



EMPLOYMENT TRIBUNALS

Claimant

Respondent

A

v

Propeller Pay Limited

Heard at: **Manchester**

On: **4, 5, 6 June 2025 & 24
November 2025**

Before: **Employment Judge Kenward (sitting alone)**

Appearances

For the Claimant: **in person**

For the Respondent **Ms J Charalambous, Counsel**

RESERVED JUDGMENT

It is the Judgment of the Tribunal that the complaint of direct race discrimination is not well-founded and is dismissed.

REASONS

Introduction

1. These proceedings arise out of the engagement of the Claimant as an agency worker at Bury College where he worked as a temporary teacher or supply teacher. For these purposes, he was effectively supplied as a contractor employed by an umbrella company, Propeller Pay Limited, which is the Respondent to the proceedings. Following the Claimant's assignment with Bury College coming to an end early, his employment with Propeller Pay Limited was subsequently terminated, and he claims that this amounted to a discriminatory dismissal.
2. The case was heard over the course of three days on 4, 5 and 6 June 2025. The evidence concluded at about 12 noon on the final day. Closing submissions were then heard from the Respondent before an extended break was taken between 12.45 am and 2.00 pm. The Claimant's closing

submissions were then delivered orally starting at 2.00 pm and continuing until 3.20 pm. The Respondent sought to exercise its right of reply in relation to the legal matters raised which was followed by the Claimant making a number of further points so that submissions finally concluded at 4:15 pm. In the circumstances, it became necessary to reserve the decision on the basis that the Judgment and written reasons would be provided in writing.

3. Six days after the hearing concluded, on 12 June 2025, the Claimant made various applications under rule 49 of the Employment Tribunal Procedure Rules 2024 (“the ET Rules 2024”) including an application for anonymity. This resulted in the case been listed for a further day on 24 November 2025 to consider the Claimant’s application which needed to be determined before the Judgment could be promulgated.
4. At the hearing on 24 November 2025, the Tribunal heard evidence and submissions from the Claimant. Written representations were made by the Respondent. At the end of the hearing, the Tribunal announced its decision in respect of the Claimant’s application under rule 49 of the ET Rules 2024 and gave oral reasons for the decision by which the Claimant’s application was allowed but only in so far as it was ordered that the Claimant’s name would be anonymised, by use of the initial “A”, in any decision entered on the Employment Tribunal’s Register of Judgments (or published online at www.gov.uk/employment-Tribunal-decisions). The Tribunal has not limited the duration of the anonymisation. However, for the avoidance of doubt, the Order made only applies to the proceedings in the Employment Tribunal.
5. The written decision on the Claimant’s application under rule 49 of the ET Rules 2024 was approved on 24 November 2025 and sent to the parties on 16 December 2025.

The proceedings

6. The Claimant initially filed an ET1 Form of Claim (Case Number 2402524/2024) in respect of the same complaint on 28 April 2024 with the Respondent cited as Guy Walker (Dovetail & Slate). The connection between these entities and the Respondent is explained below. On 6 May 2024, this Claim was rejected by Employment Judge Horne (as he then was) as the Claimant had failed to comply with the requirements in respect of early conciliation.
7. The rejection letter explained that the Claimant would need to notify ACAS of his intended Claim and get an early conciliation certificate and “*must then either (a) present a new claim form (including the certificate number in Box 2.3) or (b) write to the Tribunal with the certificate number and ask for the rejection of his claim to be reconsidered*”.
8. Thus, in order to be able to commence proceedings, on 6 May 2024, the Claimant complied with the requirement to notify ACAS of his prospective Claim for the purposes of early conciliation, and an early conciliation certificate was issued on 10 May 2024. The early conciliation certificate gave

the names of Guy Walker as well as Dovetail and Slate but identified the Respondent ("*Propeller Pay*") as having been "*on the wage slip*".

9. However, on 10 May 2024, the Claimant also notified ACAS of a prospective Claim against Bury College and an early conciliation certificate in respect of this Respondent was issued on 14 May 2024.
10. The Claimant then filed an ET1 Form of Claim (Case Number 2402873/2024) against Bury College on 15 May 2024. At section 8.2 of the ET1 Form of Claim the Claimant explained the issue of proceedings against Bury College in the terms set out below

"I was employed by an umbrella company called "Propeller Pay" working at Bury College, they were deploying me. I did put a claim against the Propeller Pay on the 28th April 2024 (case number: 242031091700), however I have decided not to take action against Propeller Pay. I will be taking action directly against Bury College (I already decided this back in Jan 2024 and informed them of this, face to face and in a letter). My cause of action is also with Bury College as discrimination took place here".
11. However, the Claimant did then file an ET1 Form of Claim (Case Number 2402954/2024) against Propellor Pay Limited which was received by the Tribunal on 21 May 2024
12. At section 8.1 of this ET1 Form of Claim, the Claimant ticked the applicable boxes in respect of bringing a complaint of race discrimination and other payments. Reference to other payments was subsequently clarified as simply being that the Claimant was seeking compensation for race discrimination.
13. The Respondent filed Grounds of Resistance contesting the Claim. Grounds of Resistance had also been filed by Bury College. Employment Judge Johnson proposed that the two Claims should be heard together and a preliminary hearing for both claims was listed for 29 November 2024.
14. The Grounds of Resistance of Propeller Pay intimated the possibility of making an application to strike out the Claim on the grounds of the Claim having no reasonable prospects of success or seeking an Order that the Claimant should pay a deposit as a condition of continuing the proceedings, but ultimately, on the basis of the clarification which had been provided as to the Claimant's case at the preliminary hearing, which took place before Employment Judge Anderson on 29 November 2024, these applications were confirmed as not being pursued.
15. Shortly prior to that hearing, on 22 November 2024, the Claimant had notified the Tribunal that he was withdrawing his Claim against Bury College. Judgment was subsequently issued dismissing the Claim against Bury College on withdrawal by the Claimant.
16. Thus, the preliminary hearing on 29 November 2024 proceeded on the basis of the remaining Claim against Propeller Pay Limited

17. At the preliminary hearing, Employment Judge Anderson refused an application by the Claimant to amend or add to his Claim (in respect of a complaint of direct race discrimination through the Respondent listing him on its internal systems as being a low-level safeguarding risk).
18. As a consequence, the single act of alleged discrimination which the Claimant was permitted to pursue to a final hearing was that of alleged discrimination on the grounds of the Respondent terminating his employment.
19. The List of Issues attached to the Case Management Orders made on 29 November 2024 confirmed that the single complaint to be determined by the Tribunal was that the termination of the Claimant's employment by the Respondent amounted to direct race discrimination on the basis that the Claimant, who was described as being of Pakistani ethnic origin, was treated less favourably because of his race than a hypothetical comparator would have been. For the purposes of this hypothetical comparison, there must be no material difference between the circumstances of the comparator and the circumstances of the Claimant (save that of race).

