Case Number: 6013198/2024

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Dr S Mvalo	v	Sheffield Hallam University

Heard at: Sheffield

On: 16, 17, 18 19, 20 March and on 21 April 2026 (in chambers)

Before: Employment Judge James
Ms G Flemming
Ms M Cairns

Representation

For the Claimant: In person

For the Respondent: Ms E Hodgetts, counsel

JUDGMENT

(1) The claims for direct race discrimination (s.13 Equality Act 2010) are not upheld and are dismissed.

REASONS

The issues

1. The agreed issues which the Tribunal had to determine are set out below.
2. Time limits
   2.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 22 April 2024 may not have been brought in time.
   2.2. Were the discrimination claims made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
      2.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

2.2.2. If not, was there conduct extending over a period?

2.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

2.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

2.2.4.1. Why were the complaints not made to the Tribunal in time?

2.2.4.2. In any event, is it just and equitable in all the circumstances to extend time?

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

3.1. Did the respondent do the following things:

3.1.1. The claimant's then-line manager Andrew Rawsthorne said in an email dated 16 August 2022 and at a one-to-one meeting on 18 August 2022 that he would not have offered the claimant a permanent contract had he been the decision maker upon the claimant's appointment.

3.1.2. Mr Rawsthorne would not arrange one-to-one meetings with the claimant, leaving it to the claimant to request them.

3.1.3. Mr Rawsthorne subjected the claimant to negative one-to-one meetings, not greeting the claimant or making eye contact with him.

3.1.4. Mr Rawsthorne did not provide the claimant with any orientation within the first six months of his employment.

3.1.5. Mr Rawsthorne did not sign off on the claimant's personal development review, contrary to the respondent's practice.

3.1.6. Mr Rawsthorne spoke loudly on the telephone, interrupting a presentation being given to the department leadership team on 7 September 2023.

3.1.7. The respondent did not appoint the claimant to the role of Associate Head, a new role created following a redundancy exercise in anticipation of the cessation of his previous role as principal lecturer.

3.2. Was that less favourable treatment?

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

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant says they were treated worse than Steve McGowan upon allegation 3.1.5 and Peter Weston, Mark Featherstone, Vicky Mellon, Emma Harrison, and Sarah Dickinson upon allegation 3.1.7. Upon allegation 3.1.7, he also relies upon two unnamed actual comparators, being those who achieved a score below the threshold but who were

given a role as Associate Head as a development role. For the other allegations in section 3.1, the claimant has not named anyone who they say was treated better than they were and relies upon a hypothetical comparator.

3.3. If so, was it because of race. The claimant self-describes as Black British African.

3.4. Did the respondent's treatment amount to a detriment?

The proceedings

4. Acas Early Conciliation took place between 22 July and 2 September 2024. The claim form was issued on 29 September 2024. The claimant makes allegations of direct race discrimination.

5. A preliminary hearing for case management purposes took place on 23 July 2025. The issues were identified, this final hearing was arranged and related case management orders were made.

The hearing

6. The hearing took place over six days. Evidence and submissions on liability were dealt with on the first five days. Judgment was reserved. The Tribunal then met in private on the specially arranged sixth day, to complete its decision making.

7. The Tribunal heard evidence from the claimant, and Mrs J Mvalo. For the respondent, the Tribunal heard from Andy Rawsthorne, formerly the Interim Head of Engineering Department; Stephen Magowan, formerly the Deputy Head of Department; Professor Jennifer Smith Maguire, Associate Dean for Research, Innovation and Knowledge Exchange in the college of Business, Technology and Engineering; and Jo Posnett, Head of Academic Planning and Delivery in the School of Health and Social Care. A written statement was considered from Kelly Cookson, HROD Manager for Resourcing and Reward. Ms Cookson could not attend due to a very recent close family bereavement.

8. There was an agreed hearing bundle of 1435 pages. Two documents were added on the final day of the hearing, by agreement. First, a document confirming a meeting on 26 April 2025, headed 'AH Panel-Reconvene', which all four invitees confirmed acceptance of. The second is a document confirming the date the claimant's 2022 PDR was modified (on 18 July 2022).

9. There were a number of applications which were contested, as follows.

Applications on Day 1

<u>Postponement</u>

10. The claimant argued that he could not have a fair hearing in the existing hearing window due to late disclosure of witness statements, the supplementary bundle and recent documents (which the respondent did not seek to admit in evidence, save the above two). The Tribunal determined that a fair hearing could take place.

11. The claimant was sent the supplementary bundle on Wednesday 11 March. He had the rest of the day on the first day of the hearing to consider its contents. In the event, very few pages in that bundle of documents were referred to during the hearing. The claimant was given the opportunity to give evidence in chief in relation to any of those documents if he wanted to; he did not take up that opportunity. It was the respondent's position that most of those documents included were not relevant; they were included at the claimant's request. For example, the claimant wanted the Tribunal to see the redacted interview notes which had been sent to him following his subject access request. The Tribunal was not referred to those during the hearing. Instead, we considered the unredacted notes of the interview, which were provided as part of the disclosure for this claim and which were in the main bundle.

12. Witness statements were not exchanged until 12 March 2026. The respondent's solicitors had suggested a short delay, to enable the claimant to refer to the supplementary bundle in his witness statement if he wanted to. The claimant did not respond to any of the suggested alternative times put forward, on 11 March or 12 March. It is always regrettable when witness statements and documents are exchanged at the last minute. However, both parties are equally disadvantaged by that. Further, in relation to the seven witness statements before the Tribunal, it was agreed at the outset that at the liability stage, the evidence of Mr Garner and Mr Lowry were not relevant and they were not called to give evidence. We have already noted above that Ms Cookson was not able to attend. We were satisfied that the claimant had sufficient time, given his obvious abilities, to consider the witness statements and prepare questions for cross examination, prior to the Tribunal starting to hear live evidence.

13. The Tribunal also took note of the fact that the claimant was able to prepare a substantial witness statement, 68 pages in length, including the spreadsheets setting out his detailed analysis of the scores given to him and the other candidates for the Associate Head post. The key area of factual dispute was in relation to the interview process for this post. It was apparent from the substantial evidence provided by the claimant, that he had more than sufficient time to set out his case in relation to that key issue.

Amendment application

14. On 16 February 2026 the claimant applied to amend his claim, to add five allegations of victimisation, which he alleged were because he complained in his grievance, grievance appeal and in this tribunal claim of race discrimination. The application was considered at the outset of this hearing.

15. As to the nature of the amendment, it is clearly a substantial one. It comprises a new cause of action and would require major new factual enquiry. Further, the allegations were not clear and would have required further particularisation. For example, it was not apparent whom the claimant was alleging had committed the acts of victimisation.

16. As a further example, in relation to the alleged delay, it was unclear who that was against – for example, the decision makers and if so which; HR; or all of those involved? In relation to the alleged lack of care and support, who failed to show concerns for the claimant's wellbeing and when?

17. Further in relation to the new allegation 2(b) the claimant says that Mr Garner insisted the claimant attend as he had some new information for him; but that is not what Mr Garner says. The email from Mr Garner to the claimant at page 431 states:

    I respectfully ask that you reconsider attending the meeting, as I truly believe it will offer you a clearer understanding of the outcomes. Please take the weekend to reflect on this, as I feel it is in your best interest to review the conclusions in this way.

18. Further, in an email sent by Mr Garner to the claimant on 18 March 2025 at 17:01, he stated:

    During the meeting, I will share my conclusions and the actions arising from the investigation. You are not yet aware of these, as I only finalised them over the weekend after having the opportunity to reflect deeply on the report.

19. In both emails, the claimant is being encouraged to attend – Mr Garner is not insisting that he attend. Further, he explains why it might be helpful for the claimant if he did – i.e. because the claimant could hear the conclusions recently reached by Mr Garner and the actions arising from them.

20. Although the allegations were unclear, it was likely that the respondent would need to call additional witnesses, in order to resist them.

21. As to time limits, the last of the alleged acts was potentially in time, the stage 3 grievance not having been concluded until 5 December 2025. On the other hand, if the application is refused, the claimant will have to submit a new claim form and that will now be out of time (although the claimant can seek to argue that it would be just and equitable to extend time).

22. As for the timing and manner of the application, the informal stage of the grievance process was completed by 28 March 2025, the formal stage by 21 August 2025 and the appeal by 5 December 2025. The application to amend was made about two and a half months after the last decision and only a month before the final hearing was due to take place.

23. At the case management Preliminary Hearing on 23 July 2025, there was no mention by the claimant of any potential allegations regarding the stage 1 or stage 2 grievance process. The issues were agreed, but make no mention of the grievance process being an issue. This final hearing was arranged, based on the issues identified at that hearing.

24. Further, the amendment application is still vague in nature. It is not clear for example who it is against and what exactly the allegations are.

25. Bearing in mind all of the above, the Tribunal must consider the prejudice to the respondent of allowing the amendment, compared to the prejudice to the claimant of not allowing it. If the amendment were to be allowed, it would not be possible to fairly deal with the new allegations at this hearing. The allegations would have to be dealt with at a separate hearing. Potentially, some of the same witnesses would be required to attend two hearings, plus any others required. That would need more Employment Tribunal time to be taken up, and more time and costs for the parties. Had the application to amend been made earlier than February 2026, everything could potentially have been dealt with at one hearing. The parties have proceeded on the

basis that this hearing would only be considering the allegations identified in July 2025.

26. Further, since the allegations are far from clear, there would have to be another Preliminary Hearing to determine exactly what is being alleged, against whom and when it arose.

27. The Tribunal concludes that the prejudice to the respondent caused by us allowing the amendment, would be far greater than the prejudice to the claimant of not allowing it. The claimant can still proceed with the seven allegations of direct discrimination which are before this tribunal. If he had succeeded in any of those claims, what happened during the grievance process would potentially have been relevant to remedy; so the issues could have been explored in that context, if the claimant had succeeded, even if not as a separate allegation of victimisation. Further the claimant can still put in a new claim, albeit it is now potentially out of time, subject to arguments about it being just and equitable to extend time.

Application for 'reconsideration' on Day 2

28. On 17 March at 01:53 hrs, the claimant asked for 'reconsideration' of the above decision. On the morning of the second day of the hearing, Judge James explained that a claimant cannot apply for reconsideration of a case management order and that the decision in relation to amendment is such an order. Orders can only be changed if there has been a material change in circumstances, which for the following reasons, there has not.

