EMPLOYMENT TRIBUNALS

Claimant: Mr E Adenigbagbe
Respondent: Royal Mail Group Limited

Heard at: Watford **On:** 2, 3, 4 and (panel only) 5 and 22 June 2026

Before: Employment Judge Dick
Ms L Jaffe
Mrs E Ojiako

Representation
Claimant: In person
Respondent: Mr Chaudhry (solicitor advocate)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is:

1. The complaint of unfair dismissal is not well-founded and is dismissed. The claimant was not unfairly dismissed.

2. The complaint of breach of contract in relation to notice pay (wrongful dismissal) is not well-founded and is dismissed.

3. The complaints under the Equality Act 2010 relating to events in and before 2021 were not presented within the applicable time limit. It is not just and equitable to extend the time limit. Those complaints are therefore dismissed.

4. The remainder of the complaints of direct race and/or disability discrimination are not well-founded and are dismissed.

5. The remainder of the complaints of harassment related to race are not well-founded and are dismissed.

6. The remainder of the complaints of victimisation are not well-founded and are dismissed.

REASONS

Key to references:

[x] = page *x* of agreed bundle.

INTRODUCTION; CLAIMS AND ISSUES

1. The claimant was employed by the respondent as an Operational Postal Grade and was dismissed, after a period of absence, for what the respondent says was gross misconduct, in that he failed to attend work without a reasonable explanation.

2. The claimant's absence was initially because of a physical illness (about which there is no dispute) but was prolonged, save for a brief return for three days, following a telephone conversation on 1 March 2022 which the claimant had with the Plant Manager Mr Coke about the absence, following which Mr Coke made a complaint about the claimant's conduct of the call. Mr Coke had been involved in a previous unsuccessful Tribunal claim brought by the claimant in 2017. It is the claimant's case that he experienced problems with his mental health, and in particular post-traumatic stress disorder, as a result of Mr Coke's involvement in the previous claim, and that these problems were exacerbated by Mr Coke's involvement in the 2022 phone call and complaint. The claimant says that, for reasons we deal with in more detail below, he was therefore unable to return to work. He says that the decision to dismiss his was unfair and/or wrongful. He also says that the respondent's conduct of the disciplinary proceedings and the decision to dismiss him were acts of disability and/or race discrimination. (The disability relied upon is "mental health". The claimant was born in Nigeria.) The claimant also says that the respondent subjected him to various detriments because of the previous Tribunal proceedings, and because of later complaints he made, and that there were earlier acts of discrimination, going back to 2020. Some of those complaints are made out of time, so we had also to consider whether to extend time limits.

PROCEDURE, EVIDENCE etc.

3. We were provided with an agreed bundle of evidence, which initially ran to 283 pages. The claimant attended with a number of additional pages which he wanted to be added to the bundle. We did not enquire into the reasons why those documents, which came from the claimant's own email account, had not been added any earlier, nor did we enquire as to the reasons why the claimant's witness statement was dated 22 May 2026 and why he only provided the statements of his other two witnesses to the respondent shortly before the hearing began. We did not need to make those enquiries because Mr Chaudhry on the respondent's behalf pragmatically took no issue with us considering those documents. Likewise, the claimant pragmatically agreed that various other documents, served on him by the respondent during the course of the

hearing, could also be added to the bundle. The claimant had initially been minded to make an application to call a third witness from abroad, but on reflection decided not to pursue that application after explaining to us that he had not provided the respondent with a statement from that witness.

4. The claimant requested, as we understand it on the first day of the hearing, that the respondent provide him with copies of the following: minutes of the meetings of 27 May and 3 June 2020 (on which, see below) and an occupational health report prepared about him in 2021. Although it was not clear to us why the request was being made at this late stage rather than any earlier, before considering any application by the claimant to order disclosure of those documents, we asked the respondent to make enquiries about whether copies were actually available. The result of the respondent's initial enquiries, we were told, was that the documents were not immediately available, but there was a possibility that, if such documents existed, they were being held in storage. We considered that it was reasonable to allow the respondent until the morning of the fourth day of the hearing to check what was in storage. But by then, the respondent was still unable to say whether it even had the documents. Even if we had made an order for disclosure, it could not have been complied with before the end of the hearing and the claimant was clear to us that he did not seek an adjournment. We therefore did not make an order for disclosure.

5. The issues for us to decide were as set out in the list of issues appended to these reasons. We indicated that we would not consider remedy at this stage, save for any issues relating to *Polkey*, contributory fault or breaches of the ACAS Code. That is, we would consider all of issues 1, 2 and 4 to 8 (time limits and liability) as well as issues 3.6.3, 3.6.4, 3.6.5, 9.6, and 9.7. We stressed to the claimant that evidence would be required relating to each point on the list. The parties confirmed that there was no application to amend the list and they understood that we would be deciding only the points on the list of issues. That final list of issues was settled by our colleague Judge Davison at the third preliminary hearing in this case, on 11 April 2025. The list reflected the claim as amended (as a result of the claimant's successful application to add a complaint of direct disability discrimination) and as set out in the claimant's further and better particulars of claim, which, the claimant told us in evidence, had been prepared with the assistance of a solicitor. There was no dispute that those further particulars, provided by the claimant on 19 July 2023 by order of the Tribunal, formed part of the claim, nor that the amended response dated 4 December 2024 formed the response.

6. Before the evidence was called we explained to the parties that we would read the witness statements but they should be sure to refer us to any documents of relevance in the agreed bundle during the course of the evidence or submissions, save for those which they specifically asked us to read at the start of the hearing. During the course of the hearing we were taken to a number of documents, one of which was the further and better particulars we have just mentioned.

7. The respondent did not pursue the application to strike out the claim which it had indicated in writing before the hearing that it would pursue.

8. As we have said, part of the claimant's case is that he was caused PTSD as a result of previous Tribunal proceedings. We were able to clarify with him that the particular things which he said caused the PTSD were (i) having to listen to what he said were the lies told by the witness Mr Coke (a witness who the previous Tribunal appears to have accepted as a witness of truth) and (ii) the result. The claimant was not saying that the way he was treated at the hearing caused the PTSD. On a number of occasions we discussed with him whether any adjustment to this Tribunal's usual procedure would be appropriate. Clearly it was unavoidable that the claimant should hear the evidence given by the respondent's witnesses in this case. Equally clearly the claimant would have to be told the result of these proceedings. We consulted the Equal Treatment Bench Book, noting that there were no particular suggestions there for adjustments for witnesses with PTSD. No adjustments were suggested beyond the following. We took regular breaks and made clear that we would be prepared to take additional breaks whenever the claimant felt he needed one. We also regularly checked whether the claimant felt able to proceed.

9. After taking time to read the statements, we heard evidence from the witnesses. In each case the usual procedure was adopted, i.e. their written statements stood as their evidence-in-chief and they were then cross-examined. As well as his witness statement, the claimant also adopted on oath the contents of his disability impact statement, which was included in the bundle of evidence.