Evidence

20. In terms of witness evidence, in addition to the Claimant's Statement of Evidence, the Tribunal had Statements of Evidence on behalf of the Respondent from Pippa Stead, Director of HR & Compliance within the Talentia Group of Companies, and from Danny Rushton, Director of HR at Bury College.
21. The Tribunal heard oral evidence from the Claimant and Pippa Stead. Whilst the Tribunal considered the Statement of Evidence of Danny Rushton, in deciding how much weight to attach to that evidence, the Tribunal took into account the fact that the evidence was untested as the witness had not been questioned on his evidence.
22. I was unable to approach the Claimant's evidence with any great confidence. Based on the analysis of the various versions of events provided by the Claimant from 30 January 2024 up to his oral evidence to the Tribunal, as discussed in the Tribunal's findings of fact below, it seemed to me that the Claimant's narrative was a constantly evolving exercise in seeking to deflect from his own culpability by minimising the seriousness of the incidents which had been reported which extended to backtracking on the extent of any admissions made when discussing the incidents with Barry Rushton and Pippa Stead when it became clear that accountability no longer served a purpose. Where the Claimant's evidence was inconsistent with other evidence, such as documentary evidence or the evidence of other witnesses, I generally preferred that other evidence, save where I have indicated otherwise below.
23. In terms of documentary evidence, the Tribunal was provided with a Bundle of 340 pages.

24. In the course of the hearing further additional documentation was added to the Bundle including:
- (1) a thank you card from a member of staff at the College complementing the Claimant for the way in which he had covered business classes at the College and suggesting “*if something comes up will ring you*”;
 - (2) a letter dated 22 March 2024 from Danny Rushton replying to a letter from the Claimant of 26 February 2024 in which he had complained about the conduct of certain students and two staff members at the College;
 - (3) an e-mail dated 13 September 2024 inviting the Claimant for an interview in relation to his application for a position as a lecturer in business and management at the College;
 - (4) an e-mail dated 25 September 2024 informing the Claimant that the vacancy for a lecturer in business and management had been withdrawn and interviews would no longer take place (and explaining the reason for the withdrawal of the vacancy).
25. At the beginning of the hearing, the Claimant made an application (which had originally been made prior to the hearing by way of a written application dated 27 May 2025) seeking to admit in evidence his replies, which purported to be by way of open correspondence, to without prejudice communications from the Respondent’s solicitors. He stated that he wanted to show that he had sought to come to a resolution and did not want to be appearing before the Tribunal. Insofar as this involved making reference to the contents of without prejudice communications, he argued that the Tribunal should allow these documents to be admitted in evidence on the basis that there had been unambiguous impropriety on the part of the Respondent in that the Respondent had been pressurising him to drop his Claim with threats as to the consequences if he did not do so.
26. However, the application did not indicate the potential relevance of the documentation. The Claimant contended that the documents should be admitted out of fairness to the Claimant in that he was not legally represented, has a mental disability under the Equality Act 2010 (although he declined to provide detail as to the nature and relevance of any disability), and had not objected to the documents which the Respondent was seeking to include in the Bundle. In his oral submissions, he contended that the relevance of the documents was that they contained information as to the Respondent not following safeguarding requirements. However, those were matters to include in his Statement of Evidence which already made such criticisms at length.
27. The Respondent had responded to this application by making it clear that the communications from the Claimant were sent in response to without prejudice correspondence sent on behalf of the Respondent. It would not be appropriate for the Tribunal to be considering communications from the Claimant in which he was responding to and commenting upon without prejudice communications from the Respondent in circumstances where the

Respondent had not waived privilege in respect of the letters. The point was also made that the letters were not relevant as they post-dated both the alleged detrimental treatment and the issue of proceedings.

28. I was satisfied that these were communications which were within the scope of the principle whereby, where there is a dispute between the parties, any written or oral communications between them which comprise genuine efforts to resolve their dispute, will not generally be admitted in evidence at a subsequent hearing of the claim. This enables parties to negotiate fully and frankly without the risk that anything they say or write in the course of negotiations will be used against them in legal proceedings if the negotiations fail. I was not satisfied that the Claimant's application came within the scope of any exception to this rule. The alleged impropriety was not directly relevant to any issue in the case. This was not a case where the without prejudice rule would otherwise exclude evidence of alleged discrimination or victimisation. I was not satisfied that this was a case of unambiguous impropriety. Making reference to the possible adverse consequences of continuing with proceedings is a legitimate, if overused, tactic. In any event, I was not satisfied that the documents were relevant to the areas of factual enquiry involved in the case or that it would be in accordance with the overriding objective to admit such documents.

Contractual position and effective date of termination

29. The Talentia Group of Companies (the "Talentia Group") is a group of companies operating within the recruitment sector. Dovetail and Slate Limited ("Dovetail and Slate") is one of the companies within the Talentia Group. Dovetail and Slate specialise in recruitment for the education sector and were recruiting during the latter part of 2023 for a temporary teacher role as a Computer and Digital Teacher to work at Bury College. The Claimant successfully applied for the role via Dovetail and Slate.
30. The Respondent, Propellor Pay Limited ("Propellor Pay"), is another one of the companies within the Talentia Group. It has been described as operating as a so-called umbrella company.
31. The businesses are effectively owned by Guy Walker who is a director of Dovetail and Slate, Propeller Pay and Talentia Group Limited as well as being the majority shareholder of Talentia Group Limited
32. When Dovetail and Slate places individuals in such roles, the individuals will typically either provide their services via their own limited company, so that the limited company will get paid for supplying the individual as a contractor, or the individual will contract via an umbrella company, such as the Respondent, as was the case with the Claimant. When contracting via an umbrella company, the temporary teacher effectively becomes an employee of that umbrella company. The payment for the temporary teacher's services is paid gross to the umbrella company which then processes the pay for the

temporary teacher and takes care of tax and National Insurance deductions. The temporary teacher then receives a net payment.

33. In practical terms, this means that where a candidate is recruited via Dovetail and Slate or another of Talentia Group's recruitment agencies, he or she has the option to contract via the Respondent, which is then responsible for processing pay during any assignment period.
34. Upon being successful in securing the role the Claimant was issued with a candidate contract by Dovetail and Slate. The preamble to this document congratulated the candidate on "*gaining a contract through Dovetail and Slate*" in respect of "*this engagement*". The document contained a schedule which set out that the engagement was at Bury College from 7 December 2023 until an expected end date of 19 January 2024. The part of the schedule which provided payment details contained a section for identifying the relevant umbrella company which was where the name of Propeller Pay Limited had been inserted. It was made plain that the candidate would only be paid for hours actually worked. Reference was made to an "*immediate notice period*", but this clearly applied to the assignment in that it was stated that "*both you and the client have an immediate notice period*" so that the assignment "*can be terminated without cause by the client, effective immediately*".
35. On 6 December 2023 the Claimant was sent an e-mail from the payroll team at Propeller Pay which welcomed him as a temporary worker. He also received a document entitled "*umbrella contractor pack*" which dealt with issues such as holiday pay and pension contributions. On 7 December 2023 he digitally signed a contract of employment with the Respondent in the form of a statement of terms and conditions of employment.
36. Paragraphs 9 and 10 of the Statement of Evidence of Pippa Stead described the contractual arrangements which existed between the Respondent and the Claimant in the terms set out below.

"9. Owing to the nature of this relationship being contingent on services being provided to an end user, if the relationship between the end user and the candidate ends, so too does the relationship with Propeller Pay, unless and until the candidate commences a new contract. Candidates are usually kept 'on the books' so to speak for a few weeks after the end of an assignment, but there is no right to receive any pay during this period as payment is contingent on work being provided to an end-user and Propeller Pay receiving payment for those services on behalf of the candidate. Within the frequently asked questions issued with the contract (page 76) it is noted that notice to terminate is immediate and is as between the candidate and client.

10. If the candidate does not start a new placement after a few weeks, employment with Propeller Pay is then formally brought to an end on paper by way of a P45 being issued, but in reality the relationship ends when the contract assignment ends. This was the case with the Claimant – his

relationship with Bury College came to an end at the end of January 2024, but his P45 with the Respondent was issued a few weeks later. Whilst technically speaking the Claimant remained on the Respondent's books during this period of time, he was not providing any services".