29. In point 3 of his 17 March email, the claimant asserts:

> *The application was made on 16 February 2026, which is 4 weeks before the listed hearing, not due to any fault of mine but as a consequence of the conducts [sic] of the respondent's solicitors.*

The Tribunal notes that in fact the claimant's application was not only to allow the claimant to amend his claim, but as a consequence of that, to postpone the final hearing and convert the first day of it, i.e. Monday 16 March, to a preliminary hearing.

30. On the first day of the hearing, the Tribunal considered the claimant's application to postpone, together with his application to amend, and the potential consequences of that if it were allowed, as well as the issues in relation to compliance with the Tribunal's orders. For the reasons set out above, the Tribunal determined that the hearing should proceed, bearing in in mind the need to balance the question of fairness in relation to both of the parties and the witnesses.

31. Point 4 states:

> *Despite the fact that it is not disputable that the respondent failed to comply with some of the Orders of the Tribunal dated 3 March 2026, the Tribunal ruled in their favour without regards to the numerous failures.*

32. Point 5 of the claimant's email refers to page 429, being an earlier email to him to Mr Garner. This issue has been dealt with above and the earlier email makes no material difference to our decision.

33. At Point 6, the claimant says:

The Tribunal should have considered the impact the conducts [sic] of the respondent's solicitors has had on my ability to properly prepare my case and represent myself in this hearing.

The Tribunal has considered that – see above.

34. Similarly to point 4, point 8 states:

Going ahead with this trial as listed will cause me great prejudice and injustice, as I would not have been given a fair chance to advance my case particularly because this tribunal has decided to ignore the deliberate conducts of the respondent's solicitors, leaving me to suffer the consequences.

35. First, there has been no ruling 'in favour of' the respondent' and no 'ignoring' of the alleged breaches. The Tribunal carefully considered the delays in exchange of witness statements and the preparation of the Supplementary Bundle. We carefully considered the effect of that on both parties, based on the representations made, when making our decision. The matters were not so clear cut as the claimant suggested on Day 1. For example, the claimant argued that the email sent at 16.01 by the respondent's solicitors did not cross with the email he had sent a few minutes before. We consider it much more likely that it did. As noted above, the claimant then failed to respond to the respondent's solicitors suggestion that they exchange later that day or the next day.

36. We considered whether this hearing should be postponed, given the late disclosure of witness statements (on 12 March) and decided that both parties were equally prejudiced by that. Fairness includes consideration of the further delay and costs caused by the hearing not proceeding. Fairness must be considered in relation to both parties. In relation to the respondent, that includes those individuals against whom allegations of direct discrimination have been made.

37. At Point 9, the claimant argues:

Following today's decision, the respondent's solicitors have continued to disclose documents in a manner that appears intended to ambush me, knowing that the ongoing exchanges between them and the Tribunal have limited my ability to carefully review the documents disclosed since I submitted my witness statement. I expect the Tribunal to exclude these documents, as the respondent has not indicated that they are to be adduced into evidence as part of the bundle. However, I believe I heard the Judge state that the respondent is entitled to continue acting in this way because they have a duty of disclosure.

38. As Employment Judge James explained to the claimant on day one, those documents are not before us. The respondent gave the claimant the option to ask that some be put before us if he thought they assisted his case. The respondent's position is that the documents actually assist their case not the claimant's, but were not seeking to admit them due to late disclosure.

39. Further, as Employment Judge James explained on day one, the Tribunal had made an order for disclosure of documents. The disclosure duty is an ongoing one, which means that if further documents do come to light, they must be sent to the other party, even if that is just before or during the

hearing. Hence the sending of those documents to the claimant. The claimant says we should exclude them; but since the respondent is not applying for the Tribunal to admit them, and they have not been sent to the Tribunal, there are no documents to exclude. As we have noted above, just two of the documents contained in the respondent's additional disclosure were added to the hearing file, with the consent of both parties.

40. Finally, it was confirmed to the claimant that written reasons for these decisions on the preliminary issues would be part of our judgment in due course. It would not be appropriate to stay the case in the meantime; indeed, that would in effect be granting the claimant's application to postpone by default. If the claimant appeals and the Employment Appeal Tribunal decides our decision on postponement was wrong, then any decision made by us will potentially be overturned and the case re-heard.

41. In light of all the above, the claimant was urged to put his efforts into continuing to prepare for this hearing and in particular, so he could commence cross examination of the respondent' witnesses on the afternoon of Day 3.

Documents

42. By agreement, two further documents were admitted during the hearing; the calendar invite dated 26 April 2024 regarding the Associate Head interview panel's 'reconvened' meeting; and the One Drive data showing the dates on which the 2022 PDRs, including the claimant's were modified.

Credibility

43. We were invited by Ms Hodgetts to make general findings in relation to the credibility of the claimant's evidence. There are detailed reasons set out in Council submissions between pages 1 and 13 as to why we should. We consider that this is an appropriate case in which to do so. As will become clear in due course, the claimant has maintained in relation to allegation 3.1.1, that documents which were before the Tribunal, and the meaning of which were clear, stated something which they clearly did not. The claimant was still maintaining that in his final submissions.

44. Further, the claimant has made serious allegations of professional misconduct and potentially criminal conduct, against the respondent's solicitors, and Mr Rawsthorne, regarding the 2022 PDR. He has argued that the further document produced, which had Mr Rawsthorne's comments on it, was a forgery, with which the respondent's solicitors colluded. The claimant made that allegation, without having any reasonable basis to do so. A document which was disclosed late, which was before the Tribunal, with the consent of both parties, proves on the balance of probabilities that the document was indeed amended, on the date of the claimant's appraisal.

45. In his closing submissions, the claimant argues at paragraphs 1 and 2:

> *1 .Before I begin, I must put it on record that I have not had a fair trial in this case as I have not had a fair opportunity to conduct my case due to the deliberate conducts of the respondent's solicitors. I reiterate that this was a proper case for this tribunal to have postponed this hearing, given the fact tat I am unrepresented and the respondent's solicitors continued to throw documents at me even after the trial began. Whether in relation to*

the disclosure of documents or the exchange of witness statements, the respondent's solicitors had an unfair advantage over me. Their conducts which this tribunal found no issues with caused me so great a distress that I was rendered incapable of taking consequential remedial actions, such as amending my witness statement, especially when I am convinced that the solicitors took amended their witness statement to respond to my witness statement after the read mine while holding on to theirs.

2. I deduce and would like this tribunal to make the same deduction, that the witness statements of Andy and SMG, which were unsigned, when sent to me over 24 hours after the time to exchange witness statement) where amended after the respondent's solicitors read my witness statement. Otherwise, there is no reason why they should send me unsigned witness statements when the people who made the statements said they signed them, and you can see from that of JSM, for example, that it was signed on 10th of February 2026.

46. We have already commented above on issues in relation to the disclosure of witness statements. Again, there is no evidence upon which it could be reasonably held, that Mr Rawsthorne and Mr McGowan amended their statements, in light of what the claimant says in his witness statement. The claimant has continued to insist this was the case, even though the respondent's solicitors had assured him that his email sent on 11 March with his witness statement attached, had been deleted from their system.

47. Further, the claimant's insistence that some documents say something which they do not; and his willingness to make extremely serious allegations against others, without having a reasonable basis for doing so, has caused us to question the credibility of the evidence given by the claimant in this hearing more generally. Where there is a conflict of evidence, we have therefore preferred the evidence of the respondent's witnesses. In contrast to the claimant, they were willing for example to accept when they could not remember the specifics of a particular meeting or interview; and were willing to concede, where they accepted in hindsight their actions would ideally have been different.

48. As to the credibility of Jean Mvalo, she told us she had not spoken with her husband about this case and that the matters set out in her witness statement was solely from her memory. However, we note that many of the sub-headings in her witness statement relate directly to the allegations in the case. This does cause us to question the reliability of her evidence. In any event, what she says in her witness statement is hearsay as to what was actually said or done to the claimant at work.

Findings of fact

Initial appointment and subsequent promotion of the claimant

49. The claimant commenced employment with the Respondent on 1 September 2015 in the role of Lecturer. His progression to the role of Senior Lecturer on 1 September 2018, was confirmed in a letter dated 4 September 2018.

50. On 9 November 2020, the Claimant was appointed to a temporary Principal Lecturer (PL) post within the Computing Department as Academic Quality &

Standards Lead. The appointment was expressly temporary and subject to renewal. He reported to Mr Mark Jacobi, Deputy Head of School for Computing and Digital Technologies. The appointment was confirmed in a letter to the claimant dated 24 November 2020.

51. On 1 February 2022, the Claimant transferred to a further temporary Principal Lecturer position within the Engineering Department as Global & Academic Partnerships (GAP) Portfolio Lead. This role was also temporary and subject to renewal. The appointment was confirmed in a letter to the claimant dated 5 April 2022. Andy Rawsthorne was part of the interview panel which decided to appoint the claimant to that role.

52. Between February 2022 and 25 January 2023, the claimant's line manager was Mr Rawsthorne, Head of School of Engineering and Built Environment. The claimant spent 70% of his working time as a PL in Computing and 30% in Engineering. From 25 January 2023, Stephen Magowan was the claimant's line manager.

53. The respondent has a Dignity at Work Policy which states:

> ***2. The University's Position***
>
> *2.1 The University does not tolerate unacceptable behaviour. This means the University is clear that these behaviours are unacceptable and if they are reported or witnessed then the University will deal with them using the appropriate processes in place. All employees have a right not to be victimised for making a complaint in good faith, even if the complaint is not upheld.*
>
> *…*
>
> *11.2 Everyone is responsible for their own conduct and should be prepared to support other employees who are the subject of unacceptable behaviour. All employees are responsible for speaking out against any unacceptable behaviour that they may have witnessed.*
>
> *11.3 Everyone has a clear role to play in creating a climate at work in which harassment, victimisation, discrimination, sexual misconduct and bullying are unacceptable.*

<u>Collective grievance outcome</u>

54. On 21 July 2022, Professor Conor Moss, the Dean of the College of Business, Technology & Engineering and Mr Rawsthorne's line manager, confirmed in a collective grievance outcome letter to the claimant and three other PL colleagues, that the Claimant's temporary PL role would be converted to a permanent appointment. The claimant was one of four Principal Lecturers who had raised the collective grievance.

55. The outcome letter from Professor Moss states:

> *Eileen [Professor McAuliffe] was concerned to learn that you had taken the impression from managers that those of you who occupied temporary PL roles had been given a commitment to permanency. I am asking CLT colleagues to impress on all our management teams that we should not make such commitments as permanent posts cannot be guaranteed. I would make a more general point that whilst temporary posts are sometimes a necessity and can add capacity to specific projects I have*

observed too many temporary posts and have been working to address this across the college.

