribunal is simply to find the facts and apply the law as it is, and that that necessarily involves a detailed examination of the Equality Act / Employment Rights Act; and it is simply not open to the tribunal to decide the case on any other basis.

30. In my judgement this is necessarily correct.

31. AdS - The starting point of the claimant's complaints relate to a Recovery Worker/Support Worker (whom I will refer to as AdS to distinguish him from the claimant) who is himself black and of African heritage, but who moved to the UK as a young child. Given the centrality of the claimants allegations against AdS, and his allegation that the respondent failed to take them seriously or deal with them at any point, even when he escalated them, it is sensible start with them first.

32. In his witness statement the claimant describes meeting AdS for the first time in January 2023, ".. *It became clear to me that AdS had experienced severe racial trauma in his life but he was very uncomfortable about his black identity and talking about racism. In my experience of working with black people I have seen this far too often. Lifelong racism and other traumatic experiences can affect black people so badly that they either reject their blackness and resort to self-hate or deny the reality and painfulness of racism, in order just to cope…On a human level I felt very sad for him because he needed help but also frustrated because he was unable to effectively help any black inpatient when that was part of the job….*" As set out below this is a description which is wholly at odds with AdS's own views as to his history and experiences.

33. The first reference to the issues between the claimant and AdS are recorded in the induction review with Mr Ramirez, of 1st December 2022: "*Some people have commented that you Abraham bring the black men element into every conversation and feel that you leave other topics and protected characteristics aside… one member of staff feels targeted with this subject as the only other black member of*

the team and makes him feel uncomfortable and forced to take an active part on something he does not feel identified with." It is not in dispute that AdS was the member of staff being referred to.

34. Mr Ramirez's evidence is that he, AdS and the claimant met on 5th January 2023; when it was agreed that Recovery Workers should be vigilant of any discrimination occurring towards their service users; but beyond that were not expected actively to participate in discussions or projects in relation to race or any other protected characteristic.

35. In or about February / March 2023 AdS himself lodged a grievance in respect of Mr Ramirez in which Mr Ramirez was supported by the claimant. The claimant was interviewed as part of that grievance and stated in relation to AdS: *" I was talking to AdS on another level as a brother, giving him quality time…. AdS was avoiding meeting with me for the EDI chat and said he'd only meet with me if ER was there. I said "You're a Black Brother. Why do we have to wait?"… AdS is completely unconcerned about EDI issues. AdS told ER he was uncomfortable because he didn't want to be part of my fight.. it's not my fight. I said we're now in a very good place to have discussions with white colleagues. I think AdS has very serious issues with his own blackness. I'm sad for him."…"AdS has put a spanner in the works. He's refusing to work in compliance with the Equality Act 2010. He's putting Second Step at risk. He's in breach of the staff code of conduct. He's incapable of advocating for black service users as he doesn't recognise his own identity"*

36. Matters came to a head during and following a meeting on 13th April 2023. The claimant complained that AdS during the meeting stated that he himself had not personally experienced race discrimination, and that racism did not exist. During the subsequent investigation of the claimant's grievance AdS accepted that he had stated that he had not personally experienced race discrimination; but denied ever saying that racism did not exist. Ms Hewitt listened to the recording of the meeting and accepted that AdS had not said this.

37. On 11th May 2023 the claimant sent an email to Mr Warren (the first of his asserted protected disclosures/ protected acts). In it he states "*In my role as EDI officer I work in the SCFT team and one of my colleagues AdS who is a recovery worker and is black is displaying racist attitudes and behaviour. …. This is a difficult issue because AdS is Black, but he is denying that he has ever experienced racism in this country, and fails to acknowledge that racism exists, and this is affecting his clients who are very vulnerable service users … AdS initially told Elias and myself that he had no intention of "joining my EDI fight" as it was nothing to do with him, even though this is part of his job. I have tried everything to get him on board but he refuses… As a black man myself I find it personally very uncomfortable and unacceptable that he is allowed to continue working in this manner with no consequences…I cannot work with a racist it is a simple that and AdS is being racist…. HR were given full details of the allegations against AdS during his grievance against Elias months ago but nothing has been done and AdS is still working with Black clients. .. There are no legal obstacles to dismissing AdS or at least suspending him and I am at a loss to understand the thinking behind this."*

38. The reference to vulnerable service users is a reference to M whom the claimant had spoken to, and whom the claimant contended had complained about race discrimination within the hospital. This had not been picked up, or reported by AdS. In Ms Hewitt's grievance report Rebecca Knight is recorded as stating that the claimants allegations had been looked into, and that neither the Care Co-ordinator or the service user himself had any concerns about working with AdS. For the reasons set out above the claimant does not accept that M's own views were reliable or should have been accepted or acted upon.

39. In his email of 18th May which is broadly concerned with the extension of his probation the claimant states **:** " *I feel as if I am being singled out unfairly. I have been expected to tolerate a racist colleague for months now and I've had no updates and nothing has been done. It's like a Jewish person being told to work with a Holocaust denier - it's uncomfortable to say the least and does not provide a healthy working environment. I have a right not to be discriminated against at work but I am. This is not being taken seriously by Second Step and this is concerning to me as a Black man and an employee. I do not feel supported or valued; discrimination comes in many forms but as an EDI officer my views seem irrelevant. He is having a very negative impact on black service users yet he is being protected by Second Step for whatever reason and he continues to work with those clients. My complaint has not even been acknowledged yet after a week. How am I supposed to feel about that? I may be an EDI officer part time but I am Black full time and can never get away from racism even at work. I feel like we should be standing up for service users instead of them having to put up with this obvious problem which breaches the duty of care which Second Step has to its vulnerable service users. Why is this so difficult* "

40. In a separate email of 22nd May 2023 (again to Mr Ramirez and which covers much of the same ground) the claimant makes a number of very similar points in respect of AdS.

41. AdS is not referred to explicitly in the claimant's email of 31st May 2023, but alleges in general terms that the respondent is institutionally racist.

42. In his email of 5th June 2023 (sent to the SLT/Trustees) again the claimant makes generalised allegations against the Respondent but does not explicitly refer to AdS)

43. In his email of 11th June 2023 the claimant refers to first reporting four months earlier ".. *serious complaints of Racism and Safeguarding against a certain colleague who would pose a threat to any Black or other service user..… Why has nothing been done about this racist colleague continuing to work with vulnerable service users…It's a total no brainer but then why is it so difficult for you to deal appropriately with employees Gross Misconduct and dismiss them?"*

44. In summary there are a number of propositions concerning AdS which form the basis of his complaint:

i) AdS was himself racist as he asserted that he had not himself suffered race discrimination (which he accepts saying); and that he denied racism existed (which he does not accept ever saying);

ii) He had "serious issues with his own blackness";

iii) As a result it was at least inappropriate, and in fact an act of race discrimination for him to work with black service users;

iv) As a result it was at least inappropriate and in fact an act of race discrimination for him to continue to be permitted to work with the claimant;

v) He should have been suspended/dismissed and it was an act of race discrimination to fail to suspend or dismiss him.

45. The respondent submits that these events and allegations exemplify the claimant's approach to these disputes. Firstly, as set out above, and on his own evidence, it appears that on the first time he met AdS he formed a view of AdS which did not come from AdS and is totally at odds with AdS own description of his life and experiences. The claimant appears totally uninterested in AdS own explanation, and to have based his views entirely on an invented life history of AdS suffering "severe racial trauma", which he at best has no way of knowing is true or untrue. However fervently the claimant believes his own diagnosis of AdS problems it is essentially a fantasy as it is not based on or formed from any factual foundation. However he is absolutely certain that his own diagnosis and identification of AdS underlying problems is correct, and has based the whole of his series of allegations on the proposition that he is right, and AdS's own account of his life history should have been disbelieved; and that the respondent was required to act on his complaints and suspend/dismiss AdS solely on the basis that the claimant required them to do so.