10. The claimant gave evidence and also called:
    a. Mr Kwesi Dadzie;
    b. Mr Alpha Bayoh.

11. The respondent called:
    a. Mr Nadeem Malik;
    b. Mr Jas Dobe;
    c. Mr Haroon Ashraf.

12. After the respondent had disclosed some documents to the claimant we agreed with the parties' joint submission that it would be appropriate to recall Mr Malik, Mr Dobe and the claimant to deal with those new documents.

13. At the conclusion of the evidence we heard submissions from the parties and indicated that we would provide a reserved judgment.

FACTS

14. We find the following facts on the balance of probabilities. We have not made findings on every dispute of fact presented to us, but merely on those which assist us to come to a decision bearing in mind the list of issues.

The claimant's work and the respondent's practices

15. At the material time, the claimant's work primarily involved parcel-sorting work on the night shift at the respondent's International Logistics Centre ("ILC"). Particular areas or groups of staff within the night shift were managed by a Work Area Manager ("WAM"). For at least some of the time we are concerned with, in early 2022, it was Mr Malik who was the WAM for the group in which the claimant worked. The entire night shift was managed by the Night Shift Manager Mr Dobe – he was Mr Malik's line manger and, in the respondent's parlance, the claimant's "second line manager".

16. The respondent's practice was that WAMs such as Mr Malik would deal with routine personnel matters such as informal resolution of conduct or disciplinary matters, or investigations where those matters could not be dealt with informally, whereas decisions (i.e. following an investigation) on the more serious matters would be taken by Mr Dobe as the second line manager. We note that the respondent's relevant policies refer to local practices and in some places say just "your manager" or "line manager", without specifying whether first or second, so it appears that in some instances that was taken to mean the first line manager, but in others the second line manager.

17. The claimant had initially worked full time but, as the claimant asserted and as Mr Ashraf agreed, by January 2022 he was working part-time due to childcare commitments. We were shown an Employee Calendar Report ("ECR") [148] which showed that by then the claimant worked three days per week, for five weeks, followed by a one-week rest period. The ECR had a box for each day of the week. The box was greyed out for non-working days and left blank for days in which the employee had attended work. For working days which the employee had not attended, various codes were entered, some of which were: HOL for annual leave, C for special unpaid leave and UA for unauthorised absence. Leave could be authorised in advance but, in the case of an absence that was not pre-authorised, retrospective leave could be granted once an employee had returned to work, following a discussion with the line manager. Mr Malik's evidence, which we accept, was that in those circumstances he would ask the employee the reason for the absence and would convey that reason to the respondent's HR department in Sheffield; HR would then decide how to categorise the absence. We were also shown a spreadsheet [147] headed "Domestic & UA Details" for each year of the claimant's employment. The spreadsheet recorded dates on which leave was taken in one column and the reason provided in another. There was a column for "authorised as" which contained entries such as "special leave unpaid", "annual holiday" etc. There was also a column that recorded the absence as either "UA" or "domestic"; as best we understand it the latter was treated as a special class of unauthorised absence for which the respondent essentially accepted there was a good reason.

18. One of the documents disclosed during the course of the hearing was a form to be filled in by an employee who sought "special leave" [376]. The form, to be sent to HR in Sheffield, had a section to be completed by the "line manager" authorising the leave. Mr Dobe's evidence, which we accept despite the

claimant's challenge to it, was that there was a local practice that the form would be taken to a manager for signing either by the employee or by a union representative on the employee's behalf. We also accept Mr Malik's evidence that he had the authority to authorise one or two days' leave, but for longer periods he would seek authority from Mr Dobe before authorising the leave.

The previous Tribunal proceedings 2017/2018 (Issue 8.1.1)

19. The claimant presented a claim to the Employment Tribunal in July 2017, which was heard in 2018. Written reasons for the decision, which were in the bundle of evidence that we saw, were provided on 19 May 2018 [159]. The claim consisted of two complaints, both of which the Tribunal found not to be well-founded: unauthorised deductions from wages and direct race discrimination. One of the witnesses the Tribunal heard from was Kenneth Coke. The Tribunal's decision includes some factual findings (4.13 onwards) about the claimant's duties. The only particular reference to Mr Coke's evidence was as follows (at 4.15): "The evidence of Mr Fletcher and Mr Coke which the Tribunal accepted was that 20 to 25 employees working at HWDC had the same job description as the claimant during this period. The tasks that were required to be undertaken by those who held the job description in question would vary over the course of a shift depending on where the work was." (We explain HWDC below.) At para 34, in setting out its findings on one of the claimant's race discrimination complaints, the Tribunal concluded that the claimant "was not given four duties combined into one or even three duties combined into one. He was given one duty – TS1 N41. That was a job description or duty shared by 20 to 25 other people." The claimant continues to take issue with that finding, though of course we are bound by it. Evidently, the finding was based upon evidence from Mr Coke which the Tribunal in 2017 accepted.

20. Mr Malik's written evidence – and this did not appear to us to be disputed – was that the claimant still (i.e. in 2022) harboured ill-feeling towards Mr Coke because of all of that. Whilst the claimant might not have put it that way himself, he did not dispute the substance of what Mr Malik said. In his oral evidence, which we accept, Mr Malik recalled the claimant having mentioned the 2017 case in the context of feeling stressed, but said that he, Mr Malik, had been unaware of the details of the case as he had not been involved in it.

Written grievance 3 June 2020

21. On 3 June 2020 the claimant submitted a written grievance by email headed "My Grievance against Mr Nadeem Malik and Mr Jas Dobe on Attendance Review policy". The grievance concerned what the claimant referred to as "formal and informal meetings on 27 May and 3 June 2020 respectively". In fact, as was made a little clearer in the claimant's oral evidence to us, the complaint was about:
    a. An attendance review meeting the claimant had with Mr Malik on 27 May, relating to absences which had triggered the respondent's attendance review procedure.
    b. An informal request the claimant made, on 3 June, to Mr Dobe for a meeting about the 27 May meeting.

c. A meeting that took place about an hour after that request had been made.

22. The grievance was a complaint that Mr Malik had handled the first meeting "incompetently" and that Mr Dobe had "failed to see any shortcomings of Mr Malik" in the later meeting. It noted that Mr Dadzie, whom the claimant called as a witness in these proceedings, was a witness to the later meeting. Towards the end of the email, the claimant asserted that he had seen "many numerous occasions where Royal Mail policies are being applied based on different standard, prejudices, biases and ethnicity". Although it did not say it explicitly, the grievance might be taken to have implied that that was what was happening in the 27 May and 3 June meetings; there was later an assertion of victimisation. The respondent did not dispute that submitting the grievance amounted to a protected act within the meaning of the Equality Act 2010, so we make no further findings about that.