…

I am aware that both Steve and Mark occupy temporary PL posts. Following discussions with the relevant Heads of Department and an identified need for both Steve and Mark to continue to provide PL leadership and management to staff, steps have been taken to confirm both Steve and Mark as permanent PL's.

56. Mr Rawsthorne told us that he was not spoken to by Professor Moss or Professor McAuliffe about the collective grievance at that time. We accept that assertion.

Evidence of alleged hostility by Mr Rawsthorne towards claimant

57. It is noted that the claimant's previous line manager, Mark Jacobi, told the independent grievance investigator Liz Croft, during her independent investigation:

LC: Just a final couple of questions to ask if that's alright. Are you aware of any difficulties in the relationship between SM and any other individual in either Engineering or Computing?

NN: You don't need to name names, it's just if you are or you are not.

MJ: No, I'm not sure I do. I mean, there's disagreements at times within meetings but nothing long term, nothing which caused him to mention it to me. I've not come across that from other people as well.

LC: Have you observed any difficulties at any point?

MJ: No I think people have questioned a bit, in meetings when he was in our department where the subject group leaders have questioned the requests he was making of them and weren't too happy, thought there were alternative ways of doing things. But nothing that suggested there was a problem in terms of the relationship between him and people in the department, no I'm unaware of that.

…

LC …You mentioned obviously that SM had raised issues about his relationship with AR over quite a long period of time, had he considered taking any action as far as you are aware to try and address those issues?

MJ: No he never mentioned that. I don't think at that stage he thought it was necessarily personal, necessarily directly about him. I think he just thought that AR didn't agree with the way he wanted to do things and didn't want to change some of the practice that was going on, whereas SM wanted to do things differently. And SM would argue "we need to take a different approach, we might need to be proactive in certain areas". SM felt he delivered on quite a few things for the department in terms of setting up partnerships, international partnerships and he felt he wasn't appreciated for that, he wasn't thanked for it. I think he didn't suggest to me that it was a personal problem between him and AR initially, he said he got a lot of resistance from a lot of people in Engineering in terms of the way they worked and he felt it was because he was an outsider to the department.

…

NN: Did it though, did it at some point become direct?

MJ: It did yes, he'd talk more about the fact that he thought AR didn't particularly like him, didn't like his approaches, didn't think he was working in the way that Engineering works. It was those sort of general comments and they're not direct quotes I'm very much paraphrasing.

58. Mr Magowan told Liz Croft during his interview with her:

Were you aware of any difficulties in the relationship between SM and AR when you took over?

SMG: Not at all, I think there was some frustrations from AR at the time around sometimes AR felt he'd asked SM to do something, and SM had not done it or he'd done something else. So I think there were some frustrations there but I wouldn't have said it was a problem necessarily with the relationship.

LC: And SM didn't highlight to you any issues in terms of his relationship with AR?

SMG: None at all negatively that I can recall, I'd say probably the opposite.

…

NN: … I think you said SM didn't raise any with you and you sort of finished with "probably the opposite" and I just wondered whether there was anything you wanted to elaborate on, you indicated you might have had some follow-on or elaboration on that.

SMG: I think SM always came across as being really pleased around his line management with AR and subsequently myself. I didn't get any impression whatsoever on taking over line management of SM or working with SM before that or on anything up to interviews for the AH role that there were any problems at all between SM and AR from SM's perspective.

59. Mr Magowan says in his witness statement at paragraph 4, which was not challenged and which we accept:

I am aware that Steve has raised certain issues with Andy as part of his claim, having worked closely with both, I do feel able to speak on this issue. I never got the impression that they didn't get on or that there was a problem in the relationship. When I use to meet with Steve as part of the keep in touch meetings he never raised anything regarding his relationship with Andy or any issues around that relationship until after the Associate Head interviews had taken place.

60. The claimant's WhatsApp messages on his family group WhatsApp record him saying on 13 May 2022:

My current job is good because Ideal with many stakeholders and there is room for travelling around nationally and internationally. Already there is a pipeline for me to travel to Basilona and Germany (these have already been approved) and furthermore travelling are in the pipeline. [sic]

However, the department of Engineering is very much rigid and not friendly. Its just so hard to work with them. I have had to work on so many

things on my own. The other problem is that my current job is not only dependent on my own decisions for the success of all I do but other people's decisions and input too. However these other people are hard to work with. No matter how much effort I have used to engage with them I get a handful or zero. Also, I may be wrong, but I don't think my current line manager is all that genuinely friendly nor helpful. Last time I asked him about this job, he said he is not ready to make it permanent. As is now is on contractual basis. It will be renewed in July/August for another X months.

…

The SGL role is advertised as a permanent role and is in the subject area of my expertise. The head and deputy heads who will both be on the panel are encouraging me to apply. I am very comfortable in the subject area since I know all the members, their strength, weaknesses, limitations and of course challenges. Its a job I have always wanted but of course it does not attract traveling etc as compared to the job I'm working on now.

My concerns and worry

I really don't want to disappoint the current department (Engineering) and the assistant Dean, Kate (Jean, you know her) because I have just been on this job for bearly 4 months [sic]. I sometimes feel that despite the current challenges I face in Engineering, the job will eventually expose me to so much avenues, because it involves traveling though this may also be risky that travelling may be banned or restrictive due to Corona, etc. What about my reputation though my current job is on temporary basis.

61. On 21 October 2022 he wrote:

Every work place is different and certainly you will deal with different people who sometimes don't really bother about people they work with. A typical example is when I was in Computing I had a fantastic manager while now in Engineering, I have a very moody manager who often times don't appear concerned about my presence nor my problems. I have struggled so much to be acquainted and used to him. I have been praying and still praying about it - I can see some changes in his attitude towards me now.

62. The Tribunal notes that there is no other contemporaneous documentary evidence suggesting the claimant was not content in his role or with Mr Rawsthorne's management. Further, there was no mention by the claimant to his GP about any alleged discrimination or bullying behaviour towards him, prior to the Associate Head interview (see below).

63. Finally in this section, we note paragraph 22 of Mr Rawsthorne's witness statement, which we also accept, which states:

> *When my permanent appointment was confirmed as Head of Department for Engineering and Maths on 4 October 2022, Dr Mvalo emailed me congratulations and said that this was "well deserved*" [1402]. *'Congratulations for your permanent role as the HoD. Well deserved'*

64. On 25 January 2023 the Claimant's line management changed when Dr Stephen Magowan was appointed Deputy Head of the Engineering

Department. From this point, the Claimant reported directly to Dr Magowan. This was confirmed to the claimant by email on 25 January 2023.

65. We conclude on the basis of these findings that the claimant had formed the view in 2022 that Mr Rawsthorne was unfriendly and could be 'moody'. We conclude however that any 'moodiness' was due to the work pressures on Mr Rawsthorne at that time, which we refer to below. It is significant, we find that the claimant did not make any further contemporaneous notes of alleged hostility towards him by Mr Rawsthorne after 21 October 2022. We also note that the claimant recorded that he found other colleagues hard to work with as well as Mr Rawsthorne.

Allegation 3.1.1

66. This allegation is that on 16 August 2022, in an email on 18 August 2022 and in a one to one the same day, Mr Rawsthorne told the claimant that he would not have offered the claimant a permanent contract had he been the decision maker.

67. We note that in earlier emails regarding permanency in April 2022, the claimant asked Mr Rawsthorne:

> *Just for my peace of mind, is this contract not going to be considered for renewal or changed to permanent since this is a permanent post after 31July?*

68. Mr Rawsthorne replied:

> *There are a number of external considerations prior to making this decision. At the moment there is too much uncertainty and dependencies (permanent HoD, college Dean etc) and due to this a change to permanent won't be approved. Hopefully in a few months there will more clarity and we can have a discussion then. In the meantime keep on doing your best and doing a good job.*

69. In his witness statement at paragraph 44, the claimant refers to this email as evidence of Mr Rawsthorne having told the claimant he '*would not offer the claimant a permanent job if it was his decision*'. We note that is not what the above email says.

70. On 16 August 2022, Mr Rawsthorne emailed the claimant about an email sent by the claimant to HR about his role being permanent. It is noted that in his witness statement at paragraph 43, the claimant sets out his allegation in relation to the August emails as follows:

> *In one of my emails, I said, "oh Mr. Rawsthorne now my six months has gone, what is my job status?" He said, "oh I forgot I was meant to renew your appointment on a temporary basis". So, I said, no because we have just received an email from Conor, here is the email confirming that we have been given a permanent role. He says, "no way you can't be given a permanent role. In fact, if it were my decision there is no way I would have given you a permanent role".*

71. This is not accurate. Mr Rawsthorne's email, sent to the claimant regarding his salary issue states:

I have followed this up with HR. I have not committed to making you permanent as of yet, and I didn't realise your temporary promotion ran out at the end of the July.

72. The claimant replied to say the matter was stressing him out. Mr Rawsthorne replied:

Sorry to hear that this is stressing you out. I've asked for clarification from HR as this is the first time I've seen the letter [i.e. the collective grievance outcome letter of 31 July].

Your temporary contract not being renewed is totally my fault of which I can only apologise as I hadn't realised. [sic]

Mr Rawsthorne had previously confirmed they could discuss the matter when they spoke on Thursday (i.e. 18 August 2022).

73. As noted above, we accept Mr Rawsthorne's assertion that the confirmation of the claimant in the role on a permanent basis by Professor Moss was news to him and had not been discussed with him. We accept his evidence that had it been, Mr Rawsthorne would have taken steps to ensure it was actioned. We note that during the formal grievance interview, Mr Rawsthorne states:

There had been a lot of talk with the previous Dean, with Eileen [McAuliffe] around restructures, we're doing all this work on restructures, obviously there was a forthcoming restructure anyway. We'd requested a number of the roles permanent at the time including myself because I was only interim DHOD at the time and interim HOD so I had two interim roles and very much at the time the college was "we need to look at those final positions". And then out of the blue I got this expectation that this individual was being made permanent, I knew nothing about that. I don't think I expressed anything to SM that he shouldn't have been but I was really shocked because there'd been no prior communication, obviously there had been a communication breakdown with me receiving any information around that.

74. We accept this evidence too. We also note that the claimant takes exception to being referred to by Mr Rawsthorne as 'this individual'. In fact, looking at that passage as whole, Mr Rawsthorne referred to the claimant by name on five occasions.