46. Put simply the respondent submits that the claimant is fundamentally wrong, and it would in fact have been wholly inappropriate for it to have acted on the claimant's complaints against AdS, at least before they had been properly investigated, which was part of the purpose and remit of the grievance investigation. It submits that it acted entirely properly in respect of the claimants allegations against AdS and that the claimants complaint that their acting or failing to act was in any way unreasonable, let alone some form of discrimination or public interest disclosure detriment is untenable. The respondent relies on the claimant's own evidence; in that in answer to questions about the 11th June email, in which he stated that he would not agree to either an internal or external investigation, he accepted that his position was that the respondent was obliged to accept his allegations as true without investigation; which again the respondent submits is necessarily an untenable position, and particularly remarkable coming from its DEI advisor.

47. Conclusion – In my judgement the respondent is essentially correct. However genuine the claimant's beliefs in respect of AdS it was simply not open to the respondent to act on them without a proper investigation.

48. Failing / Extension of Probation - One of the claimant's central complaints is the failing of his probation. The respondent does not accept that it was failed, but accepts that it was extended.

49. The claimant's contract of employment gives a start date of 1st November 2022. The Job Title is Equalities, Diversity and Inclusion Officer with the Specialist Community Forensic Team (SCFT). Clause 6.0 provides for a six month probationary period and explicitly provides for it to be extended by the respondent.

50. On 27th February 2023, the midpoint probationary review took place. It identified that he had not completed all of the eLearning, and identified the courses still to be completed; and further tasks including quarterly meetings with each Care Co-ordinator ; fortnightly meetings with ERM to organise "Connecting Care" sessions; and expressly noted that he would need to complete the outstanding tasks before closing the probation period.

51. The probation review took place on 11th May 2023. At that point the claimant was identified as not having completed six classroom courses and two eLearning Courses including Equality and Diversity in both. In addition the managers comments included that Future workshops and Connecting Care Sessions must cover other protected characteristics; and prioritising those identified through the clients Equality Impact Assessment Review.

52. Mandatory Learning – The respondent contends that it was inevitable that the claimant would have to either fail his probation, or for it to be extended as he had not completed the mandatory courses, both classroom and eLearning. The claimant contends that there was no mandatory requirement to complete the courses. His contract of employment does not contain any such requirement and the Learning and Development Policy has no contractual force and he was not aware of it.

53. The respondent submits that it is made absolutely clear in the policy that there are induction, mandatory and non-mandatory training. Para 3.1.1 explicitly provides that mandatory training must completed to pass probation. As set out In her subsequent report into the claimant's grievance Ms Hewitt received evidence from the claimant who stated that he didn't think all of the eLearning applied to him and that it was not necessary for him to complete them all. However the respondent's witness during the grievance all confirmed that completing the courses was mandatory; and produced evidence of five other individuals who had had their probation extended as they had not completed the mandatory courses.

54. The respondent submits that it is transparently clear that he was required to complete the mandatory courses as a condition of passing probation, and that whether or not he had seen or read the policy, that he knew that in any event from the mid-point review. His suggestion that Mr Ramirez had some discretion is completely baseless; as is the suggestion that it was open to him to determine which courses he needed to attend. In particular the respondent contends that the claimant's evidence as to why he did not need, and could not be required to attend,

the mandatory Equality and Diversity Training is ”extraordinary”. Firstly he contends that he was already an expert in Equality and Diversity and that there was nothing he could be taught; and that he did not need to learn about protected characteristics other than race as it was not part of his role to understand or advise on them. This leads on to the second reason for his probation being extended.

55. Job Role – The claimant contends that it was not appropriate or necessary for him to be required to work with any other service users than black service users. This is his area of expertise, and that this was the basis upon which he was employed. Thus a requirement to engage with service users with other protected characteristics was unnecessary, and not a requirement that could legitimately be applied to him. He relies on the grievance outcome which upheld his complaint in that Ms Hewitt accepted, that the job description was at best ambiguous and that all the questions and focus at interview related to his experience of and expertise in supporting black individuals; and did not align with understanding his experience of working with individuals with other protected characteristics.

56. The respondent submits that Ms Hewitt’s conclusions are necessarily not binding on this tribunal, but more pertinently are not relevant to answering the issue before the tribunal. Whether the claimant reasonably or unreasonably considered that his duties were narrower than Mr Ramirez thought, the question is whether Mr Ramirez genuinely believed that he did have those wider duties and responsibilities. If he did it provides a complete explanation as to why he required him to perform those duties. Mr Ramirez has not been challenged about this, and in any event it is absolutely plain from the contemporaneous documentation that this was his view**.** They rely on the fact that the Job Description includes references to groups with other protected characteristics than BAME male service users; and that in any event it is necessarily and obviously part of a DEI Officer/advisors role to deal with all aspects relating to DEI that may arise. Moreover the claimant was referred to the need to cover Personalised Equality Impact Assessments for all service users, not just Black service users or Black men in particular during his Induction meetings, and midpoint review.

57. The respondent submits, that looked at overall, given the contemporaneous documentation, and in the absence of any challenge to Mr Ramirez’s evidence, there is no evidential basis not to accept his evidence; and that the reasons Mr Ramirez gave for extending his probation are obviously the genuine reasons.

58. Conclusions – In my judgement the respondent is correct in these submissions; and I accept both in the absence of any challenge to his evidence, and that fact that it is clearly supported by the contractual, policy and contemporaneous documentation, that the reasons given by Mr Ramirez for extending the claimant’s probation were the genuine reasons.

59. Music / Food Festival – One of the claimant’s complaints is that ERM cancelled a proposed Music / Food festival. The sequence of events is that the claimant proposed a music /food festival to take place at Fromeside in September 2023. Whilst the response was enthusiastic the AWP wanted to understand and discuss

logistical and other issues with the claimant, prior to a working group session due to take place on 23rd March 2023. The claimant did not send an invitation to the working group session, and did not arrange a pre-meeting with Rebecca Knight. As a result the proposed event never got past the planning stage as Ms Knight confirmed to Ms Hewitt during the grievance.

60. As a consequence of the events described above Mr Ramirez denies that the event was cancelled, but rather that it never got past the planning stage, and that in any event he did not cancel it. Again the respondent submits that the contemporaneous documentary evidence supports Mr Ramirez; and as the claimant has chosen not to challenge his evidence that there is no evidential basis for concluding that the allegation that he cancelled it is factually correct

61. Conclusions -In my judgement the respondent is correct, and there is no evidence before me that Mr Ramirez cancelled the festival; and it follows that the allegations that are based on this allegation are bound to fail factually.

62. Grievance – The claimant's complaints/grievances were investigated by an external HR consultant Patricia (Trish) Hewitt. She is described by Ms Sibley in her witness statement as a Black woman of Caribbean heritage, but it is alleged that she, "..*did not understand racism unfortunately and further traumatised the claimant*". Other than the fact that she did not uphold the majority of the claimant's complaints the basis of this assertion is not set out and is not at all clear.

63. She was commissioned on 28th June 2023, and caried out a variety of interviews between 28th June and 12th August 2023. On 13th August 2023 she sent the report to the respondent.

64. Delay - One of the complaints relates to the delay in sending the report to the claimant. Ms Allaway's evidence, which has again not been challenged, is that on 21st August 2023 the claimant emailed asking for a copy of the report. She replied on 22nd August saying that it had not yet been finalised. The claimant replied indicating that he did not understand what was meant by finalised. Ms Allaway's evidence is that the respondent had received the report itself, but not the appendices which were uploaded on 28th August. In addition the respondent sought legal advice as to whether there were any redactions they were required to make, and following the receipt of that advice the final report was sent on 8th September 2023.

65. Again the respondent submits that this provides a complete explanation of the events between 13th August and 8th September 2023. Ms Allaway was not challenged, and again the contemporaneous documentation supports her account in its entirety, and the tribunal has no evidential basis not to accept it.