23. The grievance was not referred to on the original claim form. Nor was it mentioned explicitly in the amended particulars of claim, though there were references to complaints made by the claimant in 2020 about Mr Dobe and Mr Malik. Since the grievance was specifically mentioned in the list of issues, we infer that this information came by way of clarification from the claimant at one of the preliminary hearings in the case, i.e. quite some time after the claim was presented. This goes some way to explain why at least two witnesses had genuine difficulty in recalling the events some years later at the hearing. That is why, as we deal with later, we considered that it was inappropriate to extend time limits on the claimant's complaint relating to this point. It is necessary however to make some findings as some of the complaints which are in time refer back to the grievance.

24. The claimant did not mention the grievance in his written evidence, but he was asked about it in his oral evidence. The claimant's oral evidence about the subject matter of the grievance was in essence as follows. At the 27 May meeting the claimant had complained about his absences triggering the respondent's attendance process and at the following 3 June meeting it had been accepted that there was nothing untoward about the absences – i.e. the claimant successfully challenged the recording of those absences recorded negatively against him. We accept Mr Malik's evidence, which was essentially that this was the system working as it should.ll Mr Malik explained that in such circumstances, he would speak to the claimant about the issue and any necessary corrections would be made to the records.

25. It was clear to us that Mr Dobe had no recollection of the second meeting when he was asked about it in evidence. We consider this to be unsurprising given the lapse of time and the relatively commonplace nature of the conversation the claimant describes – simply, it was the sort of thing Mr Dobe would have to deal with on a regular basis and there is no particular reason why he would remember one occasion six years later. Given that he made a complaint about the 3 June meeting in writing the same day, we accept that the claimant must be right when he says that the meetings took place and that the claimant complained to Mr Dobe about Mr Malik. We were not assisted by Mr Dadzie's

evidence on the point. While we accept he was doing his best to help the Tribunal it seemed to us he had little or no recollection of what had happened and when it had happened – his written evidence dealt with a complaint about Mr Malik's "incompetence" said to have been made on 12 June 2022 (not 2020) and yet in his oral evidence, after having confirmed that there were no errors in his written evidence, he said he was certain what he was describing happened in on 12 June 2022, but then said it was on 27 May 2020.

26. When Mr Dobe he was first asked about the grievance itself in oral evidence, he was adamant that no grievance had been submitted against him, even when shown an email that appeared to "cc" him in when the grievance was first sent. After Mr Dobe had first been cross-examined (i.e. before he was re-called), the respondent disclosed a letter dated 15 August 2020 [377] from Mr Dobe to the claimant, which noted that the claimant had been asked to attend two meetings on 20 and 28 July to discuss the grievance and had not attended either and that therefore the matter was closed. We find that Mr Dobe genuinely did not remember that letter or the grievance when he was asked about it six years later. We consider that to be plausible given that, although the grievance was styled as a complaint about his conduct, it was in substance, at most, merely a complaint about a decision he had made with which the claimant disagreed. The claimant did not accept that he had ever received the August letter, but we find it more likely than not that he did, or at least that he received the two letters inviting him to the two meetings – the August letter records a reference number for each invite letter which, it is clear to us in the context of other evidence in the case, is a tracking number used by Royal Mail when it sends its employees important letters by tracked delivery. The claimant's oral evidence was that he had been working on 20 and 28 July and so cannot have failed to attend any meeting, but we do not see that the fact that the claimant was on site at the time shows that he did not fail to go and see Mr Dobe when he had been asked to. We consider that the written record is more likely than not to be accurate – i.e. the claimant did not attend the 20 and 28 July meetings and the grievance was closed.

27. The August letter plainly does show that the claimant is right when he says the grievance was assigned to Mr Dobe to investigate. In an email of 27 July 2020 [292] the claimant requested that the grievance be re-assigned. He sent the request to Mr Dobe and to two other email addresses, which we shall refer to as the Gateway and Wellbeing addresses. (The original grievance had obviously been sent to the Gateway address, since an email of 1 Jun 2020 from the Gateway address stated that since Gateway did not deal with grievances, they would not respond [292] and another email of 4 June from Gateway [378] said that the complaint had been forwarded to the Wellbeing team.) Neither party provided us with any written response to the claimant's request to reassign the grievance. The claimant accepted in his oral evidence that he had never followed the request up. As we shall explain later, it appears that the claimant, and everyone else, thought no more about the grievance after it had been closed by Mr Dobe.

Verbal grievance September 2020 (Issue 8.1.2)

28. This was another topic on which the claimant's witness statement was silent, but in his further and better particulars of claim, it was said that in September 2019 the claimant made a verbal complaint to "Aaron Ashram" about the respondent applying "company policies… differently to ethnic minority staff in comparison to their white counterparts". The respondent's witness Mr Ashraf said that he was not aware of anyone called Aaron Ashram and he assumed that the claimant meant him. (As became clear at the hearing, he did.) Mr Ashraf had managed the claimant at some prior point, but by 2020 was working as the Night Section Lead at the respondent's Heathrow Worldwide Distribution Centre ("HWDC") which was on the same site as ILC – as Mr Malik put it, whilst they are separate work units, there is a reasonable amount of cross-over. In his written evidence Mr Ashraf said that he had no recollection of the claimant complaining to him about discrimination or policies not being applied fairly, but when prompted by the claimant in cross-examination he did recall telling the claimant that everyone was treated the same, so clearly, we find, the claimant did say something to him about people being treated differently. But, Mr Ashraf was not at the time the claimant's line manager, and we accept Mr Ashraf's evidence that he did not tell anyone about what the claimant said – he plainly treated the matter as one colleague speaking to another colleague informally rather than making a formal complaint.

Non-referral to occupational health November 2020 (Issues 6.2.1, 8.2.3)

29. This is another topic which was not addressed at all in the claimant's written evidence, nor on the original claim form. The further and better particulars of claim say that on 12 September 2020 there was a meeting in which the claimant told Mr Malik and Mr Dobe that he was "suffering from mental health issues" and that in the meeting Mr Dobe "was to inform himself as to why the claimant had not been in touch with occupational health after three referrals. No further action was taken by the Jas Dobe [*sic*]". As best we can see, this must relate to a series of emails in the bundle [265] in fact sent in April 2021. An email from OH to Mr Dobe on 29 April thanked him for submitting his referral for the claimant and said: "Your referral does not give any indication of why Physiotherapy is requested but does read more like a counselling referral." The email asked Mr Dobe to explain why physiotherapy was required. Mr Dobe responded the same day as follows: "When I spoke to the employee he said he had mental health issues and I did recommend that it would be counselling that is required. However the employee said he would prefer Physiotherapy. I would agree if you can progress the referral and initiate it for counselling." OH replied, requesting more detail about why physiotherapy was required. Still on 30 April, Mr Dobe replied: "I have consent for counselling. The employee is confused with what he was asking for." (In his oral evidence the claimant confirmed that he had indeed first said physiotherapy in error when what he meant was psychotherapy.) On 4 May OH emailed Mr Dobe saying: "This has now been passed through to the Occupational health as a counselling referral."