37. Based on this analysis, the Respondent's case seemed to have become that, when Bury College eventually terminated the assignment on 29 January 2024, it also had the effect of bringing the Claimant's employment with the Respondent to an end.
38. In actual fact, although section 4.1 of the ET3 Form of Response gave the effective date of termination as 30 January 2024, which would be consistent with employment being brought to an end by the end of the assignment, paragraph 22 of the Grounds of Resistance seemed to recognise that this was only the date for the termination of the temporary placement and stated that the Claimant's "*employment with the umbrella company, 'Propellor Pay' continued until 23 February 2024, albeit that the Claimant did not work in the period from 31 January 2024 until 23 February 2024 and received no remuneration during that period, as per his contract with the Respondent*".
39. The effective date of termination was a potentially important issue in the case as the Claimant had not notified ACAS of his prospective Claim against the Respondent until 6 May 2024, so that if the effective date of termination was 29 January 2024, any complaint about his dismissal had been made outside the primary time limit of three months.
40. The Claimant's case was that his employment had terminated when he had received his P45 which gave 23 February 2024 as the date of the termination of his employment with the Respondent.
41. I was not satisfied that the analysis being relied upon by the Respondent was correct.
42. The contract of employment between the Claimant and the Respondent which was provided in the Bundle gave the date of commencement of employment as the date of commencement of the first assignment and stated that "*such employment shall continue until terminated in accordance with these terms*".
43. Clause 5.1 stated that the "*likely duration of each Assignment will be notified to you in each Schedule of Assignment*". Clause 5.3 stated that the Respondent "*will endeavour at all times during the currency of this contract to allocate the Employee to suitable Assignments*". Indeed, as a minimum guarantee, it was guaranteed that the employee "*will be offered at least 336 hours of work on assignment over the course of any full 12 month period of employment commencing on the commencement date of the Employee's first Assignment*". Thus, it envisaged the possibility that there would be more than one assignment, and employment would continue between assignments. This is also clear from the fact that clause 5.6 involved the employee accepting "*that there may be times when no suitable Assignments are available*" and during "*those times*" the Respondent "*has no obligation to pay*". There was

also a requirement on the employee to accept suitable assignments which would have been to no effect if the employee was not actually contracted between assignments or at the point when an offer of an assignment was made. The fact that there was no obligation to pay the employee between assignments effectively meant that the employee was on a zero-hour contract between assignments.

44. Clause 18 made provision for the termination of the contract. Clause 18.1 provided that the written notice which the Respondent was required to give to terminate the employment was *“one week’s notice if continuously employed for up to two years and then one week’s additional notice for each completed year of employment from two completed years up to a maximum of twelve weeks’ notice”*. This could have been better phrased but the effect of this was that an employee who had been employed for less than two years would be entitled to one week’s notice.
45. Clauses 18.3 and 18.4 provided for the termination of the employment summarily without notice by the Respondent in the event of the Respondent believing that the employee had committed gross misconduct or if the employee had ceased to hold any necessary licences or permits. This was followed by clause 18.5 which stated that any *“Assignment may be terminated at any time by Client, without cause (subject to any notice period given in a Schedule of Assignment) and without liability to the Employee”*.
46. Reading clause 18 in conjunction with clause 1.1 (which provided that any employment would continue until terminated in accordance with the terms of the contract), I was not satisfied that the contract made provision for the contract to be automatically terminated on the client ending an assignment, as Bury College did.
47. Based on the above contractual documents, and based on the history of the matter, in which the Claimant was simply informed by Aaron Jones of Dugdale and Slate that Bury College was ending the Claimant’s contract with immediate effect on 29 January 2024, I was not satisfied that the contract of employment was actually terminated by the Respondent, Propeller Pay Limited, until the P45 was sent to the Claimant on 23 February 2024.

Findings of fact as to liability

48. The Claimant had previously been engaged on a temporary basis at Bury College as a business studies lecturer for a period of over three weeks in May 2023. The Claimant had made a favourable impression as confirmed by the thank you card which he subsequently received which was complimentary as to his performance.
49. Between 7 December 2023 and 29 January 2024, the Claimant was deployed at Bury College as a lecturer in its computing and digital team.
50. The assignment was originally due to end on 19 January 2024. On 18 January 2024, the assignment was extended to the 23 February 2024

following a conversation between the Claimant and Aaron Jones from Dovetail and Slate

51. Concerns had been raised by two teaching assistants at Bury College regarding the Claimant. These staff members had been present in the Claimant's classes and their concerns were about the derogatory way in which the Claimant was speaking to students. These staff members would have had a responsibility to report such concerns and protect student welfare.
52. The concerns were brought to the attention of Danny Rushton as the Head of HR at the College, on 29 January 2024. Prior to this, the Claimant had not been specifically known to Danny Rushton. Danny Rushton spoke with Al Palmer, the recruitment lead at Bury College, and it was agreed that it was not appropriate for the Claimant to be on site at that time.
53. At 4:32 pm on 29 January 2024, Al Palmer, emailed Cameron Giola of Dovetail and Slate in the terms set out below.

"Please see below,

We have had two further complaints / statements from staff today regarding [the Claimant].

They talk of him shouting at students, saying inappropriate things such as:

"what's up with you – are you autistic";

"do you have ADHD or something, or are you stupid";

"why are you laughing at me are you special needs or something";

"have you got mental health problems"; and

"what are you smiling for, are you deranged".

He has also been reported as telling the class that people who were groomed – were not intelligent enough.

His behaviour has been described as "very erratic and one staff member said he told them that the students "wind him up so much that he could hit them", then backtracked and said "he wouldn't".

He has also been reported as shouting at one student to leave and never come back".

54. In his Claim form which cited Bury College as the Respondent, the Claimant denied having made the comments which he was alleged to have made insofar as he stated that *"I was accused of making comments that I unequivocally refute, I never made the statements that I was accused of, they were fabricated and taken out of context maliciously to vilify me"*. The Claimant referred to having suffered mental, emotional and racist abuse from students which he had documented on Pro Monitor and on the register with nothing being done. In this Claim form, the abuse to which reference was

specifically made was in relation to the Claimant's size and ridiculing him by calling him "Family Guy" (referring to the TV cartoon).

55. The e-mail from Al Palmer which had been sent to Cameron Gioia at 4:32 PM on 29 January 2024 concluded in the terms set out below.
56. *"I think given the circumstances we ask for him not to come back tomorrow. If this was a contracted staff member I would be advising suspension from work to protect students from such insults and himself from himself whilst this is investigated properly."*

Please let me know if you need any more details".