66. Again in my judgement this is correct; and I accept the respondents evidence as to the events between those dates.

67. Mr Ramirez's evidence to the grievance investigation- The claimant alleges that on 12th July 2023 in his evidence to Ms Hewitt as part of the grievance investigation Mr

Ramirez lied and/or misquoted the claimant when he stated that the claimant was aggressive towards AdS and /or alleged that the claimant had revealed personal information about AdS in the meeting of 13th April 2023.

68. The respondents submits that the first is factually inaccurate, but that in any event that Mr Ramirez's evidence is that what he said to Ms Hewitt was his genuine recollection of the meeting. The meeting was recorded, as Mr Ramirez himself informed Ms Hewitt, and when he listened to the recording he accepted, on 14th July that his recollection was wrong.

69. The claimant has chosen not to challenge this evidence and there is no evidential basis for concluding that Mr Ramirez made anything other than a genuine mistake in his recollection. It is in essence not open to the claimant / Ms Sibley to choose not to challenge Mr Ramirez and simply invite the tribunal to reject his evidence.

70. In my judgement this must be correct.

71. Claimant's Credibility – The respondent submits that little or no weight can be given to C's evidence given the clear and obvious timing of his complaints, particularly those relating to Mr Ramirez are obviously a response to the extension of his probation.

72. As set out above he made concerted efforts to undermine AdS, and attempted to get him suspended or dismissed, essentially because he had stated that he had not himself experienced race discrimination, the truth of which the claimant refused to accept. The claimant alleged that he denied that racism existed in the meeting of 13th April 2023 which was demonstrably false; and shown to be so during the grievance investigation but the claimant maintains it and has never resiled from it. He had made the extraordinary allegation of abuse of a vulnerable service user, in respect of which he rejects the outcome of his investigation on the basis that the respondent could not take into account the expressed views of the service user himself. He contends in the absence of any evidence that Ms Hewitt did not understand racism .

73. Prior to his probation being extended on 17th May 2023 he had nothing but praise for Mr Ramirez. However from the moment it was extended he went on a sustained campaign against Mr Ramirez accusing him of racism without any evidence. He was not prepared to accept even the plainest evidence that Mr Ramirez was bound to extend his probationary period as he had not completed the mandatory training; but insisted on the basis of no evidence whatsoever that Mr Ramirez had a discretion and that the refusal to exercise it in the claimants favour was an act of racism.

74. He subsequently made allegations of racism and gross misconduct, against every member of the SLT/Trustees most of whom had had no involvement with any of the events or the issues underlying his complaints with no basis whatsoever; and alleged that Ms Hewitt did not understand racism..

75. It is, submits the respondent, demonstrably true that anyone who does not act as the claimant believes they should or is accordance with his wishes, is automatically alleged not to understand racism or to be racist, and the failure to act as the claimant wishes/ demands is alleged to be an act of race discrimination.

76. In the circumstances the respondent submits that the even if he is entirely genuine as to his core beliefs and the expression of them, that he is on any analysis prepared to make allegations of the outmost seriousness against large numbers of people without any evidence.

77. In my judgement the respondent is correct. However, for the most part my conclusions as to the allegations is not based on the claimant's credibility, but on whether there is any prima facie basis for the allegations (e.g. stage 1of the Igen v Wong Test in relation to the discrimination claims) and if so whether I accept the respondent's (unchallenged) evidence as to those allegations ,and few of the allegations actually turn on the claimant's credibility as a witness.

Specific Allegations

Direct Discrimination (s13 Equality Act 2010

Claims

78. Direct Race Discrimination

1.1 From about May to August 2023, Elias Ramirez-Mesa, Andy Warren, the Senior Leadership Team and/or Colette Allaway delayed dealing with/providing an outcome to the Claimant's following grievances:

1.1.1 Verbal complaints, undated (in January to April 2023 inclusive), to Elias Ramirez about:

- working with a racist colleague (AS)
- AS and R not helping Black in-patients experiencing racism
- R having an outdated white clinical way of dealing with Black in-patients
- R not helping in-patients at Mental Health Tribunal Discharge Hearings
- R not giving Black in-patients the tools for living in the community after release.

1.1.2 Verbal repetition of the complaints in paragraph 1.1.1 to Shauna Krause and Rooth Langston-Hart in March 2023 (at the grievance investigation hearing of AS's complaints against Elias Ramirez.

1.1.3 Written complaint by email to Andy Warren, dated 11.5.23. Repeating above allegations (paragraph 1.1.1 above).

1.1.4 Email dated 18.5.23 to Elias Ramirez complaining of discriminatory treatment relating to failure of probation, not letting C do his job properly, giving tasks not in job role and which would harm Black in-patients, not being supported and being ignored.

1.1.5 Email dated 22.5.23 to Elias Ramirez alleging racism by setting up to fail, micromanaging, ignoring C, preventing C helping Black in- patients, allegations of Race discrimination by in-patients being ignored.

1.1.6 Email dated 30.5.23 to Elias Ramirez reminding ER of his extensive experience and complaining about being ignored and being prevented from doing his job.

1.1.7 Email dated 5.6.23 to various leadership personnel complaining about delay of grievance, a lack of will to tackle racism, AS still working with vulnerable Black in- patients, safeguarding concerns not reported to the relevant agencies by R etc.

1.1.8 Email dated 8.6.23 to Andy Warren about lack of response/racism not being taken seriously.

1.1.9 Email dated 11.6.23 to Andy Warren and others, reiterating complaints of racism that is affecting the recovery and discharge of Black in-patients.

1.2 On 12July 2023, Mr Ramirez-Mesa lied about and/or misquoted C in response to his grievance by the following: when interviewed about C's grievance, he stated that (at an online workshop) C was aggressive towards AS and revealed personal information about AS.

1.3 On 11 and 17 May 2023, Mr Ramirez-Mesa deciding to 'fail' C on his probation;

1.4 In about end of May/early June 2023, Mr Ramirez-Mesa cancelling the Music and Food Festival, blaming C for letting everyone down and that C had not made it happen, but then later admitting that ER had actually cancelled the festival because C had not passed his probation.

1.5 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether

he was treated worse than someone else would have been treated. The Claimant has not named anyone in particular who he says was treated better than he was and therefore relies upon a hypothetical comparator.

1.6 If so, was it because of race?

1.7 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to race?

Law

79. Direct Discrimination - Section 13 (1) Equality Act 2010 provides –

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.

80. This requires the tribunal to identify three elements of:

i) Less favourable treatment; which is
ii) "Because of" a protected characteristic;
iii) In comparison with a an actual or hypothetical comparator.

81. Less favourable treatment – The test for whether treatment is "less favourable" is objective, although the tribunal can take into account the claimant's perception that it was less favourable in determining whether objectively it was.

82. "Because of" – The nature of the requirement for a finding that any less favourable treatment was "because of" the protected characteristic was summarised by Linden J in *Gould v St John's Downshire Hill 2021 ICR 1 EAT*: "*The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the test is subjective… For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision… [and] the influence of the protected characteristic may be conscious or subconscious."*

83. Burden of Proof – S136(2) Equality Act 2010 provides: *'If there are facts from which the court [or tribunal] 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.*' This is the requirement for the claimant to establish a 'prima facie case' of discrimination, 'stage one' of the test. If the burden does shift s136 (3) provides that s136(2) does not apply if 'A shows that A did not contravene the provision', "stage two'.

84. Evidentially the process required of the tribunal was summarised by Lord Nicholls in *Nagarajan v London Regional Transport 1999 ICR 877, HL*: '*Save in obvious*

cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on [protected] grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances.

85. Allegation 1.1– These allegations relate to the alleged delay in responding to each of the claimants complaints identified at 1.1.1 -1.1.9 above. They relate to Mr Ramirez, Mr Warren and Ms Allaway.