30. In his oral evidence Mr Dobe was adamant that he had never received a report from occupational health about the claimant. Although in his witness statement

he said that he did not recall the claimant ever even asking for a referral to OH, when prompted with the emails he recalled being involved to the extent set out above and thought that he had only been involved to that extent because the claimant's line manager at the time had already made one request and the system did not permit her to make another. Again, understandably, it seemed to us that Mr Dobe's recollection was not good given the lapse of time. It is another illustration of why it was unfair in our judgment to extend time limits to allow consideration of complaints directly relating to this point, noting also that the claimant accepted in his oral evidence that he did not raise a grievance at the time about what he now says was a failure to refer him to OH five or six years ago. We do however consider it appropriate to make the following findings.

31. No OH report was provided in evidence by either party (though see what we say above at para 4). The claimant's assertion, as framed in the list of issues, that Mr Dobe did not refer him to occupational health is plainly incorrect. That is sufficient to dispose of Issue 6.2.1 – it is not correct to say that Mr Dobe did not action a referral to OH. More widely, there was simply no basis upon which a Tribunal could conclude that Mr Dobe's actions in this regard had anything at all to do with any protected characteristic of the claimant. Regarding Issue 8.2.3, there appears to us to be no basis on which to conclude that in 2021 Mr Dobe failed to refer the claimant for further treatment after the OH recommendations. Given that the claimant was obviously referred for counselling, while the claimant may be right when he said in his oral evidence that he, the claimant, received a report, that report may well have been from the counsellor – we do not accept that it would necessarily have been from OH, nor that it would necessarily have been sent to Mr Dobe. While we note the reference to Mr Dadzie in issue 6.2.1, his evidence did not deal with this point at all.

Applying policies differently (Issue 7.1.1)

32. As the List of Issues had it, the claimant's case was that "Mr Dobe and Mr Malik applied policies to the Claimant differently to his white counterparts in the workplace from 2018". The claimant's statement did not deal with this point. Nor did any other evidence in the case, save that the claimant put the broad allegation to the witnesses and they denied it. The claimant did not identify which policies were said to have been applied differently to him. There was simply no evidence to support the claimant's case on this point – the claimant has failed to prove that he was treated differently (whether because of his race or otherwise), either to a hypothetical comparator or, in particular, to Mr Danny Sullivan, who was identified as a comparator in the List of Issues. As regards Mr Sullivan, this was another area not dealt with in the evidence called by the claimant. In his statement Mr Dobe simply noted that Mr Sullivan had left the respondent's business in 2016 by way of voluntary redundancy and had not been subject to disciplinary action. There was therefore no basis upon which to conclude that Mr Sullivan was a proper comparator or was otherwise relevant to this claim.

Series of complaints (Issue 8.1.3, 8.2.1)

33. Issues 8.1.3 and 8.2.1 relate to what were said to be a "series of complaints" made against Mr Malik and Mr Dobe to HR by the claimant. We were not provided with any evidence about this beyond what we have set out in the preceding paragraphs. So what we have to consider is the written grievance of June 2020 and the claimant's request for it to be assigned to someone other than Mr Dobe. As we describe above, the grievance contained a generalised assertion that there were numerous occasions where the respondent's policies were applied differently on the basis of ethnicity, and an implied assertion that that had happened in the meetings of 27 May and 3 June between the claimant and Mr Dobe and Mr Malik about the recoding of the claimant's absences. The claimant's case as expressed in Issue 8.2.1 was that the respondent failed to investigate the claimant's complaints. We deal below with time limits, below, but even if we had allowed this complaint to proceed out of time, we would have concluded that there was no basis for a conclusion that Mr Dobe's treatment of the claimant here had anything to do with any of the things said to be protected acts at 8.1 of the List of Issues. While it is technically correct to say that the claimant's complaints were not investigated, on the facts as we were best able to find them given the lapse of time and fading memories of the witnesses, the grievance was closed because the claimant had not attended the meetings he was requested to. The claimant thereafter did not follow up his request to reassign the grievance. There was no evidence that anyone made any positive decision either not to reassign the grievance or to ignore the claimant's request to reassign it, let alone that they did so because of any protected acts.

34. If Issue 8.2.1 was intended to refer also to the claimant's verbal complaint to Mr Ashraf, given the informal nature of the complaint we do not consider there was any duty to investigate it, but even if there had been, to the extent that Mr Ashraf made a decision to take no action, there was no basis in our judgment to conclude that he did so because of any of the protected acts referred to in Issue 8.1.

Absence from January to 14 March 2022

35. In January 2022 the claimant took annual leave to travel to Nigeria. Upon his return to the United Kingdom, he was required to self-isolate because one of the other passengers on his plane home had contracted Covid 19. During his period of self-isolation the claimant became ill with pancreatitis. He spent a period of time in hospital followed by a period in which he recuperated at home. (We should add that although there was some suggestion on the paperwork that the claimant relied on pancreatitis as a disability for the purposes of this claim, he made it clear during the course of the hearing that this was not the case.) The claimant provided the respondent with a fit note, dated 3 March 2022, covering the period from 14 February 2022 to 10 March 2022, which said that he was not fit for work because of pancreatitis. No suggestion was made to us that the claimant's absence from work from January until mid March was a disciplinary matter, i.e. the respondent appears to have accepted that there were good reasons for the absence. (Although on the ECR the absences in early February are marked as unauthorised, entries on the table at [147] record

the reason for the absence as quarantine and the absence is marked "domestic" rather than "UA".)

Call with Mr Coke 1 March 2022 (Issues 6.2.2, 7.1.2, 8.2.2)

36. While he was recuperating, on 1 March 2022, there was no dispute that the claimant received a phone call from Mr Coke, then the Plant Manager. Mr Dobe's evidence, which we accept, was that Mr Coke, who had "overall responsibility for staffing resource" was calling all staff on long term sick leave to discuss their return to work. We do not accept the claimant's suggestion that it would only ever have been appropriate for his immediate line manager, rather than Mr Coke, to do this. In hindsight it may have been better if someone else had made the call, given the history, but this was of course happening some years after the previous Tribunal proceedings in which Mr Coke had been involved (albeit as we understand it that there was lengthy appeal process after the first instance decision).

37. Mr Coke did not give evidence at this hearing. We were told that he had retired but we were not told why that meant that he could not have been called as a witness. We were provided with a contemporaneous note he made, which, we should record, was not provided to the claimant at the material time. The note was made by way of a request by Mr Coke for advice from the respondent's HR department. It recorded that Mr Coke had rung the claimant to see when he would be back to work. It said the claimant had been "aggressive and abusive" to Mr Coke "as a result of failing in a tribunal claim". The claimant accepted that the call had taken place but denied that he had been aggressive or abusive. We did not find it necessary to make any findings on whether he had been, but there did not appear to us to be any reason to doubt that Mr Coke had made his complaint in good faith – he made a contemporaneous note and also, we heard, complained about the conversation to Mr Dobe. On the claimant' own case Mr Coke put the phone down on the claimant, so on either party's account something the claimant had said had angered or upset Mr Coke. We do however accept that the claimant genuinely believes that he was not rude to Mr Coke.