57. At 4.44 pm on 29 January 2024, the e-mail from Al Palmer, was forwarded to Pippa Stead and Aaron Jones of Dovetail and Slate. The e-mail seems to refer to Aaron Jones having already spoken to Pippa Stead about the matter, from which it seems likely that the information in the e-mail from Al Palmer must have been following up an earlier verbal communication between the College and Dovetail and Slate.
58. The upshot was an e-mail sent by Aaron Jones to the Claimant at 6.13 p.m. on 29 January 2024, which simply stated that *"I have some unfortunate news Bury College are ending your contract with immediate effect"*. The e-mail asked for the Claimant to confirm receipt and asked for a good time to call over the next couple of days. During oral evidence, the Claimant acknowledged that he read this on the day. This is the date the assignment ended.
59. On 30 January 2024, the Claimant attended the College mid-morning to hand in his pass and speak to his manager. It seems that his manager sent Danny Rushton to speak to the Claimant instead. Danny Rushton explained that an e-mail had been sent to Dovetail and Slate providing a written explanation. Of course, this was correct, although the Claimant obviously had not been made aware of this when he had been told that the assignment had been ended.
60. Danny Rushton states in his letter dated 22 March 2023 that he explained the nature of the allegations that had been reported. Danny Rushton's letter of 22 March 2024 states that the Claimant *"shared with me that you had used such terminology with the exception of the phrase "... are you deranged" as you said that was a word that you would not use"*.
61. In his letter dated 22 March 2024, Danny Rushton further states that he explained to the Claimant that asking a student as to whether the student was autistic or had ADHD or mental health problems or special needs, in the context alleged and in front of a class could be highly offensive and detrimental to the well-being and self-esteem of a student. Danny Rushton informed the Claimant that, on that basis, the College had shared its concerns with Dovetail and Slate who would follow up the matter.
62. This is consistent with the Statement of Evidence of Danny Rushton which stated that, given the Claimant's admission that he had made the comments,

which were entirely inappropriate for anyone to make, let alone a teacher, there appeared to me to be no real need to launch a significant investigation.

63. On the following day, 31 January 2024, the Claimant e-mailed Aaron Jones describing himself as *"infuriated that my contract has ended"*. The e-mail commented upon the allegations that he had obviously been made aware of by Danny Rushton by stating that Danny Rushton *"mentioned a few spurious allegations that were a lie"*.

64. In fact, while acknowledging that the Claimant clearly had a different position as to exactly what happened, there was clearly some substance to some of the allegations given the Claimant's own comments in his e-mail to Aaron Jones.

65. In relation to the allegation that the Claimant had asked a student if the student had ADHD, it was clear from the content of the Claimant's e-mail to Aaron Jones that this had happened in that he explained the incident in the terms set out below.

"He mentioned, me saying to the students that were not paying attention, do you ... guys have ADHD (there was a TA present). The TA told me that there are a couple of students with ADHD so I apologised and never mentioned this again, it was a ONE-OFF incident".

66. In his letter to Bury College dated 26 February 2024, the Claimant was to comment further on this incident by suggesting that, in the light of what he had been told by the TA, as set out above, *"I was right, there were two students with ADHD"*, which seemed to be suggesting that this justified the comments.

67. Similarly, the alleged incident(s) in which the Claimant was supposed to have asked if a student was stupid or had mental health problems clearly happened in that the incident was described by the Claimant, in his e-mail of 31 January 2024, in the terms set out below.

"Last week, I mentioned to the class that I have respect for every individual in this class and I'm here to help them to do well. There were a few students that were rude and laughing in my face, so I sent them outside, spoke with them and brought them back in. The TA, Leanne, started pulling faces and asked why I sent one of the students outside the class, the student was comparing me to a character in family guy so I had to explain this to her. anyway, one of the students was laughing in my face, so I asked him "are you stupid, do you have mental issues?" Leanne went and reported me, without giving the full context".

68. In his letter to Bury College dated 26 February 2024, the Claimant described the comments which he stated he had been provoked into making as being *"are you stupid, do you have mental health issues, what is wrong with you?"* He added, in the letter, that the *"student was clearly rude and maybe I should have risen above it, but he made it very difficult for me"*.

69. At section 8.2 of the Claim form, the Claimant stated (in capitals) that *“I have never admitted fault, I had written a letter detailing the abuse I suffered at the College and that a reasonable person would have acted in the same manner as me!”*
70. One of the issues raised had apparently been that the Claimant had spent an entire lesson talking about covert vaccines. The Claimant stated that he *“mentioned this is a LIE”*. In fact, the Claimant’s case was that the students had been talking about covert vaccines and he had simply shown them a short video at the end of the lesson *“saying they are not 100% effective”*. On any view, these parts of the lesson do not seem to have involved the students being taught IT.
71. The claimant did not specifically comment upon the allegation that he had made comments about grooming victims. In his Statement of Evidence dated 23 March 2025, the Claimant made the allegation, for the first time, that the allegation that the Claimant had made comments about grooming victims had been made because of the Claimant’s ethnic background not being British.
72. The Claimant variously described the issues being raised as petty or minor or taken out of context with part of the context being that he had been given the *“worst classes”* and had been subjected to abuse. Insofar as the Claimant was critical in that the *“College should have raised these minor issues a lot earlier and give me time to improve”*, the Claimant again seemed to be accepting that there was a factual basis to the issues, notwithstanding ending the e-mail by stating that the College had not given him a chance *“to respond to any of the fabricated allegations”*.
73. The Claimant suggested in the e-mail of 31 January 2024 that he had been *“discarded because I am an agency worker”* and suggested that *“I’m looking at taking the college to an employment tribunal because of the abuse that I suffered which was witnessed by Leanne”*. The Claimant did not specifically refer to any abuse being in relation to race or to race as a reason for the termination of the assignment.
74. On 1 February 2024, Pippa Stead e-mailed Al Palmer seeking to arrange to discuss the complaints, either that day or the following day.
75. Al Palmer replied stating that it was his director, Danny Rushton, to whom Pippa Stead needed to speak. It seems that a meeting with Danny Rushton and Pippa Stead did not take place until 6 February 2024.
76. In the meantime, on 5 February 2024 Pippa Stead e-mailed the Claimant explaining that she had been away for a few days and, in her capacity as the designated safeguarding officer (for Dovetail and Slate) she was *“reaching out to address recent complaints received by Bury College during your recent temporary contract which had been forwarded to us as the recruitment agency that placed you”*. She stated that *“I can’t provide many details regarding the complaints at the moment due to a confidentiality request”* but was *“actively in touch with the college regarding the complaints and the ensuing actions”*

She explained that a meeting was scheduled for the following afternoon (which was referring to a meeting with Danny Rushton) and *"I will give you a call shortly afterward to discuss the developments"*.

77. In terms of the sequence of events on 6 February 2024, following a discussion with Danny Rushton, Pippa Stead then had a discussion with the Claimant, shortly after which she e-mailed the Claimant and then Danny Rushton with these e-mails setting out the substance of what she said she had been told by the Claimant.
78. In his Statement of Evidence, Danny Rushton states that his conversation with Pippa Stead involved discussing the allegations that had been made and his subsequent conversation with the Claimant (in which the Claimant had accepted making some of the comments). He states that at *"this point in time I was not happy for the Claimant to return to teaching at the College"* but that Pippa Stead advised that she would speak with the Claimant and report back to me".
79. Whilst the Tribunal has not seen a contemporaneous note of the discussion which then took place between Pippa Stead and the Claimant, it was only a few minutes later that Pippa Stead e-mailed the Claimant at 3.26 pm in the terms set out below.

"Thanks for speaking with me a few minutes ago about the concerns raised at Bury College.

The College have confirmed they will not be taking any further action in relation to the complaints made by some staff members and have passed the information through to Dovetail and Slate as your Agency/Employer. I followed our usual process when a concern is raised and put a hold on any further recruitment until the concern has been dealt with.

Upon reviewing the details provided by both parties, it appears the accounts of the complaint raised are largely the same. You acknowledge the highlighted remarks made during interactions with students shouldn't have happened so I believe these instances were unintentional and a genuine mistake on your part.

However, we still have a responsibility and obligation to uphold safeguarding and safer recruitment practices set out in various guidance by the government please feel free to read the attached government guidance if you so wish) so I will ask you complete the two below training modules. Upon receipt of your completed training certificates, we will lift the recruitment hold within our system, enabling us to continue our working relationship. Until then, we cannot actively engage you for available or upcoming positions, and if we receive a reference request we will need to disclose the concerns raised".