86. Ms Allaway - Ms Allaway's participation in the process is dealt with above and it is not necessary to repeat it here; save to say that for the reasons given above I cannot identify any unreasonable delay on the part of Ms Allaway, and I accept her evidence as to the reasons for the delay in providing the finalised report, which would be sufficient to satisfy stage 2 of the Igen v Wong test even if the burden of proof had transferred. Insofar as these allegations relate to Ms Allaway they are dismissed.

87. General points - In respect of the allegations against Mr Ramirez and Mr Warren, the respondent makes the specific submissions as recorded below. However it makes the general point that there was no unreasonable delay between May and August in dealing with the complaints. The claimant set out a series of rapidly escalating complaints between 11th May and 11th June 2023. These started with specific complaints against AdS / Mr Ramirez and rapidly escalated to include all of the SLT and the Trustees. The respondent attempted to arrange meetings with him to discuss and identify the complaints to which the claimant initially agreed, but subsequently withdrew his consent. The respondent then on 28th June appointed Ms Hewitt to investigate and report on his grievances as set out above. It asserts that it is simply not true factually that there was any unreasonable delay: and that as set out above that the claimant's actual underlying complaint is that it was unreasonable to investigate at all and that his allegations should have been accepted as true; which it is correct that he asserted in evidence.

88. In determining the factual assertion that there was unreasonable delay the respondent is correct that during the claimant hearing did not make any specific assertions that at any particular stage the respondent should have acted more quickly (and did not challenge any of the respondent's witnesses) but rather advanced a number of general propositions:

i) In respect of the allegations against AdS, he had advanced his concerns as early as December, had repeated them in January and again in March before repeating them specifically in the emails relied on. This is his field of expertise and it was not open to the respondent to ignore or fail to act on his opinions. For the reasons set out above in the discussion of AdS I accept the respondents submission that this approach is wrong and that it was entitled to ,and indeed required, properly to investigate them.

ii) That it was not reasonably open to the respondent to investigate the complaints either internally or externally; and again that as an expert in this field his complaints should have been accepted as correct without the need for any investigation. Again this appears to me fundamentally wrong and it was necessarily reasonable to attempt to investigate the allegations. .

89. Mr Ramirez - In respect specifically of Mr Ramirez, the respondent asserts that the allegations are factually incorrect. In respect of the allegations at 1.1.1, prior to the written formal allegations starting in May 2023, the differences between the claimant and AdS were discussed in the meeting of 5th January 2023. The claimants actual complaint is not of a failure to respond, but of AdS disagreeing with the claimant and Ramirez not accepting that the claimant was right in his assessment of AdS, which Mr Ramirez was perfectly entitled to do. Similarly, the claimant complains about the respondents clinical approach to black inpatients, and the failure to assist black inpatients at discharge hearings. The respondent contends that these allegations are simply misconceived. It and its employees do not take clinical decisions, as they are not qualified to do so; and they are not involved in decisions as to whether patients should be discharged. In respect of the emails of 18th and 22nd May 2023, Mr Ramirez initially replied to the emails sent to him; and a decision was taken for the claimant's complaints about Mr Ramirez to be dealt with as part of the investigation of all of his grievances / complaints as early as 24th May 2023 (see Mr Warren's reply) and thereafter the complaints against him were subsumed in the wider investigation of the claimant's complaints. This was necessarily reasonable given the rapid escalation and expansion of those allegations to include the SLT and all of the trustees in just one month. If there is any failure to respond by Mr Ramirez the reason, which is unchallenged is that the decision was taken to include them in the investigation of all the allegations.

90. I cannot see any evidence of any delay on the part of Mr Ramirez himself; and accept the respondents evidence that the decision was taken to include the allegations against him in the wider investigation, which would be sufficient to satisfy stage 2 of the Igen v Wong test even if the burden of proof had transferred. Insofar as these allegations relate to Mr Ramirez they are dismissed.

91. Mr Warren / Respondent - In order to determine the allegations against Mr Warren, and the allegation of delay against the respondent more broadly, it is necessary to set out the sequence of communications in some detail:-

92. The first email was sent to Mr Warren on 11th May 2023. He acknowledged it in an undated reply and on 15th May 2023 followed up stating he had shared it with HR and " .. we are considering our response". He also sent the claimant an email on 24th May 2023 saying he had been copied into the claimant's letter to Mr Ramirez of 23rd May; and stating that it was sensible to consider the issues in the letter to Mr Ramirez together with the earlier matters. On 25th May he further replied suggesting a meeting between him, the claimant, Ola (Head of HR) and Sophie (Senior Ops Manager for SCFT). He recognised that the claimant may not wish to attend as all of the other participants were white, and suggested an alternative of an external consultant of Black, African, Caribbean or Asian Heritage if the claimant would

prefer. On 29th May the claimant replied saying "*Thank you for your timely and sensitive response, I really appreciate that. I look forward to meeting with you all and I have no problem in that. Please let me know when this can be arranged*." The claimant then on 30th May 2023 raised further issues with Mr Warren and sought meeting on the following Thursday if possible.

93. On 31st May C made the further complaint to Mr Ramirez and on the same day copied everyone in the SCFT with following email – "*I thought it only fair to let you know what's been going on in the last few weeks. I have made continuing complaints about racist colleagues, and totally unacceptable treatment of our black service users and staff. Nothing has happened yet, that has made things worse and I've decided to take time out until the SLT has resolved my serious concerns to an effective outcome. I have to protect myself and I hope you all understand*."

94. On 1st June Mr Warren sent an email stating his regret that they had been unable to attend a meeting that day, and expressing the view that following his further email of 31st May 2023, that the claimant's complaints should be investigated by an external consultant under the formal grievance procedure, and suggesting a meeting on 7th June to discuss the claimant's concerns and any interim measures that could be put in place pending the outcome of the grievance.

95. On 5th June the claimant sent a further email in reply, stating that Mr Warrren's email was cold and corporate, and simply focussing on his grievance as a means of covering up dealing with his complaints. He stated he would not attend any meetings with Mr Warren, the SLT or any managers from Second Step.

96. On 8th June the claimant wrote asking what Mr Warren had done about his reporting serious safeguarding issues, and contending that Mr Warren, Sophie, Ola, and Mr Ramirez were all openly committing gross misconduct.

97. On 11th June the claimant sent a lengthy email to Mr Warren, the SLT, and the trustees of the respondent. He accused Mr Warren and the SLT of racism and their failure to confront their own racism; and he accused the trustees of failing in their obligations and alerted them to his view as to their personal potential lability to him.

98. On 16th June Aileen Edwards (CEO and Trustee of Second Step) replied stating that the respondent intended to appoint a suitably qualified external investigator to investigate the claimant's complaints.

99. On the 18th June the claimant submitted his resignation.

100. The respondent submits that it is clear that the claimants complaints were being taken seriously, and that attempts were being made to deal with his complaints / grievances at every step, which given that they by 11th June 2023 encompassed the whole of the SLT and trustees of Second Step meant that of necessity they would have to be externally investigated, as there was no one internal who was not themselves the subject of a grievance/complaint. The period between 28th June and 13th August is explained by the grievance being investigated and the

delay from 13th August to 8th September is the subject of the separate allegation against Ms Allaway which is dealt with above.

101. The respondent submits that it follows firstly that there was no delay, or at very least no unreasonable delay given the breadth of the allegations and the fact that by the end they encompassed the whole of the SLT and all of the trustees; and therefore no less favourable treatment within the meaning of s13 Equality Act. Secondly that as there is no actual comparator any less favourable treatment would have to be judged against a hypothetical comparator, and there is no evidential basis for concluding that the respondent would or could have dealt with any similar complaint differently or any more quickly irrespective of by whom it was raised. It submits that in reality it is difficult to see how it could have been dealt with more promptly, and specifically that as the claimant has not challenged any of the witnesses and not put to them any suggestion as to how it could have been dealt with more promptly; that in the circumstances these allegations are bound to fail.