38. Issue 7.1.2 concerns what is said to be Mr Coke's refusal to formally write down his allegations against the claimant about the 1 March 2022 conversation. We say more about this below, but in short there was no evidence that Mr Coke was ever asked to put his allegations formally in writing, although as we have just explained, he did make a note of them.

Return to work (14 March) and informal meetings with Mr Mailk (14 to 17 March 2022)

39. Mr Dobe asked Mr Malik to deal with Mr Coke's complaint. There was no dispute that Mr Malik spoke to the claimant about it, by way of what the respondent termed a "seeking an explanation meeting" which took place upon the claimant's return to work. There was also a discussion about the claimant's return to work. The witnesses' recollections differed about whether the discussions we have just referred to took place at two separate meetings or at one meeting, and about precisely when the meetings had happened, but we

did not consider the differences to be material. What is clear, from the respondent's ECR records [148], is that the claimant attended work as scheduled on 14,15, and 16 March, so the meeting(s) must have taken place over that period.

40. Mr Malik did not make a contemporaneous note of the discussion about Mr Coke's allegation. There was no dispute that at the meeting the claimant, who was accompanied by his Trade Union representative Mr Fosi, requested that Mr Malik should put the allegations against him in writing. That is as much as the claimant asserted in his written evidence (and in the pleadings). We accept, as Mr Malik told us, that the claimant had made clear that he would not be prepared to return to work unless a statement was provided to him, and that Mr Malik told the claimant that he would not be provided with a statement unless the process "went further" (as is consistent with the respondent's policy – see below). We do not however accept the claimant's suggestion, made during the course of the evidence, that he told Mr Malik that the reason he needed a statement (i.e. a written record of the allegations) was in order to protect his mental health or that if he was not presented with the statement it would very difficult for him to return to work because of his mental health. Mr Malik denied it when the suggestion was put to him in cross-examination, and we consider that a point that the claimant believed to be so significant would not have been omitted from his statement and the pleadings. We also note that this assertion is inconsistent with the 31 May email (see below). As we go on to find, the reason the claimant requested the statement was not because of his mental health, but because of his own mistaken view that the respondent was breaching its own policy by not providing the statement to him at that stage.

Special leave (21 March to 13 April)

41. The parties agree that the claimant took special leave after 17 March. (The ECR shows the claimant on Special Leave for the weeks of 21 March, 28 March and 11 April. He was not scheduled to work the week of 4 April.) There were differences in the witnesses' recollection about how that came about. The claimant recalled that the leave had been granted by Mr Malik after he, the claimant, had asked Mr Malik. Mr Malik could not remember but said that any period of leave that length would have to have been authorised by Mr Dobe. Mr Dobe thought that he had authorised it upon a request from the claimant's union representative. So far as is necessary to make findings, we consider that Mr Dobe's recollection is most likely to be right, given Mr Malik's evidence that he did not think he had to power to authorise the leave and given also that (as we shall come to) Mr Malik first invited the claimant to a meeting on 11 April, i.e. during the leave, which suggests that Mr Malik was not aware at the time the leave had been granted.

Invites to investigation meeting and other correspondence and contact

42. Mr Malik's evidence was that, following his initial discussion with the claimant about Mr Coke's allegations, he took the view that he should proceed to a formal investigation process. On 18 March 2022 [106] Mr Malik wrote to the claimant inviting him to a "fact find meeting", on 11 April 2022, the purpose of

the meeting being to establish the facts and to determine whether formal action under the conduct policy was necessary. The letter referred to the call from Mr Coke, then said:

> It is alleged that you were extremely aggressive and abusive towards the plant manager as a result of failing in a tribunal claim against Royal Mail.
>
> The manager reiterated that he is trying to understand how you are and when you are likely to come back to work but you insisted the plant manager to stop the call which was refused you then hung up the phone.
>
> This behaviour is totally unacceptable.

43. Plainly the last line could have been better phrased, but we accept Mr Malik's evidence here that what he meant was that the behaviour was alleged to be unacceptable and that he had not pre-determined the issue. We note that the respondent had by now put the nature of the allegation in writing to the claimant.

44. Another invite letter, rescheduling the meeting for 20 April, was sent to the claimant on 6 April 2022 [108]. A further letter, noting that the claimant had not attended the 20 April meeting, was sent to the claimant on 22 April, inviting him to a rescheduled meeting on 27 April [110]. Both further letters were headed "Invite to fact finding meeting". On 25 April 2022, in a letter headed "Continuing Absence" [113] Mr Malik wrote to the claimant to say that he had not kept in contact since 18 April to explain the reason for his absence. He asked the claimant to get in contact and warned him that if he did not, his pay might be withheld. On 28 April [115] he wrote again, in similar terms to the 6 and 22 April letters, inviting the claimant to a fact finding meeting on 4 May, this time warning the claimant that a decision would be made in his absence if he did not attend.

45. On 29 April [118] Mr Malik wrote to the claimant again, under the heading "Continuing Absence", noting that he had received a missed call from the claimant on 26 April and had called him back (the implication being that he had not got through). He asked the claimant to get in contact. On 19 May [120], Mr Mallik wrote under the heading "Invite to fact finding meeting", noting that he had spoken to the claimant on the phone on 5 May and the claimant had said he would return the week commencing 16 May, but as that was a rest week he hoped the claimant would return the following week. In light of that contact, he invited the claimant to a fact-finding meeting, now on 25 May, with another warning that the meeting could proceed in the claimant's absence. On 25 May [123] Mr Malik wrote again to the claimant, noting that he had been absent from work "without any explanation" since 19 April. He gave slightly more detail about the attempts at contact in April and May – a text from Mr Mailk on 25 April, a call from Mr Malik on 26 April, a call back from the claimant the same day which Mr Malik was unable to take, then a call back from Mr Malik which was not answered; the conversation on 5 May. He had expected, he said, the claimant's return on the week commencing 23 May, but the claimant had not come back to work and had not called to explain. He therefore required an explanation for the absence within three days and warned the claimant that no

response or an unsatisfactory explanation could result in disciplinary action which could possibly result in dismissal.

46. There was no dispute that the claimant did not attend any of the meetings to which he was invited in the correspondence we summarise above. The claimant's evidence was that while he was not ignoring the letters, he did decide not to respond. We see no material distinction there.

47. We find that the claimant and Mr Malik spoke once or twice in late April/early May. We accept that the claimant continued to ask for a written statement from Mr Coke, but, as above, we do not accept that the claimant said that the reason for his absence was to do with his mental health. We reject the claimant's assertion that in these calls he told Mr Malik that he was not coming back to work because of his mental health; again, if something so important as that to the claimant's case had been said, we would have expected the claimant to have put it in his witness statement, but he did not. We also reject the claimant's suggestion, put to Mr Malik in cross-examination, that he had said that Mr Malik was not "qualified" to conduct a fact-find. The suggestion was unsupported by any written evidence, including the claimant's own, and the claimant did not raise the point in his email of 31 May (see below).