80. The focus of the conversation was on the five alleged comments which had involved asking students if they had mental health issues or conditions. Pippa Stead left the conversation with the understanding that the Claimant had

admitted four of the five comments alleged albeit with context provided. There had been no real discussion of the other matters raised in the e-mail from Al Palmer such as the alleged comments about grooming victims.

81. There is no contemporaneous evidence of the Claimant having disputed the content of this discussion or that any of the suggested steps discussed were inappropriate. He subsequently undertook the training as discussed.
82. Pippa Stead then e-mailed Danny Rushton at 16.01 pm in the terms set out below.

"Thank you for your time earlier. I managed to speak with [the Claimant] not so long ago and heard his side of the story, we had quite a productive and candid chat!

He admitted to me that he did say a few things in the same vein as the concerns raised in Al's original email and recalled a couple of sentences word for word. [The Claimant] said that he found the class quite difficult and did have a couple of outbursts but without any prompting from me he said and he shouldn't have said what he had. He admitted that one of the support workers pulled him up on this face-to-face, and at the time he did agree with her.

We had a brief talk about safeguarding in general, as said he didn't know what he had done to make the support workers dislike him, so we had a calm conversation about everyone's responsibility to report concerns and promote students' welfare for safer recruitment. [The Claimant] acknowledged that this was what the staff at Bury were trying to uphold when reporting him and we then spoke about any negative impact his words may have had on a student's mental health and/or confidence. We considered that it was part of his job as a teacher to make sure he is inclusive to all and have the best interest of students in mind at all times, even if they are a difficult class to teach.

All in all, [the Claimant] seemed take the conversation on board, I think the conversation you had with him a few days ago has also sunk in, and I believe he made some genuine mistakes. He admitted he has thought about it and agrees that some of his words should not have been used.

I have asked [the Claimant] to complete Equality and Diversity training and Safeguarding training as a refresher and have told him that he will remain on hold within the system until he passes the modules and returns the certificates to us, furthermore we will disclose the concerns raised in any reference requests. Following this I don't believe any further action should be taken".

83. Danny Rushton replied a few minutes later stating that it was refreshing to see an employment agency taking the situation seriously and following up so professionally. He further stated that, hopefully, the Claimant "*will learn from this experience*".
84. The exchange of e-mails between the College and Dovetail and Slate was then forwarded by Sarah Walton of the College to Mark Gay as the Local Authority Designated Officer ("LADO").

85. On the following day, 7 February 2024, Mark Gay e-mailed Bury College, copied to Pippa Stead, to state that the *“matter can be dealt with by the college and Dovetail Slate as they have done and did not require any Bury LADO oversight/involvement”*.
86. It was stated that the matter would be recorded as LADO advice given and not as an allegation against the Claimant.
87. The Statement of Danny Rushton makes it clear that, notwithstanding this, *“a decision was made within the College at the time that the Claimant would not be required to return, bearing in mind also that his contract had only been intended to run for a short period of time in any event”*.
88. On 9 February 2024, Pippa Stead e-mailed Bury College and Mark Gay to confirm that the Claimant had provided written confirmation of having completed his training.
89. On or about 23 February 2024 the Claimant’s P45 was provided. This was as a result of the Claimant himself phoning the Respondent and requesting that Phoebe Blakeney of the Respondent send him a P45, which she did
90. On 26 February 2024, the Claimant sent a 17-page letter described as a pre-action protocol letter, to Bury College threatening Tribunal proceedings should the College not reinstate him as the College had failed to investigate the allegations made whilst he was deployed at the college. The letter included the paragraph set out below.
“I’ve not had any support from the college. I’ve been treated poorly because I’m from an agency, there has been discrimination from Bury College”.
91. The letter stated that the Claimant had suffered abuse by students including racist derogatory comments being written on the class register.
92. The Claimant also made various criticisms of the two members of staff who he understood to be the sources of the allegations against him. It is noteworthy that, over the course of the 17 pages of his letter, he does not seek to suggest that the teaching assistants concerned had been racially motivated. He did not raise any issue about one of them having had a conversation with him in which he had effectively been asked about his position on British values, still less any suggestion that this was indicative of a discriminatory mindset on the part of one of the complainants.
93. In seeking to be reinstated, the Claimant stated in the letter that (should he return to the College), *“I will not make references to mental health issues (I have already explained the context of these issues raised)”*.
94. On 15 March 2024, Danny Rushton shared his draft reply to the letter with Pippa Stead. She replied on 21 March 2024 stating that the content was accurate.
95. Accordingly, on 22 March 2024, Danny Rushton replied to the Claimant’s letter of 26 February 2024. He sought to set out the history of the matter from

his own involvement and understanding, in relation to the concerns which had been raised about the Claimant. He explained that the nature of the concerns which come to the attention of the College on 29 January 2024, had resulted in a decision being made *“to instruct Dovetail & Slate to withdraw you from work so that the matter could be investigated further”* so that *“they instructed you not to attend work at the college until further notice”*.

96. In relation to the issue of the Claimant alleging that he had been abused by students, Danny Rushton accepted that it was evident that the Claimant was in the habit of documenting concerns regarding student behaviour via “Pro Monitor” which was the College’s student portal but suggested that it was disappointing that *“you did not report any of these alleged abuses by students via the portal or to any member of staff”*.
97. In the Grounds of Resistance of Bury College it was stated that the College was not aware of any claims of racist abuse that the Claimant placed on the Pro Monitor recording system. On review of its records, it had been noted that the Claimant logged several comments in relation to various students in his class. These comments mainly related to attendance issues. None of the comments logged by the Claimant referred to any racist abuse as alleged by the Claimant and at no time during his deployment did the Claimant make the Respondent aware either directly or indirectly of any alleged racist abuse directed towards him.
98. In his letter of 22 March 2024, Danny Rushton stated that he had now reported the Claimant’s allegations about students to the Assistant Principal of the College who would follow up on the reported student behaviours so that this was now an internal matter for the College. In relation to the Claimant stating that he wished to raise a grievance about two members of staff, Danny Rushton suggested that the concerns would be shared with the appropriate line manager and appropriate action taken, if deemed necessary, although the College had only been able to identify one of the staff members concerned.
99. The Statement of Danny Rushton reiterated the College’s denials of discrimination by asserting that any individual *“making comments of this nature would have been treated in the same manner, save that direct employees of the College would have been suspended and subject to the College’s disciplinary process”*. It was explained that, because *“the Claimant admitted making the comments there was no need for an investigation, and this would have been the case with anyone who admitted making the same or similar comments”*.
100. In subsequent correspondence, it was made clear, effectively on behalf both of Dovetail and Slate and Propeller Pay, that they were willing to continue to act for him in the sense of putting him forward to clients (notwithstanding the Claimant having intimated various legal proceedings and commenced Tribunal proceedings).