102. Conclusion – I accept the respondents submissions. The core factual complaint upon which this allegation is based is of unreasonable delay. As a matter of fact I cannot identify any unreasonable delay in the sequence of events set out above, and it follows that this claim must fail factually. Even had I concluded that there was delay sufficient to satisfy stage1 of the Igen v Wong test and transfer the burden of proof I accept the respondent's evidence, primarily from Mr Warren, that its responses were a genuine response to and a genuine attempt to resolve the claimant's complaints / grievances and that the respondent had therefore satisfied the burden.

103. 1.2 - On 12 July 2023, Mr Ramirez lied about and/or misquoted C in response to his grievance by the following: when interviewed about C's grievance, he stated that (at an online workshop) C was aggressive towards AdS and revealed personal information about AdS.

104. This allegation is dealt with factually above. Mr Ramirez's evidence is that he gave a genuine account, which he later corrected when it was obvious he had misremembered. It was not deliberately untrue or concocted. Critically, he has not been challenged about this, and there is in my judgement no documentary or other evidence to contradict it. There is no actual comparator, and so this claim has to be judged against a hypothetical comparator. It follows that in my judgement if the fact of Mr Ramirez having given an inaccurate account to Ms Hewitt is sufficient to transfer the burden of proof; then Mr Ramirez's unchallenged evidence satisfies that burden and that a hypothetical comparator would have been treated in the same way. It follow that this claim must be dismissed.

105. 1.3– This allegation is again dealt with factually above. For the reasons set out I accept the respondents evidence; and it follows that Mr Ramirez did not in fact "fail" the claimant" on his probation. Even if the extension of the period can fall within the general description of failure; and even if that is sufficient in and of itself to transfer the burden of proof; I again accept Mr Ramirez's unchallenged evidence as to the

reasons for doing so. There is no basis for concluding that the claimant was treated less favourably than any hypothetical comparator; and this claim must be dismissed.
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106. 1.4 – For the reasons given above this claim must fail factually as I accept Mr Ramirez's unchallenged evidence, as supported by the contemporaneous documentation, that he did not cancel the food/music festival. As the basic factual allegation is in my judgement not well founded, it follows that this allegation must also be dismissed.

Harassment

107. The allegations of harassment are :

2.1 On 12 July 2023, Mr Ramirez-Mesa lied about and/or misquoted C in response to his grievance by the following: when interviewed about C's grievance, he stated that (at an online workshop) C was aggressive towards AS and revealed personal information about AS.

2.2 On 11 and 17 May 2023,Mr Ramirez-Mesa deciding to 'fail' C on his probation.

3. If so,

3.1 was that unwanted conduct?

3.2 Did it relate to the Claimant's protected characteristic, namely race?

3.3 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

3.4 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Harassment Related to Sex (s26 Equality Act 2010)

S26 Equality Act 2010 provides:

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

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

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

(i) violating B's dignity, or

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

(2)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

©because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

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

(a)the perception of B;

(b)the other circumstances of the case;

©whether it is reasonable for the conduct to have that effect.

108. "Related to" - No specific definition is given in the Act, but the phrase allows for a wider causal connection than the "because of" test for direct discrimination. In determining whether specific conduct is related to a particular protected characteristic the tribunal is entitled to take into account the context of the conduct alleged.

109. 2.1 – This is dealt with above and for the reasons already given there is in my judgement no evidence that the comments were related to race within the meaning of s26. Again if the evidence was sufficient to satisfy stage 1 of the Igen v Wong test and transfer the burden of proof, I accept Mr Ramirez unchallenged evidence, and would have concluded that the burden had been satisfied.

110. 2.2 In respect of 2.2 above I have set out my conclusions as to the probation issue above. There is equally no evidence in my judgement that the decision to extend the claimant's probation was related to race; and again if the evidence was sufficient to satisfy stage 1 of the Igen v Wong test and transfer the burden of proof, I accept Mr Ramirez unchallenged evidence, and would have concluded that the burden had been satisfied.

111. It follows that these allegation must also be dismissed.

Victimisation

112. The allegations of victimisation are as follows:

4. Did the Claimant do a protected act(s) as follows:

4.1 Verbal complaints, undated (in January to April 2023 inclusive), to Elias Ramirez about: working with a racist colleague (AS)

- AS and R not helping Black in-patients experiencing racism
- R having an outdated white clinical way of dealing with Black in- patients
- R not helping in-patients at Mental Health Tribunal Discharge Hearings
- R not giving Black in-patients the tools for living in the Community after release.

4.2 Verbal repetition of the complaints in paragraph 1.1.2 to Shauna Krause and Rooth Langston-Hart in March 2023 (at the grievance investigation hearing of AS's complaints against Elias Ramirez

4.3 Written complaint by email to Andy Warren, dated 11.5.23. Repeating above allegations

(paragraph 4.1).

4.4 Email dated 18.5.23 to Elias Ramirez complaining of discriminatory treatment relating to failure of probation, not letting C do his job properly, giving tasks not in job role and which would harm Black in-patients, not being supported and being ignored.

4.5 Email dated 22.5.23 to Elias Ramirez alleging racism by setting up to fail, micromanaging, ignoring C, preventing C helping Black in-patients, allegations of discrimination against in- patients.

4.6 Email dated 30.5.23 to Elias Ramirez reminding ER of his extensive experience and complaining about being ignored.

4.7 Email dated 5.6.23 to various leadership personnel complaining about delay of grievance, a lack of will to tackle racism, AS still working with vulnerable Black in-patients, etc.

4.8 Email dated 8.6.23 to Andy Warren about lack of response/racism not being taken seriously.

4.9 Email dated 11.6.23 to Andy Warren and others, reiterating complaints of racism.

113. Did the Respondent do the following things:

5.1 In about the second week of August 2023, Colette Allaway (HR) refused to provide C with the grievance outcome report;

5.2 From about May to August 2023, Elias Ramirez-Mesa, Andy Warren and/or the Senior Leadership Team delayed dealing with/providing an outcome to the Claimant's grievances listed in paragraph 4.1-4.9 above.

5.3 In about July 2023, Mr Ramirez-Mesa lied about and/or misquoted C in response to his grievance by the following: when interviewed about C's grievance, he stated that (at an online workshop) C was aggressive towards AS and revealed personal information about AS.

5.4 On 11 and 17 May 2023, Mr Elias Ramirez-Mesa failed C's probation.

5.5 Mr Ramirez-Mesa ignored the following points made by the Claimant in emails to Mr Ramirez-Mesa:

5.5.1 (in C's email/letter to Andy Warren dated 11.5.23) criticising Mr Ramirez for blaming Sophie Dumayne for delays;

5.5.2 (in C's email/letter to Andy Warren dated 11.5.23) about nothing being done about his grievances;

5.5.3 (in C's email/letter to Andy Warren dated 11.5.23) about AS still working with Black in-patients;

5.5.4 (in C's email/letter to Andy Warren dated 11.5.23) about R not taking racism/needs of Black in-patients, and issues with anti- racism trainers seriously;

5.5.5 (in C's email to Mr Ramirez dated 18th May 2023) about Mr Ramirez failing C's probation and not taking into account C's reasoning/ignoring C/blaming C;

5.5.6 (in C's email to Mr Ramirez dated 22.5.23) about Mr Ramirez being racist towards C and preventing him from doing his job.

5.5.7 (in C's email to Mr Ramirez dated 30.5.23) ignored C's complaining that Mr Ramirez was ignoring him/his allegations of racism.

6. If so,

6.1 By doing so, did the Respondent subject the claimant to detriment?

6.2 If so, was it because the Claimant had done the protected act(s)? C relies upon all of the alleged protected acts as being the cause of the alleged detrimental treatment.