48. It was evident to us that the claimant believed at that time, and continues to believe, that not putting the allegation in writing – either by providing him with a formal "charge" or with a statement from Mr Coke – was a breach of the respondent's policies. Despite repeated opportunities at the hearing, the claimant was unable to point to the policy he says was breached. The claimant's belief, it is clear to us, is based on his mistaken interpretation of the respondent's policies. Most significantly, the *National Conduct Procedure Agreement* with the relevant Unions, says the following about a fact finding meeting:

> All documents used in the fact finding meeting should be shared with the employee at the start of the meeting or where there is more than one issue during the meeting, before they are discussed.

49. In other words, in a situation where, as Mr Malik had decided, there is to be a fact finding meeting, the only obligation is to share any documents *at the start of the meeting.* That stage was never reached in the claimant's case – the meetings never happened. We would further note that the respondent's *Conduct Policy* permits conduct concerns to be dealt with informally or formally. In the latter case, a fact finding meeting "may include examination of the relevant documents". After that fact finding meeting, the policy says, if a decision is made to progress the case formally, then a formal conduct meeting will take place. The invite to such a meeting must "include copies of any notes or evidence that will be referred to during the meeting". So, if the claimant had been "charged" with misconduct for his dealings with Mr Coke, the respondent would had to have provided the claimant with some written evidence from Mr Coke. But the claimant was never so charged. That stage was never reached – as we explain below, the eventual charge of misconduct related to the claimant's absence, not to his dealings with Mr Coke, so there was never any

obligation under the policies for the respondent to provide the claimant with a statement from Mr Coke. The allegations made by Mr Coke never proceeded beyond the invitations to fact finding meetings.

50. We accept Mt Malik's evidence to us that he told the claimant that he would be provided with a statement when he attended the fact-find meeting – that recollection is entirely consistent with what the respondent's policy says should have happened. This raises what at first blush appears a curious point. One might ask why, given that it seemed so important to the claimant, the respondent could not simply have provided the claimant with a statement from Mr Coke, even if it was not strictly required by policy. But the point is that although the claimant had asked for it, contrary to his own recollection now, he had never told the respondent he needed it in writing *because of* his mental health. So in fact the respondent had never appreciated that the point was so important to the claimant and had no reason (i.e. a reason other the claimant's own misunderstanding of the correct procedure) to conclude that there was a good reason to depart from the usual procedure.

The claimant's email of 31 May 2022

51. The claimant emailed Mr Malik on 31 May 2022 [126]. He reminded Mr Malik that he had requested that Mr Coke provide in writing "the exact offences he claimed or alleged" the claimant had committed. The claimant said that he had been having "sleeplessness, anxiety, fear, depression, and high blood pressure over these allegations because it brings back all dark, unpleasant memories" of 5 and 6 April 2018 (the dates of the earlier Tribunal hearing). The claimant did not in that email link any of those conditions directly to what he saw as the failure to provide the allegations in writing – the natural meaning of the words he used was that those conditions have been caused by the nature of Mr Coke's allegations. The claimant went on to assert that Mr Coke was obliged to provide what he was asking for under "the relevant rules of the United Kingdom and Royal mail policy". As we have already explained in part, that assertion is simply incorrect. The claimant also said that because Mr Coke's allegations were "very serious the details had to be recounted in a transparent, fair and objective manner in order to avoid unnecessary connotations". The claimant further asserted that Mr Coke was obliged to provide what he was asking for "as this is a case between a white manager and a black employee in view of [their] previous encounter [at the Employment Tribunal]". The claimant also said that Mr Coke's position required him not be "biased, unfair, untrustworthy, racist, discriminatory and approach issues from an equality and diversity perspectives". The implicit allegation there – that Mr Coke had discriminated against the claimant because of his race – was made, in our judgment, without any proper foundation (see further our conclusions below).

Mr Dobe's investigation (including conduct interview 20 June 2022) (Issues 6.2.3, 8.2.4)

52. Mr Malik wrote again to the claimant on 7 June 2022 [127]. He summarised Mr Coke's allegation and noted that the claimant had failed to attend the four fact-finding meetings. He said that he had referred the matter to Mr Dobe as he did

not believe that he should deal with the case as a result of the claimant's "continued failure to meet business standards". As Mr Malik explained in his evidence, because the claimant's email of 31 May had not explained his absence and the claimant did not seem willing to attend any meeting with him, and because the allegations could potentially result in a sanction (dismissal) which was beyond his authority to impose, he had referred the matter to Mr Dobe to proceed with a disciplinary process (which, as the parties did, we also refer to below as an investigation, since the claimant was interviewed by Mr Dobe in the course of the process).

53. Mr Dobe wrote to the claimant on 13 June 2022 [128], under the heading "Continued unauthorised absence from work". He noted that the claimant had failed to attend any of the meetings we refer to above, and had not provided any explanation for his unauthorised absence. He was, he said, charging the claimant with gross misconduct for failing to attend work since 19 April without a reasonable explanation. He did not refer to the allegations made by Mr Coke. It therefore was, or should have been, clear to the claimant that the focus was on his alleged misconduct in failing to go to work, rather than whatever he had said to Mr Coke. The claimant was invited to attend a formal conduct interview, told that he could be accompanied and warned that one possible outcome was dismissal without notice.

54. The conduct interview took place on 20 June, with Mr Dobe, in the presence of the claimant's union representative. We were provided a note of the interview, whose accuracy was not challenged. (The claimant was sent the note after the interview and given the opportunity to comment on it [136]). The claimant was asked why he was not attending work and he said there were two issues – the first was Mr Coke's allegation and the second was "absence". The claimant explained that Mr Malik had asked him about the allegation and that he, the claimant, had asked Mr Malik to ask Mr Coke to do a signed statement. He referred to the 2018 Tribunal claim which, he said, had not succeeded because of Mr Coke's lies. (We stress here that clearly the Tribunal in 2018 found Mr Coke to be a witness of truth.) That, he said, had caused him "mental distress, depression, sleeplessness and high blood pressure", and his mental health got worse after the appeal. The claimant said that after the March 2022 meeting with Mr Malik about Mr Coke's 2022 allegation, he went on unpaid leave and began to have flashbacks that had a negative impact on his mental health. He than said:

> For my own sanity and overall well-being I communicated that over the phone about 3 times that I will not be able to come until Mr Ken Coke puts it in writing of what actually happen what said that contributed my aggressive behaviour and me being rude.

55. Note that even here, contrary to the claimant's assertion to us, the claimant was not saying *that he told Mr Malik* that the reason for the request was for his mental health. Nor did he at any point assert that he had explained the reasons for his absence in any of those calls. His focus was on his requests/demands for Mr Coke to produce a statement. He said that he had "made it clear that before the next meeting" Mr Malik should tell Mr Coke to produce a statement.