101. The Tribunal was referred to subsequent correspondence between the Claimant and Dovetail and Slate where the main focus of the correspondence was on the position adopted by Dovetail and Slate that the concerns which had been brought to its attention by Bury College had been determined to be a substantiated low-level safeguarding concern with this being information which it was under a duty to record and share, for example in responding to reference requests, although the company remained content to put the Claimant forward to its clients for assignments.
102. The correspondence seems to have resulted in a Claimant sending Dovetail and Slate a pre-action protocol letter giving prior notice of his intention to issue proceedings in the Small Claims Court by way of seeking to amend data held by Dovetail and Slate about him.
103. Pippa Stead subsequently set out the position of Dovetail and Slate in an e-mail dated 4 November 2024 which can be summarised as set out below.
 - (1) a safeguarding concern would include any instance or allegation that an individual may have behaved in a way that has harmed, potentially harmed, or has posed a risk of harm to a child, young person or vulnerable adult.
 - (2) the allegation made against the Claimant related to the Claimant making comments which were perceived to be derogatory, about students' potential learning difficulties, which could cause emotional harm or distress;
 - (3) the allegation had been forwarded by Bury College and discussed by Pippa Stead with the Claimant with the Claimant acknowledging having made remarks similar to those described by Bury College;
 - (4) the allegation had been reviewed with the LADO who had determined that the harm threshold was not met;
 - (5) As such, Dovetail & Slate had categorised the allegation as a safeguarding concern which was low-level.
 - (6) Dovetail and Slate were satisfied that the safeguarding concern was substantiated as a result of its internal investigation which involved discussing the alleged comments with the Claimant;
 - (7) Dovetail and Slate had a responsibility to maintain an accurate record of the concern;
 - (8) having reviewed the position, Dovetail and Slate was satisfied that the concerns did not need to be included in any reference as only substantiated safeguarding concerns meeting the harm threshold should be included in references.

Relevant law

Time limits in discrimination cases

104. In relation to discrimination complaints, section 123(1)(a) of the Equality Act 2010 provides that “a complaint ... may not be brought after the end” of ... “the period of 3 months starting with the date of the act to which the complaint relates” or “such other period as the employment Tribunal thinks just and equitable”. Equality Act 2010 section 123(3)(a) provides that “conduct extending over a period is to be treated as done at the end of the period” and section 123(3)(b) provides that “failure to do something is to be treated as occurring when the person in question decided on it”.
105. In *Bexley Community Centre v Robertson* [2003] IRLR 434, CA, the Court of Appeal provided the guidance set out below.
- “It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule”* (Auld LJ at paragraph 25).
106. In relation to the above guidance, in *Chief Constable of Lincolnshire v Caston* [2010] IRLR 327, CA, Sedley LJ gave the further guidance set out below.
107. *“In particular, there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised and Auld LJ is not to be read as having said in **Robertson** that it either had or should. He was drawing attention to the fact that limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them. Thus, the burden of proof is on a Claimant to satisfy the Tribunal that any complaint was either made within the applicable time limit for doing so, or that it would be just and equitable to extend time”* (paragraph 31).
108. In *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194, CA, the Court of Appeal dealt with the argument that, in the absence of an explanation from the Claimant as to the reasons for not bringing a Claim in time and an evidential basis for that explanation, the Employment Tribunal could not properly conclude that it was just and equitable to extend time. The argument was rejected, as set out below.
- “I cannot accept that argument. As discussed above, the discretion given by section 123(1) of the Equality Act 2010 to the employment tribunal to decide what it ‘thinks just and equitable’ is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason*

for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard” (paragraph 25).

109. In *British Coal Corporation v Keeble* [1997] IRLR 336, the Employment Appeal Tribunal suggested that the factors listed in Limitation Act 1980 section 33 might serve as a checklist of potentially relevant factors to take account in considering whether to exercise the discretion to extend time in discrimination cases, with the position as to the applicability of Limitation Act 1980 section 33 being summarised below.
110. *“That section provides a broad discretion for the Court to extend the limitation period of three years in cases of personal injury and death. It requires the court to consider the prejudice which each party would suffer as the result of the decision to be made and also to have regard to all the circumstances of the case and in particular, inter alia, to –*
- (a) the length of and reasons for the delay;*
 - (b) the extent to which the cogency of the evidence is likely to be affected by the delay;*
 - (c) the extent to which the party sued had co-operated with any requests for information.*
 - (d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action.*
 - (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action”.*
111. The prejudice which a Respondent will suffer from facing a claim which would otherwise be time barred is “customarily” relevant in such cases (see *DCA v Jones* [2007] IRLR 128, paragraph 44).
112. In *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, [2021] ICR D5, Underhill LJ indicated concern that Tribunals had tended to use the factors relevant in dealing with any discretion to extend time in personal injury cases, as set out in Limitation Act 1980 section 33 as a checklist and advised that they should not do so. He went on to give the guidance set out below.
- “The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) “the length of, and the reasons for, the delay”. If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking.*

Burden of proof in discrimination cases

113. *Equality Act 2010 section 136* provides for a shifting burden of proof, as set out below.
- “(2) *If there are facts from which the court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
- (3) *But subsection (2) does not apply if A shows that A did not contravene the provision”.*
114. Guidance on the burden of proof was given by the Court of Appeal in *Igen v Wong [2005] ICR 931*. This guidance has subsequently been approved by the Court of Appeal in *Madarassy v Nomura International plc [2007] ICR 867*, and by the Supreme Court in *Hewage v Grampian Health Board [2012] ICR 1054* (at paragraphs 25-32). In *Efobi v Royal Mail Group Limited [2021] ICR 1263*, at paragraph 26, Lord Leggatt made it clear that *Equality Act 2010 section 136* had not made any substantive change to the previous law.
115. This is a two-stage process. The initial burden of proof is on the Claimant to show facts from which an inference of discrimination can be drawn.
116. Thus, the burden of proof starts with the Claimant. It is for the Claimant to prove facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant’s relevant protected characteristic. At the first stage, when considering what inferences can be drawn from the primary facts, the Tribunal must ignore any explanation for those facts given by the Respondent and assume that there is no explanation for them. It can, however, take into account evidence adduced by the Respondent insofar as it is relevant in deciding whether the burden of proof has moved to the Respondent. If such facts are established, then the burden of proof transfers to the Respondent to establish on the balance of probabilities that the protected characteristic formed no part of the reasoning for the impugned decisions or treatment.
117. Thus, the second stage only comes into play if the Claimant has satisfied stage one. For this stage the Respondent is required to show that it did not do the unlawful act.
118. The mere fact that the Claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy the first stage of the shifting burden of proof. It may be that the employer has treated the Claimant unreasonably. That is a frequent occurrence quite irrespective of the race or age or other protected characteristics of the employee and will not, by itself, be enough to shift the burden of proof (see *Bahl v The Law Society [2004] IRLR 799*, and *Zafar v Glasgow City Council [1998] IRLR 36*).
119. In *Madarassy v Nomura International plc [2007] ICR 867*, the Court of Appeal emphasised that there must be something more than simply a difference in protected characteristic and a difference in treatment for the burden of proof to shift to the Respondent. Mummery LJ gave the guidance set out below.

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

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

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

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

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

123. However, in *Anya v University of Oxford [2001] ICR 847, CA*, the Court of Appeal pointed out (in a case dealing with race discrimination) that very little direct discrimination is today overt or even deliberate so that what the relevant authorities *“tell tribunals and courts to look for, in order to give effect to the legislation, are indicators from a time before or after the particular decision which may demonstrate that an ostensibly fair-minded decision was, or equally was not, affected by racial bias”*.

Direct discrimination

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

125. Thus, direct discrimination takes place where a Claimant is treated less favourably, because of the relevant protected characteristic, than the

employer treats or would treat others. This can involve comparing the treatment of a Claimant with that received by an actual comparator or comparing the Claimant's treatment with that which would have been received by a hypothetical comparator.