75. We also note that in the first grievance interview, the claimant told Mr Garner:

I have once been told by the chair of the interview that if it were his decision when I was offered my current role to permanent position (see Appendix G, a letter to confirm my temporary role to permanent that was discussed by relevant HoD), he could not have confirmed a permanent role for me (see email in Appendix H).

76. This is different to what the claimant says in his witness statement at paragraphs 43 and 44. In cross examination, the claimant said he got the words 'could' and 'would' mixed up. We note that the claimant's assertions made in his witness statement, contradict the clear contemporaneous record, as well as what he told Mr Garner in July 2024.

77. We accept Mr Rawsthorne's evidence that the claimant had a different start date to the other temporary PLs and therefore their contracts were not up for

renewal at the same time. Hence the renewal of the claimant's temporary contract was missed.

78. When it comes to what was said when they met on 18 August 2022, we could not be confident in light of the above, that the claimant was remembering correctly, bearing in mind what he says in his witness statement, which clearly contradicts the documentary evidence. We consider it far more likely that Mr Rawsthorne simply reiterated what he had previously stated to the claimant in the emails quoted above. Namely, that he would not have been in a position to confirm the claimant in a permanent PL role in Engineering at the time, due to the uncertainty regarding the permanency of the other PLs and Mr Rawsthorne's role too.

Allegation 3.1.2

79. This allegation is to the effect that Mr Rawsthorne would not arrange 1-2-1 meetings with the claimant, leaving it to the claimant to request them. We note that in the document prepared for the purposes of his 2022 PDR, the claimant noted that after a meeting with Mr Rawsthorne and Kate Morse, that regular meetings had been taking place since 23 June.

80. We accept Mr Rawsthorne's evidence that he amended the PDR during the discussion between him and the claimant about the PDR on 18 July 2022 – see further, in relation to Allegation 3.1.5 below. In the amendments he made, Mr Rawsthorne noted:

> *Wants to improve leadership and management to collaborate better with partners and colleagues (SGLs, PLs etc).*
>
> *Wellbeing ok – resilient. Stressed sometimes around miscommunication.*
>
> *We could work better with more 1-2-1s with members of DLT & CCLs.*
>
> *Reflections – how to better induct staff from other departments into E&M. This could've [been] managed better by myself.*

81. At this point we note the contents of Mr Rawsthorne's witness statement at paragraphs 16 and 17, regarding the workload he was carrying, due to him in effect trying to carry out the role of two Deputy Heads of Department and Interim Head of Department. He had 20 direct reports around this time. It is clear to the Tribunal that Mr Rawsthorne had an extremely high workload and was under enormous pressure.

82. The claimant accepted in cross examination that he could not confirm what arrangements Mr Rawsthorne made for meetings with his other direct reports during this period. We accept Mr Rawsthorne's evidence that he did not arrange 1-2-1s for other staff, unless specifically requested, due to the workload pressures.

Allegation 3.1.3

83. The allegation is that Mr Rawsthorne subjected the claimant to negative 1-2-1 meetings, not greeting the claimant or making eye contact with him.

84. We note that in his grievance document, the claimant says in relation to this allegation:

> *In many instances, his body language consistently conveyed that I was not part of his team. For instance, there were times he could not greet me,*

unless I do, nor see me face-to-face. In response to these experiences, I started transcribing some of our conversations thoroughly to protect myself and gather evidence and then deleting them after the conversation.

85. Then in his interview with Ian Garner the claimant stated:

IG … In your documentation that you kindly provided for this, you used a phrase that did attract my attention which was "personal hatred". Now that's a pretty bold claim and I'd really like you to unpack what do you mean when you write "personal hatred".

SM Okay so why I had to use all those things again is because as I said, there are so many things that sometimes it is very difficult to evidence because for example, body language. Because there were some instances, for example, we were in a DLT meeting everybody would be greeted and then I would not be greeted.

86. In his witness statement however the claimant says at para 32:

For instance, there were instances that he would not greet me and yet able to greet every other white member of DLT in the room.

This is the first time the claimant specifically asserted that Mr Rawsthorne treated the claimant's non-white colleagues differently.

87. At paragraph 68 the claimant says:

This was worsened for me by the fact that Mr. Rawsthorne tried to avoid engaging me and would not speak with me on his own initiative except where he cannot avoid it and he did everything to make me feel unwanted. He would refuse to greet me during DLT meetings. He would come, talk to someone, they would talk about what happened over the weekend, they would laugh, and I would never have that.

88. There is no allegation of a failure to make eye contact in these passages That allegation appeared for the first time in the particulars of claim. The claimant asserts this happened when the claimant met with Mr Rawsthorne face to face. None of these allegations were shared with Mr Magowan. They are categorically denied by Mr Rawsthorne. We also take into account counsel's submissions on these issues at (ff) to (mm).

89. Bearing in mind the above, we conclude that Mr Rawsthorne did not subject the claimant to negative one to ones, fail to greet him in meetings or fail to make eye contact with him. We consider it more likely that after the Associate Head interview process, the claimant has looked back over his working relationship with Mr Rawsthorne in a negative way, when trying to recall behaviours which support his case. Memory can be deceptive, as research demonstrates (see the reference to the ***Gestmin*** case below); we consider that is what has happened in this case.

Allegation 3.1.4

90. The allegation is that Mr Rawsthorne did not provide the claimant with any orientation within the first six months of his employment.

91. We accept Mr Rawsthorne's evidence in his witness statement at paragraphs 10 and 11 that there is no formal orientation (or induction) process for staff moving within the University; just for new staff. We accept that when Vicky Mellon, a white colleague, moved from Service Sector Management to

Engineering, she did not received a fresh induction or 'orientation' meeting. We also accept that Mr Rawsthorne had three meetings with the claimant before he started in the department. These were on 13 December 2021, 17 December 2021 and on 11 January 2022.

92. The claimant accepts he met Mr Rawsthorne on 13 December 29021 and he was given a handover note. The clamant did not make a note himself at that meeting or ask questions about the handover note. The claimant disputes that he met with Mr Rawsthorne on 17 December, despite being sent a record of a meeting invite for that date. We accept that a meeting did take place on that day. On 11 January 2022, the claimant met with Mr Rawsthorne, the other PL GAP Leads and the two PL Leads associated with Teaching and Learning.

Allegation 3.1.5

93. The claimant alleges that Mr Rawsthorne 'did not sign off on the claimant's personal development review', contrary to the respondent's practice. During cross examination the claimant accepted that these is no formal 'sign off' as such – what he is in effect alleging is that his PDR was not completed by Mr Rawsthorne. The evidence is to the contrary.

94. On 15 July 2022 the claimant emailed Mr Rawsthorne to say:

> *Hope you are doing well. Just to update you that I will be sending you my PDR over the weekend or first thing on Monday. I thought I would manage to get it ready by today but its very unlikely that I will be ready by the close of the day. I have other things to do too to make sure that when I go for my AL next week all is settled*

Mr Rawsthorne replied, 'no problem'.

95. On 17 July 2022 (a Sunday evening), the claimant sent the PDR document to Mr Rawsthorne by email at 19:47. The claimant complains that he received no reply. Given that this was sent on a Sunday evening and they were meting the next day, the Tribunal does not find that surprising. The claimant then met with Mr Rawsthorne on 18 July to discuss the PDR.

96. In the first grievance meeting with Mr Garner, the claimant says:

> *Even when we had our PDR with Andy there was not one single thought of, I think I've already copied you in anyway the copy of my PDR, that it raised any concern.*

97. The claimant told Liz Croft:

> *Because of the way it has been happening with the PDR I've had with my previous managers I was expecting that he'd put down notes on the section of the line manager, you put down notes, and you send it to me and I have to sign to agree on what we have discussed, that never happened. The document (PDR) I'm sharing with you, shows this evidence. This one, the PDR, he has a copy of it.*

98. At page 1378, the claimant says in the document he prepared for the PDR meeting:

> *I asked Nick, if I could share these concerns with DLT on how we can take a step to improve students' learning experiences. Nick accepted and said it would be helpful if I go ahead and share with DLT. I then shared these*

concerns with DLT on 25th May. However, I was told that the DLT members were not clear what I was asking them to do that Andy had to inquire from Kate Morse. Eventually, I, Kate and Andy had a separate meeting on 26th May to clarify the ask.

99. The claimant told Liz Croft during his meeting with her:

LC: Just to be absolutely clear, the discussion, did you have any development objectives agreed as a result of the discussion, could you perhaps summarise what that discussion was please?

SM: Thank you; no there wasn't. There was a discussion I had a meeting with him following that PDR and I remember one of the things he did say to me, he said "Steve, one thing I like about you is that you are very prompt and you're very passionate on the things that you do". Every time when someone has spoken something good to you it's so difficult to forget and that's why I can remember, that is the thing that he highlighted on the day, what we were discussing.

100. This is consistent with what is stated on what is said to be the 'doctored' PDR, which states:

Really appreciate passion and enthusiasm and think they are positive presence on DLT.

101. The claimant says that the amended PDR which was provided to him as part of the ongoing disclosure process is a forgery. He says in his witness statement at paragraph 69:

But, like magic, out of the blues, even after the bundle ought to have been long completed, the respondent, with the active connivance of its solicitors decided to create a document purporting to be Mr. Rawsthorne's comments on my PDR.

102. These are extremely serious allegations to make against Mr Rawsthorne and the respondent's solicitors. We are satisfied that they are baseless. One of the documents disclosed late but admitted in evidence before us by agreement, is a record from OneDrive, showing the date that the PDR document was amended, i.e. 18 July 2022. That is entirely consistent with Mr Rawsthorne's evidence that during the PDR discussion with the claimant on that day, he added his own comments to the PDR document.

103. Part of the claimant's argument was that Mr Rawsthorne did not produce the completed PDR, during the grievance process. We are satisfied with Mr Rawsthorne's explanation that he did not do so, because he was accepting at face value at that stage the claimant's assertion that he had not completed the PDR.

104. Ideally, following the meeting on 18 July 2022, the completed PDR should have been sent to the claimant asking him to check the additions made, and to formally agree them. This was at a time however when Mr Rawsthorne had 20 direct reports. It is Mr McGowan's evidence, which we accept, that his PDR was not properly completed. Although Mr Rawsthorne's comments are apparent in the document and some objectives have been set, Mr McGowan did not fill in the section of the PDR he was meant to complete beforehand.

Allegation 3.1.6

105. The allegation is that in September 2023, the claimant was in the middle of a presentation, when Mr Rawsthorne spoke loudly on the telephone, interrupting the presentation.