114. Section 27 Equality Act 2010 provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a)B does a protected act, or

(b)A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

115. Protected Acts – It is not in dispute that the protected acts relied on at 4.1.- 4.9 above are protected acts within the meaning of s27 Equality Act**.**

116. Detriment - 5.1 – This dealt with factually above. There is in my judgement no evidence from which I could conclude that any part of the reason for the delay between 13th August 2023 and 8th September 2023 was because the claimant had carried out a protected act. Again if the evidence was sufficient to satisfy stage 1 of the Igen v Wong test and transfer the burden of proof, I accept Ms Allaway's unchallenged evidence, and would have concluded that the burden had been satisfied.

117. 5.2 – These allegations are dealt with actually above. For the reasons given above I do not accept factually that there was any unreasonable delay; and further there is no evidence before that would allow me to conclude that any delay was in any way causally linked to any protected act. Again if the evidence was sufficient to satisfy stage 1 of the Igen v Wong test and transfer the burden of proof, I accept Mr Warren's evidence in particular, given that it is unchallenged and supported by the contemporaneous documentation, and would have concluded that the burden had been satisfied

118. 5.3. -Again this is dealt with factually above. For the reasons given above I accept Mr Ramirez's unchallenged evidence. Again if the evidence was sufficient to satisfy stage 1 of the Igen v Wong test and transfer the burden of proof, I accept Mr Ramirez's unchallenged evidence, and would have concluded that the burden had been satisfied.

119. 5.4 – Again this is dealt with above, and again for the reasons set out above I accept Mr Ramirez's evidence as to why the claimant's probation was extended; and if the evidence was sufficient to satisfy stage 1 of the Igen v Wong test and transfer the burden of proof, I accept Mr Ramirez's unchallenged evidence, and would have concluded that the burden had been satisfied. In addition to the points set out above, and specifically in relation to the victimisation claim, there is clear documentary evidence that Mr Ramirez had indicated he was intending to extend the claimants probation prior to the first protected act on 11th May 2023, and in any event this allegation, was in any event bound to fail as an allegation of victimisation.

120. 5.5 – This again is dealt with above. A decision was taken for the claimant's complaints about Mr Ramirez to be dealt with as part of the investigation of all of his grievances complaints as early as 24th May 2023 (see Mr Warren's reply) . In any event Mr Ramirez could necessarily not investigate complaints against himself and the investigation was bound to be conducted by someone else. In the circumstances in my judgment here is no evidence that any failure to respond was because the claimant had done a protected act.

121. It follows that all of the claims of victimisation detriment must be dismissed.

Protected Disclosures

122. The alleged protected disclosures are :

7.1 Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

7.1.1 What did the Claimant say or write? When? To whom? The Claimant says he made disclosures on these occasions:

7.1.1.1 In an e-mail dated 11 May 2023 to Andy Warren (Email 1)

7.1.1.2 In an e-mail dated 18 May 2023 to Mr Ramirez-Mesa (Email 2)

7.1.1.3 In an e-mail dated 22 May 2023 to Mr Ramirez-Mesa (Email 3)

7.1.1.4 In an e-mail dated 31 May 2023 to Mr Ramirez-Mesa (Email 4)

7.1.1.5 In an e-mail dated 5 June 2023 to Andy Warren and the Senior Leadership
Team (Email 5)

7.1.1.6 In an e-mail dated 8 June 2023 to Andy Warren (Email 6)

7.1.1.7 In an e-mail dated 11 June 2023 to Andy Warren and the Senior Leadership Team (Email 7)

7.1.2.1 An inadequately trained and inappropriate staff member working with vulnerable Black in- patients who was causing harm because of their own difficulty with being Black and its effects on Black mental health in-patients. (Email 1 / 2 and 3 as amended during the hearing)

7.1.2.2 That a certain Black in-patient had been in a secure unit under section for over 15 years when he could not receive the necessary and specific support to get through the Mental Health Tribunal/Parole Board to be discharged. C was concerned that after such a long time the in-patient becomes institutionalised and that makes recovery more unlikely (Email 5)

7.1.2.3 That C believes that Black in-patients and staff have to put up with ingrained and institutional racism and no one is addressing this effectively to make the radical changes that are needed. Racism plays a part in why every Black in-patient is under section. (Email 5)

Racism/stereotyping plays a negative part in their treatment, and racism can land them back into Mental Health services and this is not recognised or discussed enough. Safeguarding legislation classes racism as abuse, but this was never acknowledged or recognised by the Respondents, so it was not treated seriously at all (Email 4 & Email 5)

7.1.2.4 That Black in-patients are being treated differently from white in-patients when they break the rules. No consideration is given to how those Black in-patients' mental health and emotional wellbeing are affected by this racially discriminatory practice. (Email 7)

7.1.2.5 That the service is overly clinical which is harmful to Black service users because they are least likely to respond to that approach. This leaves them at a disadvantage which then enables discrimination. You cannot use the 'white approach' with Black service users, but many white clinicians don't understand and feel defensive. (Email 7)

7.1.2.6 That discharged in-patients do not received the practical streetwise' help that will enable them to protect themselves from harm or feel more prepared to deal with it if it happens, in the community. (Email 2)

7.1.2.7 The Black in- patients need help on how to deal with their experience of racism, racist incidents on the street, diffuse situations and protect themselves from harm. This will help prevent relapses or avoid situations where the police become involved and they could be placed back into secure accommodation under section. (Email 5)

7.1.2.8 That Black in-patients have no help with specific support to get them through the Mental Health Tribunal that decides whether they should

be discharged into the community or not. This is a very stressful time for them but they do not have the support that C could give and he was prevented from helping in this way despite his experience with being on the Tribunal panel and being an advocate. (Email 5)

7.1.2.9 That it is harmful to have so many white staff working with Black in-patients because their needs are not being understood or met. If Black in-patients don't feel understood or respected, they will shut down and it makes it harder for their recovery. They need to see clinicians and doctors that look like them, otherwise the service will never be anti-racist. (Email 3)

7.1.2.10 That Black staff are left to put up with racist abuse from white in-patients and little or nothing is done about it. The Black staff on the night shift either do not get any supervision or it is very sporadic which is unacceptable. (Email 2, Email 3 & Email 5)

7.1.2.11 That preventing the Claimant from doing the job he was employed to do is harmful to in-patients who C was paid to help but they weren't getting it. C's job was funded by AWP/NHS and that money is being wasted because ER does not want C to have any contact with Black in-patients. This is wasting Public money and harming those it is meant to help. (Email 5)

7.1.2.12 That treating Black service users in a service which is institutionally racist is harmful to their health, mental health and recovery. (Email 6 & Email 7)

7.1.2.13 That Second Step do not adhere to its own Whistleblowing policy which is very concerning (Email 7)

7.1.2.14 That from the Listening Exercise it is clear that Second Step have been breaching the Equalities Act for several years at least. The numerous accounts of racist behaviour against Black staff at work was distressing. Second Step has such a lack of diversity, it is unfit for the purpose of being able to deliver a service like this to any Black service user. This situation has continued unchallenged because the same people are writing the job descriptions and adverts, interviewing applicants, deciding who to appoint and how those people do their jobs. Second Step keeps doing the same things over and over but expects different results which will never happen until more Black doctors, clinicians, managers and Recovery Workers are in the service. (Email 7)

7.1.3 Were these disclosures of 'information'?

7.1.4 Did he believe the disclosure of information was made in the public interest? The Claimant says it was because it related to in-patients in a secure mental health hospital and he was not happy how black patients were being treated.

7.1.5 Was that belief reasonable?

7.1.6 Did he believe it tended to show that:

7.1.6.1 a criminal offence had been, was being or was likely to be committed, namely causing harm to patients who could not move;

7.1.6.2 a person had failed, was failing or was likely to fail to comply with any legal obligation, namely its duty of care and safeguarding and obligations under the Equality Act 2010;

7.1.7 Was that belief reasonable?

7.2 If the Claimant made a qualifying disclosure, was it a protected disclosure because it was made to;

7.2.1 to the Claimant's employer?