126. This is a two-stage process: firstly, is the treatment less favourable and secondly whether the less favourable treatment was discriminatory?
127. Section 23(1) of the Equality Act 2010 provides that on a comparison for the purpose of establishing direct discrimination there must be "*no material difference between the circumstances relating to each case*". In the case of *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, HL, Lord Scott explained that this means that "*the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class*".
128. It is not a requirement that the situations have to be precisely the same. The existence of a different decision maker does not prevent the comparison being a valid one (see *Olalekan v Serco Limited* [2019] IRLR 314).
129. In *Virgin Active Limited v Hughes* [2024] IRLR 4, EAT, His Honour Judge Tayler the Employment Appeal Tribunal gave guidance as to the use of comparators (paragraph 61 and 62) as set out below.

"61. In many direct discrimination claims the claimant does not rely on a comparison between his treatment and that of another person. The claimant relies on other types of evidence from which it is contended that an inference of discrimination should be drawn, the comparison being with how the claimant would have been treated had he had some other protected characteristic.
130. In *JP Morgan Limited v Chweidan* [2012] ICR 268, Elias LJ gave the guidance (at paragraph 5) set out below.

"In many cases it is not necessary for a tribunal to identify or construct a particular comparator (whether actual or hypothetical) and to ask whether the claimant would have been treated less favourably than that comparator. The tribunal can short circuit that step by focusing on the reason for the treatment".
131. In every case the Tribunal has to determine the reason for the Claimant having been treated as he or she was. In *Nagarajan v London Regional Transport* [1999] IRLR 572, Lord Nicholls observed that "*this is the crucial question*". He also observed that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.
132. In *Gould v St John's Downshire Hill* [2021] ICR 1, EAT, Linden J made it clear that the Tribunal must consider the reason for the actions of the alleged discriminator, as set out below.

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

133. The focus is on the mental processes of the person who took the impugned decisions. In a direct discrimination claim, the Tribunal should consider whether that person was influenced consciously or unconsciously to a significant extent by the Claimant’s relevant protected characteristic. The decision makers’ motives are irrelevant.
134. If the Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial (see *Nagarajan v London Regional Transport [1999]* and *Igen v Wong [2005] ICR 931, CA*).
135. In *CLFIS (UK) Ltd v Reynolds [2015] EWCA Civ 439*, the Court of Appeal considered the correct approach in the type of case which it described as a tainted information case. The Court of Appeal emphasised that it was the decision maker’s mindset that needed to be considered. It was not appropriate to investigate the mental processes of those involved in earlier decisions, such as compiling the presentation considered by the decision makers. The Court of Appeal provided the guidance set out below.

“34. We are accordingly concerned not with joint decision-making but with a different situation, namely one where an act which is detrimental to a claimant is done by an employee who is innocent of any discriminatory motivation but who has been influenced by information supplied, or views expressed, by another employee whose motivation is, or is said to have been, discriminatory. I will refer to this as a case of “tainted information” (treating “information” widely so as to cover also the expression of views). I agree with Singh J that tainted information cases may arise in a variety of different ways, but I will for the purpose of discussion take as an example a case of the kind with which we are concerned here – that is, one where a manager has decided to dismiss an employee on the basis of an adverse report about her from another employee who is motivated by her age. I will refer to the employer as E, the claimant as C, the decision-maker as X and the informant as Y.

35. I agree with Singh J that it would plainly be unjust if in such a situation C had no remedy against E; and that was in fact common ground before us. But the parties differed as to the legal basis on which a remedy should be available. Mr Pitt-Payne’s submission was that Y’s discriminatory motivation could be treated as the ground, or part of the ground, for C’s dismissal, albeit

that the actual decision-maker was X; and it seems, though his reasoning was not perhaps quite explicit, that that was also the approach of Singh J. I will refer to this as “the composite approach”, because it involves bringing together X’s act with Y’s motivation. Mr Tatton-Brown submitted that that was illegitimate and that the right approach was to treat Y’s report as a discrete discriminatory act, for which E was liable ... I will refer to this as “the separate acts approach”

36. In my view the composite approach is unacceptable in principle. I believe that it is fundamental to the scheme of the legislation that liability can only attach to an employer where an individual employee or agent for whose act he is responsible has done an act which satisfies the definition of discrimination. That means that the individual employee who did the act complained of must himself have been motivated by the protected characteristic. I see no basis on which his act can be said to be discriminatory on the basis of someone else’s motivation. If it were otherwise very unfair consequences would follow. I can see the attraction, even if it is rather rough-and-ready, of putting X’s act and Y’s motivation together for the purpose of rendering E liable: after all, he is the employer of both. But the trouble is that, because of the way the Regulations work, rendering E liable would make X liable too

It would be quite unjust for X to be liable to C where he personally was innocent of any discriminatory motivation”.

136. Therefore, Underhill LJ concluded that *“I accordingly believe that the correct approach in a tainted information case is to treat the conduct of the person supplying the information as a separate act from that of the person who acts on it”* (see paragraph 46).

Conclusions

137. On the basis of the conclusions set out above as to the effective date of termination, I was satisfied that the complaint in relation to the alleged discriminatory dismissal was in time.
138. Had I been satisfied that the effective date of termination was 29 January 2024, then I would have extended time on the basis that it was just and equitable to do so having regard to the fact that:
- (1) the Claimant was only a week out of time when he provided the requisite notification to ACAS;
 - (2) he had previously attempted to commence proceedings on 28 April 2024, which would have been in time, but at that point in time he did not have an ACAS certificate, with the Tribunal then not accepting the original ET1 Form of Claim because of the absence of an ACAS certificate;
 - (3) the contractual arrangements were less than straightforward and on any reading the documentation the effective date of termination was less than clear;

(4) the Claimant had not been formally given notice and there had been no written confirmation of the termination of his employment by the Respondent other than the P45 which was sent to him on 23 February 2025.

139. I turn to the merits of the complaint of direct discrimination.
140. The burden of proof starts with the Claimant. It is for the Claimant to prove facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant's relevant protected characteristic. It is well established that there must be something more than simply a difference in protected characteristic and a difference in treatment for the burden of proof to shift to the Respondent.
141. I was not satisfied that the Claimant had satisfied this initial burden of proof. In the first place it was not entirely clear that he had suffered relevant detrimental treatment, The detrimental treatment was Bury College ending the assignment, or the making of the complaints or concerns about the Claimant which had resulted in that action being taken, but that was not the detrimental treatment being complained about within the present proceedings.
142. It may be that the Claimant was less than happy with the way in which Pippa Stead dealt with the matter once she became involved but that was also not the specific cause of action within the proceedings. Moreover, she had made it clear, effectively on behalf both of Dovetail and Slate and Propeller Pay, that they were willing to continue to act for him in the sense of assigning him as an agency worker to clients which would potentially have involved managing his pay through Propeller Pay once any further assignment was identified. I have already found that the Claimant did remain employed by Propeller Pay even after the assignment with Bury College ended. In the words of Pippa Stead, the Claimant was still on the books. It was the Claimant himself who rang up Propeller Pay and requested Phoebe Blakeney send him a P45, which she did.
143. In the alternative, if the termination of the Claimant's employment is to be treated as a detriment, recognising that a dismissal will normally amount to a detriment, would an employee of a different protected characteristic in terms of race have been treated any differently? On the face of it, telling the Claimant that any block on him being offered assignments would be lifted once he had completed any training, was a fairly lenient and not unduly harsh way of dealing with the situation. Given that, on the face of it, the Respondent was actually willing to continue employing the Claimant, or alternatively re-employ him, it is difficult to conclude that the formal confirmation of the termination of his employment through the P45 form involved treating him less favourably than a hypothetical comparator would have been treated.
144. A relevant hypothetical comparator would be a temporary teacher who did not share the same protected characteristic as the Claimant in respect of race but about whom the same complaints had been made. The Tribunal was not satisfied that the Claimant had proved facts from which the Tribunal could

conclude that any such hypothetical comparator would have been treated differently. Even allowing for possible mitigating features, such as the circumstances in which the alleged comments were made, I am satisfied that the Claimant made comments which had the effect of stigmatising mental health conditions and appeared to have been used for the purpose of putting down rather than supporting students. On the face of it, the consequences which flowed from this, in terms of bringing the Claimant's assignment to an end and in terms of the impact upon his employment relationship with the Respondent were unsurprising.