106. We accept that Mr Rawsthorne received an urgent call. He went to the back of the room to take the call, assuming that this would not be distracting to his colleagues. He was later spoken to by Mr Magowan, who pointed out to Mr Rawsthorne that he had been speaking loudly and the claimant had been distracted and was upset about that. Mr Rawsthorne apologised to the claimant in an email sent on 12 September 2023, a few days later, in which he states:

> *I just wanted to write to you with an apology. During your section on the DLT delivery day I received a call regarding the Birmingham site for NCATI which due to the urgency of this I felt I needed to take. I thought that in going to the rear of the room this wouldn't be a distraction but I have since learnt that it was still quite loud and distracting for you. This was wrong of me and I am sincerely sorry.*
>
> *Outside of the apology the trip looked like a great success, and there are some fantastic photos, thanks for your hard work in arranging this.*

107. The claimant replied on 12 September 2023 stating that he really appreciated the kind message and the apology. The claimant accepted in cross examination that his acceptance of the apology was genuine and truthful.

Proposed restructure

108. On 8 January 2024 the Respondent issued a consultation presentation setting out a proposed new College structure. In summary, the proposal was to move from 16 Departments to 10 Schools/Institutes including, in relation to the College of Business Technology and Engineering:

> *– five departments to be consolidated into three new units as follows: School of Engineering and Built Environment (including some of the subject areas previously included within the Natural and Built Environment in the College of SSA); Sheffield Business School and School of Computing and Digital Technologies.*

109. Staff in those departments were notified whether their roles were at risk of redundancy and told which roles they had been ring-fenced to. PLs were ring-fenced to PL posts in the department they were working in at the time. However, the proposals in relation to the College of Business Technology and Engineering involved the removal of the Principal Lecturer role and creation of the Associate Head role, which required a higher level of skill and proficiency in people management at a strategic level and consequently a higher salary.

110. The University operates two pay grades: the single spine pay grade, which applies to the majority of staff, and the senior staff pay framework, which covers roles such as Associate Head. The Associate Head pay band range is between £65,819.00 and £72,585.00, reflecting the seniority and responsibilities of the position.

Allegation 3.1.7 – the Assistant Head role

111. Unsurprisingly, this was the issue which took up most of the hearing time. It was the issue about which most witness evidence was provided, and much of the documentary evidence. All of the relevant evidence has been carefully reviewed, including the claimant's analysis of the interviews, set out in his witness statement. It is not necessary or proportionate to refer to every piece of evidence in relation to these findings of fact. In order to avoid duplication, we have quoted from the most pertinent interview notes and application forms in the Conclusions section.

112. The restructure proposals created Associate Head positions in various departments within the University. In order to ensure consistency, a briefing was delivered through a HROD presentation to panel members which included a Q&A element. The presentation reminded panel members that they needed to be up-to-date with their Equity, Equality, Diversity and Inclusion (EEDI) training, referred to the Chairs assessment form and was used to brief the panel.

113. The interview panel for Engineering interviewed 12 staff for the role of Assistant Head. The panel was comprised of Mr Rawsthorne, Steve Magowan, Professor Jennifer Smith Maguire, Jo Posnett and Kelly Cookson. Mr Rawsthorne chaired 11 out of the 12 interview panels. He did not chair the panel for Candidate B for reasons which are not relevant to this claim. Professor Smith Maguire chaired that panel.

114. On 6 March 2024 the Claimant received a letter confirming that his post was placed at risk of redundancy as part of the consultation process. In Engineering, there were more posts at Associate Head level than applicants. In effect therefore, candidates were competing against the competencies, not each other.

115. On 16 March 2024 the claimant submitted his application for the role of Associate Head, within the School of Engineering and Built Environment. Before he knew he would be on the interview panel, Mr Magowan assisted the claimant to prepare for the interview and with his application. He was invited to interview on 9 April 2024 by email. He was notified who the members of the selection panel were in that email.

116. The threshold for the appointment was set at 18, 21, or 24, depending on whether there were 6, 7 or 8 questions asked, with a maximum of 4 marks for each question. The threshold was set at College level, not by the Engineering Panel. There were seven questions in Engineering, so the threshold was 21. This meant scores of 3 or more were required for most questions, subject to the overall discretion of the panel, if there were was a clear development plan in place. The process allowed the panel to take into account the content of the application form, if the interview scores were below the threshold.

117. In Engineering, Employees B, C and F were interviewed on 16 April 2024; Employees E, G, J, H and I on 17 April 2024; and Employees K, A, D and the claimant on 25 April 2024. The schedule allowed for an average of 50 minutes per interview. Inevitably, some lasted longer, some less. All candidates were asked the same questions. The panel members used a standard form to make their own notes and scores, which some of them

amended as they went along, and there was then a panel discussions after each interview (assuming time allowed) to agree a consensus score. That was arrived at through discussion. The chair was responsible for recording the final agreed score.

118. Candidates were allowed to bring notes to the interview, if they chose, to help them answer the competency based questions.

119. On 22 April 2024 there was an online discussion between the panel members, which lasted about 20 minutes, and was convened to discuss candidates B and C, who scored slightly below the threshold.

120. The claimant's interview on 25 April lasted about 40 minutes. He was the last person to be interviewed. He texted his wife at 11.48 whilst still waiting to go in an called his wife after the interview at 12.34.

121. At pages 543 to 554 is the claimant's analysis of what he says he said during his interview, compared to what he is recorded as saying. The claimant says that the note about what he said during his interview was made shortly after the interview itself, because he did not think he was going to be appointed. We note however that the claimant has given two diametrically opposed accounts as to how he felt about the interview afterwards. At pages 236-237 (during his interview with Mr Garner), he said that he made the notes because he was suspicious. At page 363, during his interview with Liz Croft, he said he thought it had gone well. At page 481, in the interview with Elizabeth Wilson, the claimant said he was upset at the outcome because he was not expecting it. In his witness statements at C/137 however the claimant he suggests that there was a pre-meditated plan to fail him beforehand.

122. We also note, in relation to question 6 for example, that Mr Rawsthorne stated during cross examination that the claimant's notes as to what he says he said are not accurate. He told us that they do not reflect the answer the claimant gave to that question; they are the claimant's reflection after the event. We accept that. Again, we find that the claimant is mis-remembering after the event, to suit his case.

123. Bearing this in mind, we find on the balance of probabilities that it is more likely that the notes of what the claimant says he said during the interview were created around the middle of May. Further we find that they do not reflect what he actually said. Rather, they record what the claimant, on reflection, would have hoped to have said.

124. The interview notes for the claimant are located at pages 160 to 203 of the bundle and have been carefully considered by the Tribunal. To save duplication and to make the conclusions more understandable, we have quoted from the interview notes in the conclusions section. We consider that the contemporaneous notes taken by the five interviewers on the day of the interview, to be far more reliable evidence of what the claimant said at interview, than the document produced by the claimant, after he had been given formal feedback and had received the notes of the interviewers.

125. We were provided with a calendar invite for the members of the panel for a meeting which took place on 26 April 2024 at 8.15am for 30 minutes. It is not clear whether the panel reconvened to consider whether what the claimant said in his application form could increase his scores; or of Candidate A; or

both. In any event, we are satisfied that the claimant's application form was considered, in order to decide whether his scores should be increased. This is apparent for example from notes made by Mr Magowan on the interview notes for the claimant.

126. We accept the submissions of counsel for the respondent, that Professor Smith Maguire's lack of specific recollection of reconvening overnight in relation to the claimant, reflected at p357, is not confirmation that the panel did not do so in relation to the claimant. Not is it confirmation that they did not look at his application at all, whether as part of that reconvened meeting or on the interview day itself.

127. Following the further consideration, it was determined that Candidate A, a white candidate, who scored 17, was deemed not to be appointable. Neither was the claimant, who scored 15.

128. Candidates B and C scored 20/21, but following the meeting on 22 April, it was decided that they were appointable, with a development plan in place. The other candidates scored 21 or more and were deemed appointable.

The claimant's feedback meeting

129. On 29 April 2024 the Claimant was notified that he had been unsuccessful in his application. He submitted an 'appeal' the same day. His email states:

> *I wish to submit a formal appeal regarding the selection and feedback received on my application for the position of Associate Head in Engineering & Built Environment.*

130. On 1 May 2024 Mr Rawsthorne, who had been forwarded the claimant's above email, wrote to say:

> *Thanks for your email. I have been passed your query to respond to as colleagues in HROD are aware that I will be meeting formally with those unsuccessful in their application for Associate Head.*
>
> *To respond directly [to] the query regarding an appeal, there is no appeal process against the decision of the recruitment selection panel. When we meet later this week I will be taking you through all the options that are available to you following the outcome of the selection process. The meeting request has now been sent out to you for Friday 3rd May.*

131. On 2 May the claimant responded:

> *[May] I kindly ask for feedback from each panel member regarding my performance on each question? Along with the corresponding scores for each question from each panel member and copies of the handwritten answer sheets from each panel member for each question, that were recorded during my responses? I would appreciate having this information before our 1-2-1 meeting please.*

132. On the same day Mr Rawsthorne gave the claimant options for meetings and confirmed the feedback meeting would just be with him. The claimant repeated his request that he have a trade union rep present for the feedback meeting. That was subsequently agreed.

133. On 10 and 13 May 2024 the claimant submitted Subject Access Requests. The Respondent issued the SAR response on 7 June 2024.

134. The feedback meeting relating to the claimant's interview took place on 14 May 2024 and was attended by the Claimant, Simon Cooper, Mr Rawsthorne and two trade union representatives.

Redeployment to Senior Lecturer position

135. A further meeting took place on 15 May to discuss the options available to the claimant, in light of the decision not to appoint him to an AH role. Mr Rawsthorne reached out to colleagues in the Computing Department, who agreed to create a Senior Lecturer role for him.

136. On 19 June 2024 the Respondent issued a letter confirming the Claimant's redeployment to a Senior Lecturer position with effect from 1 August 2024, with pay protection in place until 31 March 2026.

The claimant's grievance

137. The Claimant lodged a grievance on 24 June 2024. He was invited to an informal grievance meeting the same month. The meeting took place with Mr Garner on 17 July 2024.

138. Mr Garner met with Mr Rawsthorne to discuss the grievance on 15 August 2024, as part of the informal stage of the grievance process.

139. Due to the seriousness of the claimant's allegations, Mr Garner decided to commission an independent investigation. A letter to the claimant dated 10 September 2024 confirmed the commissioning of that investigation. The Claimant's investigation meeting with the independent investigator, Ms Liz Croft, took place on 25 September 2024.