123. Protected Disclosures -The respondent does not accept that any of the protected disclosures relied on are protected disclosures within the meaning of s43B as:

i) A number of them do not factually appear in the emails relied on (as set out at para 42 of the respondent's written submissions);
ii) In any event they are simply allegations and did not involve the disclosure of information;
iii) The claimant could not reasonably have considered them to be made in the public interest.

124. Information - The question of the distinction between an allegation and information is not necessarily easy. The question will always be a fact-sensitive one (see *Kilraine v London Borough of Wandsworth [2018[EWCA Civ 1436*)**:** *"the dichotomy between "information" and "allegation" is not one that is made by the statute itself. It would be a pity if tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggest that very often information and allegation are intertwined. The decision is not be decided by whether a given phrase or paragraph is one or rather the other, but is to be determined in the light of the statute itself. The question is simply whether it is a disclosure of information. If it is also an allegation, that it nothing to the point"* – per Langstaff J, para 30, an approach upheld by the Court of Appeal.

125. The disclosures asserted by the claimant fall into the following categories:-

i) AdS was causing harm to black inpatients because of his own difficulty with being black; (7.1.2.1);
ii) That one patient had spent over 15 years in a secure unit resulting in him becoming institutionalised and making recovery more difficult (7.1.2.2);
iii) That black patients and staff are exposed to undressed institutional racism requiring radical changes (7.1.2.3)
iv) Black inpatients are being treated differently to white when they break the rules (7.1.2.4);
v) The service uses a “white” “overly clinical approach to black patients (7.1.2.5)
vi) Discharged inpatients do not receive practical streetwise help on discharge (7.1.2.6 and 7);
vii) Black patients are not supported through Mental Health Tribunal panels (7.1. 2.8);
viii) It is harmful to have white staff working with black inpatients (7.1.2.9)
ix) Black staff receive racist abuse from white inpatients with little or nothing being done about it (7.1.2.10)
x) That the respondent was wasting public money and preventing the claimant from doing his job to assist black inpatients (7.1.2.11);
xi) That it was harmful to black patients to treat them in an institutionally racist service (7.1.2.13)
xii) That SS does not adhere to its own whistleblowing policy
xiii) The listening exercises make it clear that SS has been in breach of the Equality Act for many years (7.1.2.4)

126. The source of those allegations are the emails referred to above. In my judgment the respondent is correct that in general terms the emails reflect the claimants worldview, and in many case are expressions of his general opinion, for example of the appropriateness of an “overly clinical” approach in the diagnosis of black patients. In addition some, such as the allegation against AdS, are clearly based on his own opinion and assessment of AdS and are not based on anything other than his own opinion.

127. The assertion that black patients are not supported through mental health review tribunals (vii) above) is a disclosure of information. However in that case there is no suggestion of differential treatment, and it simply reflects the fact that it is not the purpose or policy of the respondent to do so. In my judgement although the underlying information is factual, the import of the disclosure is the claimants opinion and belief that the respondent should change its policy and do so, at least for black patients if not others. The difficulty with this is that, it is in my judgement impossible fit this within any s43B category. The respondent has no legal or other obligation to represent any patient at a metal health review tribunal, and the claimant’s belief that they should do so, cannot in my judgement be translated into a reasonable belief that the disclosure tended to show a breach falling with any statutory category.

128. However, there are some which do disclose information, albeit not the detail underlying the information, such as iv) above – black patients being treated

differently from white when they break the rules. This is in my judgment, clearly a disclosure of information, which is clearly in the public interest as it relates to allegedly differential treatment in a public hospital of necessarily vulnerable patients. It follows that in my view at least one of the disclosures is at least capable of being a public interest disclosure.

129. Put simply the claimant only needs to prove that one of the alleged disclosures was a protected disclosure; and I have concluded that at least one of the disclosures was. It follows that I have assessed the alleged detriments on the basis that at least one of the alleged disclosures was a protected disclosure.

Detriments

130. Did the Respondent do the following things:

9.1 From May to August 2023, Elias Ramirez-Mesa, Andy Warren and/or the Senior Leadership Team ignored or delayed a response to the following allegations of racism or safeguarding concerns:

9.1.1 Verbal complaints, undated (in January to April 2023 inclusive), to Elias Ramirez about: working with a racist colleague (AS)

AS and R not helping Black in-patients experiencing racism

R having an outdated white clinical way of dealing with Black in- patients

- R not helping in-patients at Mental Health Tribunal Discharge Hearings

R not giving Black in-patients the tools for living in the community after release.

9.1.2 Verbal repetition of the complains in paragraph 9.1 above to Shauna Krause and Rooth Langston-Hart in March 2023 (at the grievance investigation hearing of AS's complaints against Elias Ramirez).

9.1.3 Written complaint by email to Andy Warren, dated 11.5.23. Repeating above allegations (paragraph 9.1 above).

9.1.4 Email dated 18.5.23 to Elias Ramirez complaining of discriminatory treatment relating to failure of probation, not letting C do his job properly, giving tasks not in job role and which would harm Black in-patients, not being supported and being ignored.

9.1.5 Email or letter dated 22.5.23 to Elias Ramirez alleging racism by setting up to fail, micromanaging, ignoring C, preventing C helping Black in-patients, allegations of discrimination against in-patients.

9.1.6 Email dated 30.5.23 to Elias Ramirez reminding ER of his extensive experience and complaining about being ignored.

9.1.7 Email dated 5.6.23 to various leadership personnel complaining about delay of grievance, a lack of will to tackle racism, AS still working with vulnerable Black in-patients, etc.

9.1.8 Email dated 8.6.23 to Andy Warren about lack of response/racism not being taken seriously.

9.1.9 Email dated 11.6.23 to Andy Warren and others, reiterating complaints of racism.

9.2 In about the second week of August 2023, Collette Allaway (HR) withheld the grievance report for 4 weeks;

9.3 Andy Warren and the Senior Leadership Team failed to respond to the email from C to SCFT dated 31.5.23 about going off sick.

9.4 Colleagues present at the workshop the Claimant held on 11th April 2023 ignored and ostracised him from that date onwards;

9.5 All C's colleagues ignored and ostracised him from 31st May 2023 onwards.

10. By doing so, did it subject the Claimant to detriment?

10.1 If so, was it done on the ground that he had made the protected disclosure(s) set out above?

131. Detriment is not defined in the ERA itself but (as summarised in the IDS Hand Book Whistleblowing at Work) involves the considerations set out below :

"In *Ministry of Defence v Jeremiah 1980 ICR 13, CA*, Lord Justice Brandon said that 'detriment' meant simply 'putting under a disadvantage', while Lord Justice Brightman stated that a detriment 'exists if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment'. Brightman LJ's words, and the caveat that detriment should be assessed from the viewpoint of the worker, were adopted by the House of Lords in *Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL*. However, in *Warburton v Chief Constable of Northamptonshire Police 2022 ICR 925, EAT*, the EAT confirmed that although the test is framed by reference to 'a reasonable worker', it is not a wholly objective test. It is sufficient that a reasonable worker might take the view that the conduct in question was detrimental. This meant that the answer to the question of whether there has been a detriment cannot be found solely in the view taken by the tribunal. According to the EAT, a tribunal might perfectly reasonably take the view that certain conduct did not constitute a detriment. However, if a reasonable worker (even if

not all reasonable workers) might take the view that, in all the circumstances, the conduct was to the worker's detriment, the test is satisfied. Accordingly, the test of detriment has both subjective and objective elements. The situation must be looked at from the claimant's point of view, but the claimant's perception must be 'reasonable' in the circumstances."(My underlining)

132. 9.1 This allegation of delay in the response to the emails is essentially identical to those dealt with above. For the reasons set out, in my judgment the respondent acted with reasonable promptitude in dealing with those allegations; and in general reasonably in appointing an outside investigator given that the claimants allegations were brought against the whole of the SLT and trustees, and that in any event he refused to accept any internal investigation. There is in my judgement no evidence that the respondents response was detrimental or intended to achieve anything other than the investigation of the complaints themselves, which by definition cannot be a detriment. As is set out above the claimants fundamental complaint is that the respondent considered it necessary to investigate at all, which for the reasons given above is not in my judgement a reasonable or tenable position. It follows that in my judgement whatever his subjective view, the claimant could not reasonably consider the respondent's response to his complaints a detriment.