145. Insofar as the Claimant seeks to argue that the Respondent might have dealt with these concerns differently, through applying provisions in the statutory guidance for schools and colleges ("Keeping Children Safe in Education") as provided by the Department of Education, I do not see that this assists the Claimant or would provide a basis for satisfying any initial burden of proof on the Claimant since there is nothing to indicate that the same approach would not have been adopted, in the same circumstances, towards a hypothetical comparator. The criticisms which the Claimant makes of the Respondent do not, on their own, provide a basis for concluding that a hypothetical comparator would have been treated any differently.
146. In any event, I was satisfied that the evidence from both Pippa Stead and Danny Rushton suggests that action would have been taken which would have involved removing the comparator from the teaching setting pending any appropriate investigation or action. I accepted the evidence of Barry Rushton and Pippa Stead as to the concerns which arose from the alleged comments, in particular those which they understood to have been admitted by the Claimant, and the likely way of dealing with those concerns had they arisen in respect of any teacher, from which it followed that the same concerns in respect of a hypothetical comparator were likely to have resulted in the same outcome.
147. The conclusion that a hypothetical comparator would have been treated no differently is sufficient to determine the case. There was no less favourable treatment.
148. However, if I am wrong about that, and there was a basis for concluding that there was less favourable treatment, was any such less favourable treatment on the grounds of race?
149. Two arguments were identified in Case Management Orders following the preliminary hearing as being put forward by the Claimant on the basis of seeking to provide facts from which the Tribunal could potentially infer that any less favourable treatment was on the grounds of race.
150. The first was that the information which was relied upon for terminating the Claimant's assignment, which ultimately led to the termination of employment, was tainted with discrimination. The basis for this argument was that one of the concerns included within the e-mail sent by Bury College on 29 January

2024 was that the Claimant had been “*reported as telling his class that people who were groomed - were not intelligent enough*”. It was suggested by the Claimant, in the course of putting questions during the hearing, that the mere fact of such an allegation being made was indicative of racist bias. This was inconsistent with what the Claimant himself said about this allegation in his Statement of Evidence, which was that, whilst the allegation was denied by him, he accepted that, if true, it would have involved saying something which was completely unacceptable.

151. As an extension of this argument in relation to these comments, the Claimant argued that, because he claimed that the allegation was untrue and malicious, it could only been made by someone with a discriminatory mindset, so that it followed that any action subsequently taken was tainted by the discriminatory mindset of at least one of the complainants. In the course of the proceedings, the Claimant’s case also developed further in that his Statement of Evidence appeared to raise for the first time that one of the support workers, who he understood had reported comments which he had supposedly made, had, at some unidentified earlier point in time, had a conversation with him in which he had effectively been asked about his position on British values, with the suggestion again being that this was indicative of a discriminatory mindset on the part of one of the complainants (the Claimant seemed to assume that this individual must be the complainant who had raised the alleged comments about grooming victims).
152. However, at the point in time when the allegations were being referenced in the e-mail of 29 January 2024, it was simply on the basis that these were allegations or concerns which had yet to be investigated or substantiated. In any event, I was not satisfied that the concerns raised had been raised maliciously or amounted to racist concerns. In the hands of Danny Rushton, these were simply concerns which needed+ to be taken seriously. I was not satisfied that the action taken by the College was influenced by the Claimant’s race as distinct from the nature of the concerns being raised about the Claimant.
153. Still less was I satisfied that any treatment of the Claimant on the part of Pippa Stead, or, more generally, the Respondent, was because of his race. Notwithstanding its flawed (retrospective) analysis that Bury College ending the assignment had brought any contract of employment to an end, the Respondent had made it plain that it was willing to continue to employ the Claimant, or to renew his employment, once he had completed the training identified.
154. If, for the sake of argument, the Claimant’s dismissal had been brought about by a malicious and racist allegation on the part of an employee of Bury College, the correct approach identified on CLFIS (UK) Ltd v Reynolds [2015] EWCA Civ 439, was that it was the purportedly malicious and racist allegation which gave rise to a cause of action (which would potentially have been against Bury College as the employer of the malicious and racist complainant)

rather than any subsequent termination of employment by the Respondent in so far as this was as a result of the concerns raised by Bury College.

155. Put simply, I was satisfied that the termination of the Claimant's employment by the Respondent was not on the grounds of his race. Even if, for the sake of argument, any dismissal was, in part, as a result of information which derived from an allegation by a third party, the making of which involved treating the Claimant less favourably on the grounds of his race, this would not have caused any dismissal of the Claimant by the Respondent to amount to direct risk discrimination of the Claimant by the Respondent. His cause of action would have been in respect of the alleged discriminatory allegation rather than the dismissal,
156. The Claimant's case also proceeded on the basis, whether further or alternatively, that an inference could be drawn to the effect that any less favourable treatment involved in dismissing the Claimant, involved treating the Claimant less favourably on the grounds of his race, because of alleged failures on the part of the Respondent to meet applicable requirements in respect of dealing with safeguarding matters.
157. The main thrust of this argument was that the way in which the Respondent dealt with the concerns about the Claimant involved failing to comply with the requirements of the statutory guidance for schools and colleges ("Keeping Children Safe in Education") as provided by the Department of Education.
158. The reality of the position was that, rightly or wrongly, the Respondent dealt with the concerns which had been raised about the Claimant in the way in which it did because:
 - (1) the concerns had been forwarded to the LADO who had been satisfied that the harm threshold had not been met so that any concerns should be dealt with by the Respondent and / or College;
 - (2) the Claimant was understood to have admitted that he had made comments which were inappropriate and not inclusive;
 - (3) the assessment of the Respondent was that these failings were best dealt with through the Claimant undertaking further training; and
 - (4) as such, no further formal action was necessary (subject to the issue of whether any concern should be recorded and / or referred to in any reference).
159. However, even if, for the sake of argument, the approach adopted by the Respondent failed to comply with the requirements of Keeping Children Safe in Education, I was not satisfied that this provided a basis for concluding that any alleged less favourable treatment in dismissing the Claimant was on the grounds of his race. For the same reasons as I found that there was no less favourable treatment (compared to that of a hypothetical comparator) in dismissing the claimant, I was similarly satisfied that there was no basis for concluding that a different approach would have been followed in relation to a hypothetical comparator in terms of complying with the requirements of keeping children safe in education. In short, I considered that this part of the Claimant's case was misconceived. Establishing a failure to comply with

Keeping Children Safe in Education did not, on its own, provide a basis for inferring that any dismissal of the Claimant was on the grounds of his race.

160. In conclusion, I was not satisfied that the termination of the claimant's employment involved treating him less favourably on the grounds of his race.

Outcome.

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

Approved by
Employment Judge Kenward

Dated 23 February 2026

Sent to the parties on

25 March 2026

For the Tribunal office