He repeated that he had spoken to Mr Malik three times over the course of his absence and said that on the fourth time that Mr Malik had refused to take his call. On that point, we accept that (as Mr Malik accepted) there may well have been one occasion when Mr Malik did not answer the claimant's call. But that alone is unremarkable. We do not accept the evidence from Mr Bayou that Mr Malik had refused a request he made on the claimant's behalf that Mr Malik speak to the claimant – we prefer Mr Malik's clear evidence on the point to that of Mr Bayou, who we considered not to have a clear recollection, in particular in relation to when the incident he described had happened.

56. In the conduct interview the claimant then spoke at length about his previous interactions with OH. He had received a report from OH, he said, the previous year, but had not heard anything since from his line or shift managers (i.e. Mr Dobe or Mr Malik) despite OH telling him they would email the shift manager. (The claimant did not provide the report he was then referring to then to Mr Dobe, nor did he produce it in evidence to us. See also para 4 above.) Mr Dobe asked the claimant whether he was working anywhere other that Royal Mail and the claimant declined to answer before he was provided with Mr Coke's statement. The claimant told us in his oral evidence that once he was physically fit for work (i.e. after the pancreatitis) he had begun to do some work as an Uber drive. Essentially his position was that he was mentally unfit to return to work for the respondent, but was not mentally unfit for other work.

57. Mr Dobe believed that the claimant was under a contractual requirement to notify the respondent if he was working for anybody else. Whether Mr Dobe's view is correct, which is not a point we needed to resolve, would in the claimant's case depend on the precise interpretation of the meaning of the word "employment" in the respondent's *Business Standards,* which oblige its employees to declare any "outside employment". We also note that, since the claimant was only employed part-time at this point, there would not necessarily be any reason for him not to do other work on his non-working days.

58. When Mr Dobe asked him what was preventing him from attending work, the claimant said:

> Every day coming to work is a struggle mentally for me because I believe that action Mr Ken Coke prove I am not wanted or treated unfairly and for that actions my managers continue to prove to me hostile environment
>
> […]
>
> Sometimes when I have flashbacks, I will not be able to sleep feel depressed anxious that has contributed my blood pressure going up.
>
> Every morning I have to monitor my blood pressure.
>
> That is the sole and the main and only reason that is causing my absences, I feel depressed.

59. The claimant also said that the actions of Mr Coke, Mr Malik and Mr Dobe were having a cumulative affect on his mental health. He said that “from that issue of lying at court I had a mental breakdown from that moment, I never recovered.”

60. The claimant then mentioned the June 2020 grievance we have dealt with above, asserting that it had not been concluded. (As we have set out above, that was not correct. We have found that the claimant was told in writing, after he had requested that grievance be dealt with by someone other than Mr Dobe, that the grievance had been closed and he took no further action.) The claimant’s Union representative then said that it was not appropriate for Mr Dobe to be doing the interview. It is unclear why this point was raised towards the end of the interview rather than at the beginning. After a discussion on the point, the meeting continued to its conclusion, with the claimant asserting that as the (first) invite letter had been sent while he was on authorised special leave, the procedure should be nullified. The claimant concluded by asserting (again incorrectly) that the respondent’s policy required Mr Coke’s allegation to be put in writing. At no point in the meeting did Mr Dobe give any indication that he was considering Mr Coke’s allegation as part of the disciplinary process against the claimant.

61. On 28 June [138] Mr Dobe wrote to the claimant to remind him that the last fit note had had provided (i.e. for the pancreatitis) had expired on 10 March 2022. Consideration would be given to stopping his sick pay if a medical certificate was not provided within 48 hours. This draws attention to what in our view is a fundamental point in this case. In the disciplinary interview with Mr Dobe, the claimant says he was telling Mr Dobe that he was too mentally unwell to come to work, because of the way he had been treated by Mr Dobe and two others. But he had not supplied any evidence whatsoever to the respondent to support that assertion. Nor did he provide any after the interview. There was no fit note and no other medical evidence. When asked about that in cross-examination, the claimant said that he believed that a GP could not provide a fit note dealing with mental health. We reject this assertion, which lacks any credibility, if for no other reason than that for the purposes of this claim the claimant himself obtained a note from his GP about his mental health (see below).

Letters asking the claimant to return to work (Issue 7.1.3)

62. We reject the claimant’s suggestion that there was anything untoward in the respondent sending him letters requiring him to return to work. It might have been better if the first letter inviting the claimant to a fact-finding meeting had not been sent while he was on special leave. But he was not on sick leave, and in any case it appears to us most likely that this was simply an error on the part of Mr Malik, who was unaware at the time that the claimant was in fact on leave. The letters which followed were entirely unobjectionable in our view and, as we have said above, the claimant chose not to respond to them

Dismissal 8 July 2022 (Issues 2, 4, 6.2.4, 8.2.5)

63. Mr Dobe provided a written decision to the claimant on 8 July 2022, having, as he explained in his written evidence, sent the claimant the 28 June letter to give him the chance to provide medical evidence about his mental health given what the claimant had said in the interview. He summarily dismissed the claimant. The claimant, he said, had been absent from work since 19 April 2022 (i.e. after the end of the special leave period) without a reasonable explanation and had not provided any fit note. He had also failed to attend the four meetings that we refer to above.

64. Although in his letter Mr Dobe did refer to the claimant declining to say whether he was working anywhere else, we are satisfied on the basis of Mr Dobe's oral evidence that this was at most a minor factor in his decision.

65. This was not a point on which the claimant criticised the respondent, but we should also note that it is also clear that Mr Dobe took account of the claimant's previous record of attendance, as in our view he was entitled to do. While it might have been better had Mr Dobe raised the issue with the claimant in the disciplinary interview, those absences were a matter of record and the respondent was entitled to take them into account, given how numerous they were, even where many of them had been recorded as "domestic", i.e., as we explain above, the respondent had accepted that there were good reason for them. The previous absences were, we find, at best a peripheral consideration and did not of themselves lead to the claimant's dismissal, as is clear from Mr Dobe's letter.

66. Mr Dobe also took into account, on his own evidence, the claimant's lack of cooperation with the investigation into Mr Coke's allegations. Again, we consider that he was entitled to do so. He did not purport to make any findings on Mr Coke's allegations and so did not hold that against the claimant. The fundamental reason for his decision was, we accept, his view that the charge had been made out – the claimant had been absent, the absence had not been authorised, the claimant did not appear to be unwell and had certainly not provided any medical evidence about that. This was well within the range of reasonable responses open to an employer in our view – indeed it is difficult to see how Mr Dobe could reasonably come to any different view. The claimant was not dismissed merely because he was unwell or purporting to be unwell, but because he had failed to provide the required evidence to show that there was any good medical or other reason for his absence.