140. Ms Croft then conducted interviews with several other managers: Mr Rawsthorne on 23 October 2024; Ms Kelly Cookson on 24 October 2024; Dr Magowan on 25 October 2024; Professor Smith Maguire on 11 November 2024; and Mr Mark Jacobi on 13 November 2024.

141. On 29 November 2024 Mr Garner informed the Claimant by email that Ms Croft had received all necessary witness statements and was working on her report. An email update was provided on 11 December 2024 to the claimant by Mr Garner about the grievance investigation.

142. On 5 February 2025 Mr Garner emailed the Claimant explaining that a further witness had been identified while the draft report was being finalised. Jo Posnett was interviewed on 11 February 2025. The independent investigation report was finalised in February 2025.

143. On 12 March 2025 the Claimant was invited to a reconvened grievance meeting. On 18 March 2025 the claimant emailed Mr Garner requesting that the meeting be held online due to emotional difficulties. The reconvened hearing took place on 19 March 2025. The grievance was rejected.

144. The Stage 1 outcome letter was issued on 28 March 2025 and advised the Claimant that he had five working days to lodge an appeal. On the same date the Claimant submitted a further SAR request, with another SAR request on 1 April 2025.

Formal grievance

145. The claimant submitted a Stage 2 grievance letter on 2 April 2025. The stage 2 process involves a review of the decision, not a complete re-investigation.

The claimant was sent an invitation letter dated 30 April 2025 about the Stage 2 Grievance hearing. On 15 May 2025 the Claimant emailed Mr Daniel Lally, who had been appointed to hear the stage 2 grievance, copying Ms Spenceley, requesting that the meeting be postponed on the basis that he had not yet received witness documents requested under his SAR of 1 April 2025.

146. The Stage 2 grievance hearing took place on 30 June 2025 between the claimant and Mr Lally. The meeting was reconvened on 22 July 2025.

147. The Stage 2 outcome letter was issued to the claimant on 21 August 2025. the grievance was rejected but recommendations were made as follows:

> • *to provide access to mentoring and professional guidance to support your ongoing career development with a particular focus on exploring future role opportunities.*
>
> • *to implement a professional cultural development plan for the School of Engineering and the Built Environment ensuring that equality, equity, diversity and inclusion are central to these considerations within its leadership culture.*
>
> • *to introduce structured resources and guidance to induct, support and integrate both existing staff transitioning into the School of Engineering and Built Environment leadership team from other Schools and institutes and new staff joining from outside the University.*

Grievance appeal

148. The Claimant submitted a grievance appeal letter on 23 August 2025. The Appeal hearing took place before Ms Elizabeth Wilson on 22 October 2025. Agan, this process involves a review of the decision, not a re-investigation. The final outcome letter was issued on 5 December 2025. The grievance outcome was upheld. The recommendations set out above were reiterated.

Relevant law

149. We are grateful to counsel for setting out the relevant legal principles in her closing submissions. We are satisfied that they are a correct summary of the law relating to direct discrimination and the burden of proof. We have, to save time, copied and pasted them below. These are followed by the Tribunal's discussion of the ***Gestmin*** case.

Direct discrimination

150. S.13 EqA provides, relevantly:

> *(1) A person (A) discriminates against another person (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

151. S.23 EqA provides:

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

152. Detriment. A detriment exists if a reasonable worker would or might take the view that the act was in all the circumstances to his detriment: Ministry of

Defence v Jeremiah [1980] ICR 13, CA, per Brightman LJ; approved Shamoon v RUC [2003] ICR 337, HL.

153. Because of [protected characteristic]. The imposition of an inherently discriminatory criterion will constitute direct discrimination: James v Eastleigh BC [1990] 2 AC 751; at 763H -764B, D-E, 765D - 766E, 767A-B, 769B, 777D-G. However, save in obvious cases, this question will call for some consideration of the mental processes of the alleged discriminator: Nagarajan v London Regional Transport [1999] ICR 877, per Lord Nicholls, p884. Direct evidence of a decision to discriminate will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances. It goes without saying that in order to justify such an inference the Tribunal must first make findings of primary fact from which the inference may properly be drawn: p885.

Burden of proof

154. S. 136 EqA provides, relevantly:

> *(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 subs. (2) does not apply if A shows that A did not contravene the provision.*

155. The guidance in Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205 EAT, 1218F, as revised in Igen Ltd v Wong [2005] ICR 931 CA, per Peter Gibson LJ 956-957 [76] ("Barton 1-13"), and approved in Hewage v Grampian Health Board [2012] ICR 1054 HL, per Lord Hope 1065H [30-31], is still good law: Efobi v Royal Mail Group Ltd [2021] ICR 1263 SC, per Lord Leggatt 1269E-G [16-17], 1275A [34].

156. "Facts" denotes that the assertions upon which a prima facie case depends must be proved: Efobi 1273D-G [29-30]. The ET is entitled to take into account facts proved by R: Igen 941H [24]; Laing v Manchester City Council [2006] ICR 1519 EAT, per Elias P (as he was then) 1529H [59]; Madarassy v Nomura International plc [2007] ICR 867 CA, per Mummery LJ 881D-E [71]; affd Efobi 1271C-D [23], 1272F [26], 1273H [30], 1275F [36]. Whether there is a non-discriminatory explanation from R is not relevant: Madarassy 879C [58]; 882B [77]; affd Efobi 1271C-D [23], 1276E [40]. However, an ET can take into account a frankly inadequate explanation: BCC v Millwood UKEAT/0564/11, per Langstaff J (P) [26]; Raj v Capita Business Services Ltd [2019] IRLR 1057 EAT, per Heather Williams QC [61]; Base Childrenswear Ltd v Otshudi [2019] EWCA Civ 1648, per Underhill LJ [27, 37]; London Ambulance Service NHS Trust v Sodola [2026] EAT 6 per HHJ Tayler [28, 41-42].

157. A prima facie case requires something more than a difference in status and in treatment: Madarassy 878B-879C [52, 56, 57]; approved Hewage 1064H - 1065E [29-32]; such as:

> (a) Discriminatory comments; or unconvincing denials of a discriminatory intent, coupled with unconvincing assertions of other reasons: Shamoon v RUC [2003] ICR 337, HL, per Lord Scott 375H [116];

(b) No explanation for unreasonable treatment: Bahl, per Peter Gibson LJ [100-101], following Anya v University of Oxford [2001] ICR 847, per Sedley LJ 857A, and approving Elias J (as he then was) in Bahl, EAT [97]. However, it is not the case that an alleged discriminator can only avoid an adverse inference by proving that he behaves equally unreasonably to everybody. The inference may also be rebutted - and indeed this will be far more common - by the employer leading evidence of a genuine reason which is not discriminatory and which was the ground of his conduct. Employers will often have unjustified albeit genuine reasons for acting as they have. If these are accepted and show no discrimination, there is generally no basis for the inference of unlawful discrimination to be made. Even if they are not accepted, the Tribunal's own findings of fact may identify an obvious reason for the treatment in issue, other than a discriminatory reason. Moreover, the utmost care must be taken before drawing inferences from what a tribunal regards as a failure to give a complete explanation or particular language used, particularly where the acts complained of were only a few among other interactions with the complainant that are not said to be tainted with discrimination [126-127] ("It would be astonishing for a person subconsciously motivated by discriminatory considerations only to act in a discriminatory fashion in such a haphazard way"). A charge of discrimination is a very serious matter to find established against anyone; fairness demands that findings of discrimination have a proper evidential basis [134];

(c) 2 candidates who are equally qualified: Network Rail Infrastructure Ltd v Griffiths-Henry UKEAT/0642/05, per Elias P (as he was then) [17]; Laing 1532E-F [73];

(d) Where R's inadequate explanation is rejected: Millwood [25];

(e) Differences in treatment with comparators, albeit not like for like, with no adequate explanation: Hewage, 1062E [21], 1064C [26];

(f) Collectively, a strong adverse reaction to an allegation, a refusal to address the grievance, and persistence in advancing an incorrect explanation: Otshudi [27, 37] [27, 37].

158. 2nd stage: explanation & evidence required from R: if C has raised a prima facie case, the burden moves to R to show that the treatment was in no sense whatsoever on the prohibited ground.

159. Move straight to 2nd stage? It has been said that it would not necessarily be an error of law to move straight to the 2nd stage, if the ET "assumed … a p/f case of discrimination to explain": Brown v Croydon LBC [2007] ICR 909, CA, per Mummery LJ 915H [36]; Madarassy 883C [81], approving Laing 1532F-G [74-77] (eg where C relies on a hypothetical comparator, or on a comparison where a number of the comparator class were also unfavourably treated).

160. However, even if permissible, it is preferable to use the 2-stage approach, to ensure that the ET grapples with the evidence, identifies the facts from which an inference could be made, and looks for cogent evidence from R; failure to explain why the ET has not, is an error in law; and a move straight to the 2nd stage should be on the (assumed) basis that C has passed the 1st stage: Field v Steve Pye & Co [2022] EAT 68, per HHJ Tayler [42-49]; followed Ion v CITU Manufacturing Ltd [2023] EAT 151, per HHJ Shanks [24-27].

The case of Gestmin

161. The Tribunal also adds the following regarding the potential unreliability of memory. The importance of contemporaneous documentation to judicial fact finding was considered by Leggatt J in the case of ***Gestmin v Credit Suisse UK & Another*** [2013] EWHC 3560 (Comm) which has become a touchstone for the correct approach to evidential analysis. The relevant passages, set out below, observe the fallibility of human memory, and the concomitant importance of contemporaneous documentation when any 'tribunal of fact' including Employment Tribunals are called upon to assess what did, or did not, occur many years earlier.

Evidence based on recollection

15. *An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.*

16. *While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.*

17. *Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).*

162. ***Gestmin*** was considered by the Court of Appeal in ***Kogan v Martin*** [2019] EWCA Civ 1645 at para. 88. The Court emphasised that ***Gestmin*** was not seeking to lay down any golden rule permitting the Court to ignore other sources of evidence but it reaffirmed the important observations made in ***Gestmin***. The Court made the following observations:

(1) Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. That studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time;

(2) The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party to the proceedings;

(3) Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to give a good impression in a public forum, can be significant motivating factor;

(4) Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, (as in the present claim) when a long time has already elapsed since the relevant events;

(5) In the light of these considerations, the best approach for the 'tribunal of fact' to adopt in a factually disputed case, is to hard focus on the contemporaneous documentation. Particular caution is required where the evidence relied on is hearsay evidence. The C had the opportunity to call supporting witness evidence but has determined not to do so; and

(6) It is not that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.

Conclusions

163. In arriving at the following conclusions on the issues before the Tribunal, the law has been applied to the facts found above. The issues are dealt with in turn.