133. 9.2 This is dealt with above. Again I accept the respondents factual explanation as to the reasons for the delay between 13th August 2023 and 8th September 2023. It follows that in this case there is no causal link between any disclosure and detriment complained of.

134. 9.3 – The respondent submits that this is factually incorrect which in my judgment is correct. Mr Warren specifically responded on 1st June 2023 proposing a meeting on 7th June. As the allegation of this detriment is factually incorrect it is bound to be dismissed.

135. 9.4/9.5 – The respondent submits that the claimant has produced no evidence or given any examples of what he means by this. Secondly if the claimant was ostracised after the meeting on 13th April it would appear most likely that that occurred because of something said or done at the meeting; and the claimant does not allege that he made any protected disclosure at the meeting. In any event this allegation is bound to fail as an a allegation of public interest disclosure detriment as the first disclosure relied on is the email of 11th May 2023. It follows automatically that a detriment that precedes any disclosure cannot be causally linked to it.

136. In respect of 9.5 the respondent submits that as the claimant was off work from 31st May 2023 it was not possible for him to be ostracised by colleagues thereafter and that his allegation is bound to fail factually.

137. In my judgement the respondent is correct in all of these submissions and it follows that all of the claimant's complaints of public interest disclosure detriment must be dismissed.

Automatic Unfair Dismissal (s103A ERA 1996)

138. As set out in the List of Issues the basis of this claim is that:

> 11. Did the Respondent commit a fundamental breach of the Claimant's contract of employment?
>
> The Claimant relies upon the breach of the implied term of 'trust and confidence' by way of the following allegations: the allegations at paragraphs 3, 6, 8, 9 and 10 inclusive, i.e. the allegations of detriment
>
> 12. If so, did the Claimant resign in response to that alleged fundamental breach of contract?
>
> 13. If so, did the claimant waive the breach/affirm the contract prior to resignation?
>
> 14. If the Claimant was dismissed (constructively) what was the reason for the dismissal: was the sole or principal reason for dismissal that the Claimant had made a protected disclosure?
>
> 15. The Claimant did not have at least two years' continuous employment and the burden is therefore on him to show jurisdiction and therefore to prove that the reason or, if more than one, the principal reason for the dismissal was the protected disclosure(s)

139. In order for this claim to succeed the claimant must have resigned in response to one or more public interest disclosure detriments.. As I have not upheld any, it follows that this claim is bound to fail, and must be dismissed.

Discriminatory Constructive Dismissal (S39 Equality Act 2010)

140. In addition the claimant brings a claim of discriminatory constructive dismissal he basis of which as set out in the List of Issues is:

> *16. Alternatively was the Claimant's dismissal a discriminatory constructive dismissal within the meaning of s. 39(2)(c) and 39(7)(b) of the Equality Act 2010. The Claimant relies upon the allegations of direct discrimination, harassment and victimisation above.*
>
> *17. Did the Claimant cause/contribute to his dismissal?*
>
> *18. Would the Claimant resigned or have been dismissed, fairly, in due course, in any event (Polkey)?*

141. Similarly in order for this claim to succeed I would have to have upheld one or more of the allegations of direct discrimination, harassment or victimisation; and found that the claimant resigned at least in part to those upheld allegations. As I have not, it follows that this claim is also bound to fail.

142. It follows that all of the claimant's claims must be dismissed.

Costs Application

143. The respondent as made an application that the claimant pay some or all of its costs. It accepts that there is one allegation that had a solid factual foundation and in respect of which it could reasonably be argued that stage one of the Igen v Wong test was satisfied and the burden of proof reversed, which are the allegations relating to Mr Ramirez's recollections as to the claimant's conduct as expressed in the grievance investigation.

144. But for that allegation it submits that on a factual enquiry as has been carried out in this tribunal there was simply no factual basis for any of the other allegations; but that they all stemmed from the claimants perceived sense of injustice, that he could not conduct himself exactly as he wished and without supervision, and that the respondent did not act immediately on what were essentially orders, such as that to dismiss AdS. In fact and in addition, in this hearing it has become apparent that the claimant and Ms Sibley's primary focus was not in fact on any of the specific allegations (as exemplified by the decision not to challenge any of the respondent's evidence) , but to advance a political and/or philosophical proposition focused on their identification with and on an "Afrocentric" worldview. The claimant was essentially uninterested in pursuing these claims, but rather sought to use the tribunal process as a means to advance a political /philosophical view as to entrenched or endemic or institutional racism irrespective of the legal rights and wrongs of his claims under the Equality Act and/or Employment Rights Act. The respondent submits that whilst it does not dispute the genuineness and the passion with which the claimant holds and expresses these views, that it is on any analysis unreasonable behaviour within rule 74(2)(a) and/or that those claims had no reasonable prospect of success within rule 74(2)(b).

145. Although not expressly asserted by Ms Sibley who was obviously very upset at the end of the hearing; as I understand it neither she nor the claimant accept that he has brought the claims or conducted the litigation unreasonably. He passionately believes that his analysis is correct, and if the mechanism to establish that he is right is via the tribunal that is the route he is entitled to take. As Ms Sibley put it in her application to be permitted to give evidence, this is an opportunity for which he has waited forty years. In addition, in response Ms Sibley stated that both she and the claimant are on benefits and have no savings or property and there is nothing from which they could meet any order for costs. I asked he claimant as to his health given that, before they were withdrawn some of the claimant's claims were for disability discrimination relating to his cancer diagnosis, although he declined the opportunity to provide any information as to the current position or prognosis.

146. In my judgement this is at heart a very sad case. Like the respondent I have no doubt that all of the claimants beliefs are genuinely and passionately held. He appears to have believed that his role with the respondent was something close to his perfect job as he would be able to use his expertise and act and advocate for black in patients whom he believes are wrongly and badly served by a "white" and "overly clinical" approach to mental illness. He appears to have become intensely

frustrated by the respondent's position that that was not either the respondent's role, nor what he was employed to do; and he appears to have sought to use this tribunal to advance the basic proposition that he should have permitted to carry out his role exactly as he wished as this was his field of expertise, and was the best way of helping black patients.

147. Whilst it is admirable that individuals hold passionate beliefs and seek to use their positions to right perceived social wrongs, in my judgment the respondent is essentially correct that, as became apparent during the hearing; that the claimant was not focused on the merits or otherwise of the specific claims which is in my judgment unreasonable behaviour/ conduct of the proceedings within the meaning of rule 74(2)(a). I am less persuaded that the claims had no reasonable prospect of success which appears to rely on the claimant's decision taken during the hearing not to challenge the respondent's witnesses which either doomed his claim to failure, or at very least made success very difficult to achieve.

148. It follows that the threshold for considering making an order for costs pursuant to rule 74(2)(a) has been crossed. Whilst I am very sympathetic to the respondent as a charity having to use its resources to defend legal proceedings, I bear in mind that the claimant has no savings, or property and has essentially no means of meeting any order for costs; and that to make one would be a purely symbolic gesture. In the circumstances, albeit with some reluctance, I have concluded that I would not use my discretion to make any award of costs.

Employment Judge Cadney
Dated: 20 November 2025

Sent to the parties on
12 December 2025

Jade Lobb
For the Tribunal Office