164. In reaching our conclusions, we have considered the burden of proof under the Equality Act 2010. In relation to the first six allegations, we were satisfied that there was no less favourable treatment. In any event we are satisfied with the respondent's explanation in respect of those allegations. It is only in relation to the last allegation that the burden of proof provisions have been of

more assistance to the claimant, particularly in relation to the treatment of candidates B and C, compared to the treatment of him.

165. We have considered each alleged incident of discrimination separately and we have also considered them collectively. Given our clear findings and conclusions on allegations 1 to 6 however, that did not assist the claimant's case either.

166. In relation to each of the allegations of less favourable treatment, where we have found that they did occur on the facts, we have gone on to consider in relation to each of those allegations, whether that amounted to less favourable treatment, and if so whether that less favourable treatment was because of race.

Allegation 3.1.1 - the claimant's then-line manager Andrew Rawsthorne said in an email dated 16 August 2022 and at a one-to-one meeting on 18 August 2022 that he would not have offered the claimant a permanent contract had he been the decision maker upon the claimant's appointment

167. We refer to our findings of fact above. This allegation fails on the facts. Mr Rawsthorne did not tell the claimant in April 2022, in the emails of 16 August 2022, or in the meeting on 18 August 2022, that he would not have offered the claimant a permanent role had he been the decision maker. In light of what is clearly said in the contemporaneous documentary evidence, we are surprised to note that the claimant is still asserting, at page 5 of his closing submissions:

> *I respectfully would like to draw to your attention that evidence in this hearing has shown that AR had previously told me on four occasions [81, 97-98, 250, and verbal on 18 August 2022] that he would not have offered me a permanent role, and he confirmed these statements during cross-examination.*

168. Given that the claimant is still asserting something that is not factually correct in relation to the written documentation, we are further reinforced in our doubts not only about what the claimant asserts was said on 18 August 2022, but more generally about the reliability of his recollection of events, as set out in his witness statement. The comments in *Gestmin* and *Kogan* seem to use to be particularly apt, in this case.

Allegation 3.1.2 - Mr Rawsthorne would not arrange one-to-one meetings with the claimant, leaving it to the claimant to request them

169. We have found as a fact that Mr Rawsthorne did not arrange one-to-one meetings with the claimant, until he was specifically requested to do so, following the meeting with the claimant and Ms Morse in May 2023. This did not however amount to less favourable treatment. Mr Rawsthorne was under severe workload pressure at that stage, with 20 direct reports. Mr Rawsthorne did not arrange meetings with the claimant's white colleagues either, unless requested. When the claimant asked for one-to-one meetings, those were arranged. In any event, none of this was because of the claimant's race. It was because of Mr Rawsthorne's workload at that time, having 20 staff under his direct line management and trying to carry out on an interim basis at times two and at other times three roles.

Allegation 3.1.3 - Mr Rawsthorne subjected the claimant to negative one-to-one meetings, not greeting the claimant or making eye contact with him

170. We note how this allegation has expanded over time, to include the allegation of not making eye contact. There was no allegation regarding eye contact in the grievance, or the grievance meetings. The first time it appears is in the Claim Form, the ET1. Further the first time the claimant alleges that Mr Rawsthorne put down the claimant to destroy his confidence is in his witness statement. Again, all of that has caused us to question the reliability of the claimant's witness evidence, although we would stress that this is based on our conclusion that he has misremembered. Again, see *Gestmin* and *Kogan* above.

171. We have found as a fact that Mr Rawsthorne did not subject the claimant to negative one to one meetings, fail to greet the claimant or make eye contact with him. The allegation therefore fails on the facts. We also note all counsel says about this on her closing submissions at 1.(dd) to (mm), all points which we consider well made and with which we agree.

Allegation 3.1.4 - Mr Rawsthorne did not provide the claimant with any orientation within the first six months of his employment

172. In relation to this allegation, it is important to note the distinction between a formal induction' and 'orientation'. A formal induction is for new employees. We accept that when staff move from another department, there is no fresh induction. The claimant was not a new employee when he transferred to Engineering. On internal transfer, handover meetings are usually held and we have accepted that the claimant had three meetings before he started in Engineering. We also accept that when for example, Vicky Mellon moved from Service Sector Management, she did not received a fresh induction or an 'orientation' meeting.

173. While therefore this partially succeeds on the facts, in that there was no formal orientation (although there were three meetings before the claimant joined the Department) the claimant was treated no differently to any other colleagues, regardless of their race. There was therefore no less favourable treatment. In any event, we are satisfied that none of this had anything to do with the claimant's race.

Allegation 3.1.5 - Mr Rawsthorne did not sign off on the claimant's personal development review, contrary to the respondent's practice

174. We accept the evidence of Professor Smith Maguire and Mr Magowan that there is no formal sign off, of PDR documentation. To that extent, the allegation fails on the facts. In fairness to the claimant, if what he means is that the documentation was not completed, we have found that there was a meeting between the claimant and Mr Rawsthorne on 18 July 2022. The claimant had sent the PDR document, with his section completed to Mr Rawsthorne prior to the meeting and it was amended by Mr Rawsthorne during the meeting on 18 July. We have dealt in the hearing section above, the allegation that the PDR documentation in a forgery. Following the meeting, the claimant never asked for the completed form or where he could find it.

175. We also note that Mr Magowan did not complete the employee's section of his own PDR documentation. We accept that ideally, as a matter of best

practice, there should be an email sent by the manager to the employee, saying that the PDR had been completed and uploaded.

176. Even allowing for a rather less literal interpretation of the allegation itself as set above, we are in any event satisfied that there was no less favourable treatment of the claimant, compared to Mr Magowan, the named comparator. His PDR document was not formally 'signed off'. In both cases, Mr Rawsthorne filled in the manager's section of the form and completed some objectives.

177. In any event, we are satisfied that none of this had anything to do with the claimant's race. Again, it was due to the excessive workload of Mr Rawsthorne at that time. Similarly, the fact that Mr Magowan did not complete his own section of his PDR in 2022 and that Mr Rawsthorne did not chase him up about that, demonstrates the workload that both were having to deal with at that time.

Allegation 3.1.6 - Mr Rawsthorne spoke loudly on the telephone, interrupting a presentation being given to the department leadership team on 7 September 2023

178. This occurred as a matter of fact. It was raised with Mr Rawsthorne by Mr Magowan, who apologised to the claimant in an email sent to him within a reasonable period (bearing in mind Mr Rawsthorne's workload and the intervening weekend). The claimant accepted the apology at the time. We note that in his closing submissions, the claimant says he was just being professional; we note however that the claimant accepted in cross-examination that it was a truthful apology. The assertion of the claimant in the closing submissions contradicts that evidence.

179. We are satisfied that there was no less favourable treatment of the claimant in relation to this allegation. Mr Rawsthorne took the call because it was urgent, not because it was the claimant doing the presentation. We are satisfied that if a white colleague had been carrying out the presentation instead, Mr Rawsthorne would have taken the urgent call. What happened that day, had nothing to do with the claimant's race.

Allegation 3.1.7 – the respondent did not appoint the claimant to the role of Associate Head, a new role created following a redundancy exercise in anticipation of the cessation of his previous role as principal lecturer

180. It is apparent from the EDI data that 11 out of the 12 interviews in the Engineering department were with white colleagues. The claimant was the only Black British African applicant.

181. We are satisfied on the basis of our findings of fact that during the interview process, Mr Rawsthorne did not hold sway, even though he chaired most of the panels. The evidence of the other panel members was very clear on that and we accept their evidence. For example, Professor Smith Maguire told us that Mr Rawsthorne was careful to facilitate a discussion at the end of each interview, in order to arrive at a consensus; he did not seek to direct or lead the discussion.

182. We are equally satisfied that the panel members made their own notes and scores. Some of them changed the scores as they went along, crossing out the previous scores. We are satisfied that those who crossed out their

scores, did so in order to avoid any confusion, not to hide the previous scores. Further, those who changed the scores did so partly as the interview progressed. An example given was where a scenario described by the interviewee gave evidence in relation to one of the previous questions, the mark for that question might go up; whereas, if an interviewee used the same examples for two or more questions, their score might be reduced.

183. We conclude that at the end of the interview for each applicant, there would be a panel discussion. Through that discussion, a consensus was arrived at between all five interviewers. None of those interviewing the applicants gave evidence that they disagreed with any of the final scores. To the contrary, their consistent and credible evidence was that they were confident that the final score was a fair one, on the basis of the answers given during the interview and the subsequent discussion after it concluded. We reiterate that the role was different to the role of PL in that it was more senior and requires the post holder to provide strategic leadership. [para 205 below]

184. As for the named comparators, Mark Featherstone applied for a post in Computing so he is not a valid comparator. Vicky Mellon applied after the ring-fenced interviews had been concluded, so it was a different panel; again, she is not therefore a valid comparator. The other named comparators were interviewed by the same panel as interviewed the claimant. They are referred to in the findings of fact and these conclusions by the relevant letter used during the hearing, A to K.

185. Candidate A received a score of 17. He was deemed not to be appointable. The claimant scored 15, the lowest score given to any of the candidates. He was deemed not to be appointable either. It is apparent therefore that a white candidate, who was given a higher score than the claimant, was not appointed, because they did not achieve the benchmark either.

186. Candidates B and C were interviewed on the first day. Although the scores for B were relatively consistent, there was a marked difference in the scores given to Candidate B. Professor Smith Maguire gave candidate C a total score of 10; Ms Posnett a score of 8, changed to 19; Ms Cookson a score of 15, changed to 19; Mr Rawsthorne a score of 20; and Mr Magowan a score of 19.

187. We are satisfied in relation to Candidate C that this is evidence from which an inference of discrimination could be drawn and the burden of proof shifts to the respondent to provide an explanation. The consistent explanation by witnesses who we heard from, is that the interviewers were getting used to the scoring on the first day; hence the variations. Further, candidate C used acronyms, which made more sense to Mr Rawsthorne and Mr Magowan in Engineering, but not to the other interviewers from other departments. We are satisfied with that explanation. We conclude that the variation in scores and subsequent agreement at a much higher score than three of the interviewers had initially given the candidate, had nothing to do with the race of candidate C.

188. The variation in the scores on day one for candidate C, can be contrasted with the consistency of the scores given to the claimant by the five interviewers; which were 15, 16/17, 14, 15 and 15. The consensus, after discussion, and taking into account the content of the claimant's application, was that the claimant scored 15.

189. We have found as a fact that, on the balance of probabilities, the claimant's application was taken into account, in order to decide whether the interview scores should be increased. Unfortunately for the claimant, it was decided it was not.

190. It would not be proportionate to deal with every point raised by the claimant about the interviews and the comparison with other candidates. A limited number of examples helps to illustrate the general conclusion however, that the claimant was fairly assessed. Further, that his assessment score was based on his performance at the interview and the content of his application form; it had nothing to do with his race.

191. As a general point, we accept the evidence of Mr Rawsthorne that he wanted all applicants to be appointable. He had plans for the claimant; he already knew where the claimant would have slotted into the draft structure.

192. In her submissions on page 10 at paragraph (eeee), Ms Hodgetts has set out in summary why the claimant was not deemed to be appointable, by reference to the answers he gave to the interview questions. On pages 10/11, at paragraph (gggg), counsel has summarised why candidates B and C were deemed to be appointable, with a development plan in place. We do not repeat those reasons here for the sake of brevity but note that we accept what is said. In short, the answers given by candidates B and C were demonstrably more complete overall than the answers given by the claimant.

193. By way of further contrast with Candidate C, in his application form, the claimant says in relation to leadership and initiative (Criteria 1):

> *As a course leader I effectively led and influenced the teaching practice of a team of lecturers to win three consecutive award prizes (in 2016, 2017 & 2018) for outstanding NSS results. [125].*

The claimant does not say what he specifically did to effectively lead and influence the teaching practice; he simply asserts that he did.

194. This can be compared with candidate C who in their application says:

> ***Leadership and initiative****: Recognising the benefits of on-site training for JCB employees, I proactively initiated collaboration with JCB Academy. This involved negotiation, curriculum adaptation, and ensuring a smooth program transfer (FdEng Integrated Engineering) from Derby College to Rocester.*
>
> **Governance and Quality Assurance***: To ensure parity of learning opportunity and sharing of best practice between partners, I maintained consistent communication with stakeholders, including colleagues at JCB Academy and JCB, North Lindsey College and Derby College. I completed regular monitoring visits and obtained feedback from the students. In accordance with the university's Governance procedures, to ensure parity of assessment, I arranged for all work to be second marked by colleagues who were delivering the same module within Sheffield Hallam University.*
> *…*
>
> *On reflection, I focused too much on managing the relationship with the delivery partner (JCBA), rather than the customer (JCB). A change of leadership at JCB, decided to move the learners to a more local university,*

negating the need for employees to travel to Sheffield to complete their Top-up. Greater partnership with JCB may have mitigated this decision.

In contrast to the claimant, these examples demonstrate a strategic leadership approach and an ability to reflect on their own actions.

195. In relation to managing conflict, the claimant gave the following example:

Experience of implementing and managing change and conflict effectively/Ability to be innovative and adaptive to change and to solve problems:

• I managed to clearly define a departmental strategic plan and (my) accountability on how simplification of assessment was to be executed and achieved. There were two major challenges which I successfully managed to overcome: timing (during pandemic) and that data set given by P&I was incorrect. I set up constant small course team meetings and subject group meetings via Zoom/Teams with clear guidance and expectation. I redesigned my own data set for all courses (UG & PG) in the department to solve the problem of the data set provided by P&I Team (happy to discuss in an interview).

• Change of the old curriculum to the new curriculum from Derby college caused a lot of challenges that it involved back and forth meetings to come up with a consensus product.

196. In relation to managing conflict, Candidate C gives the following example:

As Programme Lead for the Mechanical, Materials and Design Engineering Subject Group, I was responsible for overseeing, the redesign and production of the revalidation documents for all 22 course variants within my portfolio. To increase the NSS results (assessment and feedback) and simplify the organisation of the courses, I reduced both the number of modules delivered and the number of assessments within each module. To ensure that all colleagues opinions were acknowledged required a high degree of emotional intelligence, including listening to colleagues' views and defusing conflict through showing how I adapted the modules I lead. All courses were successfully revalidated and subsequently accredited by the IMechE. In hindsight, I could have perhaps challenged colleagues to further reduce the amount of assessment. However, I may have risked losing broader support.

Again, the contrast between the two examples is apparent.

197. Professor Smith Maguire gave convincing evidence as to why the claimant did not achieve a high enough score. We accept her evidence for example as to why she scored the claimant a 2 and not a 3 for a number of questions. She specifically recorded the reasons why in her interview notes. For example, his answer to Q.1 was 'too vague'; on Q2 there was 'very little to substantiate his individual contribution, skills'; on Q.3 there was 'no substance to what that means in practice'; on Q.4 'but what does that bring explicitly'; on Q.5, 'answers revert to students so not entirely answering the question lacking the more developed perspective'. Again, a clear rationale for the marks given is set out in the contemporaneous notes.

198. In relation to question 3, the claimant compares himself to candidate K. Mr Rawsthorne's answer for the higher score for K, which he gave during cross

examination, and which we accept, is that Candidate K gave a very clear example, discussed the broader context, set out the impact on the school, his consideration of finances, how he went about the process, and included a reflection about his approach to the task. Whereas the notes relating to the claimant's answer show there was no reflection by him. The claimant gave an example of leadership but his answer did not demonstrate the strategic leadership skills required to work at Associate Head level, which is what the panel was trying to assess.

199. Ms Posnett noted in relation to the claimant's answer to Q.3; '*slightly dated example and Uni example might be better evidence'*. Her evidence to the Tribunal was to the following effect;

> *Looking at the criteria for this role, we were looking for it to be more contextualised for the area the claimant worked in. If C came from FE setting and using that and current, absolutely if try and relate to transferable skills to the new role. But Ms Posnett felt the example was dated, not being related to a HEI, and the claimant had been in a PL role for a time. They would have expected a more current example. If Ms Posnett went for a new role, she would not refer to an NHS example, where she had previously worked she would think that was dated. If the claimant had talked of his experience in FE and how he had progressed, maybe. She was sure the claimant had progressed but he did not demonstrate it in the answer he gave. She wanted to know how it applied to where the claimant was working now and hence that note she made.*

We accept that explanation.

200. In relation to question 4, the claimant argues he should have been given a mark of 4 for this answer. However, whilst the notes talk about the result of his input, he did not demonstrate how strategic thinking on his part resulted in the success of the initiative. He was given a 3 for that answer. We note that during cross examination, the claimant would not accept that a mark of 3 was a fair score for the answer that he gave.

201. In relation to question 5, we note the content of paragraph 22 of the witness statement of Ms Posnett. We accept her evidence on this matter which is a follows:

> *Question 5 which required the candidate to give an example of having demonstrated excellent interpersonal skills. Employee B scored a 3 for this question. They provided a clear example of a specific challenge they had faced, explained how they managed the situation effectively, and demonstrated their ability to take ownership and achieve a positive outcome however, their structure in answering the query did let them down. Employee C also scored a 3, although their initial example focused too heavily on operational tasks, such as participation in the student team at the University, which did not fully showcase wider collaboration or strategic interpersonal skills. However, their CV included examples of listening to colleagues' views and diffusing contentious situations, which showed that they had demonstrated all the required criteria for this question. As a panel, we agreed that Employee C's overall response met the expectations for a score of 3. Both these candidates gave leadership examples, unlike Dr Mvalo, whose responses to this question focused on curriculum matters rather than demonstrating management or teamwork*

skills. From my notes, this was a recurring theme throughout the interview that his understanding of the role was heavily subject-related, rather than aligned with the broader strategic and collaborative requirements of the Associate Head position.

202. Noting our general findings on credibility, we accept in relation to question 6, Mr Rawsthorne's evidence that whilst the claimant mentioned IFP, he did not articulate how he drove the numbers up. In relation to the Derby example, we accept that the claimant did not say how many students were involved, or talk about the cost of running the course, with an initially small number. In relation to the example of Loughborough, the claimant did not explain how he worked on that.

203. The comparator relied on by the claimant (candidate E) demonstrably gave a much better answer on the day. Candidate E demonstrated a clear approach to what they did, showed financial awareness, the general lack of that at the University when costing new courses, discussed the Barrett courses which brings in significant money, explained the importance of delivering efficiently and took a strategic approach around funding bands. He demonstrated how the course was developed with a financial mindset, showing an awareness that whatever candidate E did would incur costs for the University. The two answers were very far apart. We accept that.

204. In relation to question 6, Ms Posnett was asked by the claimant if she marked him down, due to him being prompted. She answered:

No, it was not automatic. It is about on this one – you talked about FE experience, development of student courses and the prompt, this all helps decide score going to give. Imagine from notes, cannot remember word for word what you say, it is due to prompting and because link back to FE, not sure what proportion at that time. No notes about higher level strategic thinking that looking for in this role.

205. These examples help to demonstrate why we preferred the evidence of Ms Posnett to that of the claimant. Her evidence was credible and provided a reasoned explanation for the scores she gave to the claimant in relation to the answers he gave at interview.

206. In her witness statement at paragraphs 15 and 16, Kelly Cookson sates:

15. Having attended all 12 interviews for the Associate Head role, I feel I gained a clear understanding of the consistency and parity of the questions asked throughout the process. These questions were designed to assess leadership skills and strategic thinking, among other competencies. In Dr Mvalo's case, his responses lacked the necessary depth to meet the expectations for the role. While he demonstrated a good relationship with students and was a well-performing lecturer, these qualities did not reflect the leadership capabilities required for the Associate Head position, which were distinct from those expected of Principal Lecturers.

16. During the interview, Dr Mvalo required significant prompting, which highlighted gaps in his ability to fully meet the evidential criteria for the role. Although probing was standard practice for all interviews, the level of prompting needed for Dr Mvalo underscored the limitations in his responses and his inability to consistently provide sufficient evidence to

demonstrate the competencies required for the position. Reasons – not at hearing but consistent with what others say.

207. Whilst we appreciate that Ms Cookson did not appear before the tribunal, we note that these paragraphs of her witness statement are entirely consistent with the evidence given by the other interviewers.

208. In summary, the Tribunal is satisfied that the overall scores given to the claimant and the other candidates were fair, reflected the answers given, and had nothing to do with their race of any of the candidates. They were arrived at through the application of an agreed process, the asking of standard interview questions, and the scores given were consistent and fair. Allegation 3.1.7 therefore fails too.

Time-limits

209. In light of our conclusions above, there is no need to consider the question of time limits. Since we have not upheld any of the claims of direct race discrimination, the issue of whether to exercise our discretion to allow any such claims out of time is academic.

Employment Judge James
North East Region

Dated 21 April 2026

Sent to the parties on:

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For the Tribunals Office

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Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/