67. The respondent was in our view entitled to treat this a conduct rather than an attendance matter. Although this would not have been known to the claimant, the respondent's managers had been provided with written guidance [365], which was shown to us, which suggested that this would be the proper approach where there had been a "failure to notify", which we consider in the context meant a failure to notify the respondent of the reasons for the absence. This practice was in our view reasonable. So although it is correct to say that the respondent did not follow its absence procedure, it was not required to – the absence procedure is based on consideration between the employer and the employee of the reasons for the absence, whether a return to work is likely etc. None of that could realistically have been done in this case, when the reality

was, in our view, that the claimant was simply refusing to return to work because the respondent had not complied with his demand to supply a statement from Mr Coke, a demand which he wrongly believed to be an entitlement under the respondent's policies. That was, we find, the reason for the claimant's absence. The absence may also have been motivated by the claimant's upset and anger at Mr Coke and the previous Tribunal case, but the claimant has not provided sufficient evidence to support the conclusion that he was medically unfit to attend work. Indeed, he accepts that he was fit to work at the time – witness his work for Uber – but says that he was unable to return to work because the refusal to provide a statement from Mr Coke was damaging his health. Not only is this unsupported by medical evidence, it is also illogical. It simply does not make sense to suggest that the claimant's mental health would have improved had he been provided with a written statement. The entire basis for his upset was, he asserts, that Mr Coke was not telling the truth. It is difficult in our view to see how a written statement could have improved the situation.

68. The claimant did not exercise his right to appeal the decision to dismiss him. He was in our view unable to provide a satisfactory explanation for this in the course of his evidence to us. If, as the claimant said, he did not think the process should have been conducted by Mr Dobe because of the 2020 grievance, that supposed flaw would have been entirely mitigated by an appeal, which would of course have been heard by someone else. This provides further support for the view that the claimant was simply declining to come to work because of what he thought (wrongly) was a significant procedural failure to provide him with the statement from Mr Coke.

69. We reject the claimant's suggestion that Mr Dobe should have recused himself from the disciplinary process. The claimant's own oral evidence to us was along the lines that he himself had forgotten about the grievance until he and his union representative were going through his emails whilst preparing for the disciplinary hearing. So the grievance cannot have seemed particularly significant to the claimant, let alone to Mr Dobe. We accept that Mr Dobe had genuinely forgotten about the grievance. But even if he had not, there was no reason to recuse himself – the grievance had been closed years before, without a finding made against Mr Dobe and even more significantly, was only tangentially about Mr Dobe – in reality it was complaint about Mr Malik which Mr Dobe declined to uphold. It was a minor complaint about a minor issue which everyone had forgotten about.

70. We reject the suggestion that Mr Malik or Mr Dobe's treatment of the claimant over the period of the investigation had anything to do with the claimant's race or his mental health. The appropriate comparator here must be someone who was refusing to come to work and to attend fact-finding meetings because a statement had not been provided and because they were saying they were unwell, without providing any medical evidence about their illness. There is simply no basis on which a Tribunal could conclude that Mr Malik or Mr Dobe would have treated someone of a different race, or who was not disabled (assuming for the moment that the claimant was disabled), but was otherwise in the same circumstances, any differently. We also note the claimant's own

concession during cross-examination the decision to dismiss him had been based on his absence from work.

71. We accept that Mr Dobe took account of the claimant's "clean" conduct record and genuinely considered alternatives to dismissal. We consider that his decision that there was no alternative to dismissal in the circumstances was reasonable. The fundamental point was that the claimant was not coming to work, had not provided any evidence that he was unfit to attend work, and there was no prospect of that situation changing.

Disability (Issue 5)

72. During the course of submissions, Mr Chaudhry indicated on the respondent's behalf that the facts on which the claimant relied upon in relation to disability were not in dispute; the issue was whether those facts could properly lead to a conclusion that the claimant was disabled within the meaning of the Equality Act 2010 (and in particular whether there was an impairment which was long term and which had a substantial adverse effect on the claimant's ability to carry out day-to-day activities); the respondent also disputed knowledge, at the material time, of sufficient facts which could or should have led it to the conclusion that the claimant was disabled. We deal with our conclusions on all of that in the *Conclusions* section below. In this section, we set out the evidence on which those conclusions are based; it was uncontested and we accept it.

73. The claimant's disability impact statement [253] asserted that the decision following the April 2018 Employment Tribunal proceedings had triggered "mental health challenges in the claimant which negatively impacted his ability to attend work regularly" which were aggravated by what Mr Coke said in March 2022. The symptoms he experienced were, he said symptoms such as: anxiety, sleeplessness, flashbacks, depression, headaches, high blood pressure, and less motivation to work. He pointed in particular to the following:
    a. High blood pressure noted by his GP from August 2018.
    b. Advice from his GP to seek "mental health help" from the Maudsley NHS Trust in August 2020 resulted in an eight-week period of "talking therapy" sessions in February and March 2021. (The 2021 ECR [150] shows the claimant on holiday for much of February and on special leave for all of the days in March when he would otherwise have been working.)
    c. At the time of the hearing before us, another round of Therapy session for the claimant had been scheduled (i.e. in 2026) by Maudsley NHS Mental Health Trust.
    d. Poor concentration, low self-worth, low spirit, disrupted sleep in particular when he recalls his experiences with Mr Coke.
    e. Anxiety when going to work.

74. The claimant also relied upon documentary evidence as follows:
    a. His GP records [193] include hypertension (i.e. high blood pressure) from January 2020. There were no references in those records to the claimant's mental health.
    b. A letter from the claimant's GP dated 20 January 2025 says:

> This patient is suffering symptoms consistent with anxiety and post-traumatic stress related to his previous experience of the employment tribunal.
>
> We have discussed treatment options open and have agreed he should refer himself to the local talking therapies team for therapy in full input from a psychologist

c. Another letter from his GP dated 20 Mar 2025 says [221]:

> I reviewed this patient on 20 January 2025.
>
> He complained of recurrent flashbacks and increased anxiety relating to his experience during a previous tribunal hearing. He was concerned about his ability to engage with a similar pending tribunal/court appearance.
>
> His presentation was consistent with post-traumatic stress.

d. An April 2025 letter from a Psychological Wellbeing Practitioner at Talking Therapies Southwark [225] says:

> I am writing to provide an update regarding Mr Adenigbagbe who we conducted a mental health assessment with on 13/02/2025. He has reported experiencing ongoing difficulties since 2021 due to being racially discriminated against at work. Since then, he has reported persistent symptoms of low mood and anxiety. Specifically, he has experienced sleep disturbances, heart palpitations and a reduced appetite, all of which are impacting his daily functioning and overall well-being.
>
> In 2020 Mr Adenigbagbe referred to Talking Therapies Southwark reporting very similar symptoms as a result of his on going work difficulties. From this assessment he attended our 'Race, Identity and Me group'. This group offers a space for people who identify as black or as an ethnic minority, to share experiences and address the impact of racial trauma and discrimination. He attended this group during March-April in 2021.

75. Finally, a note of a return to work discussion with the claimant in February 2020 (i.e. before any of the events with which we are directly concerned) was provided at [297]. It is unclear who made the note but we assume it would have been one of the claimant’s managers. It concerned a three-day absence. It records that the claimant was off sick with stress due to a case that was at court, which was “having an adverse effect on his daily life”. This “illness/condition” was ongoing as the claimant had developed high blood pressure.

LAW

Unfair dismissal and conduct

76. Section 94 of the Employment Rights Act 1996 ("ERA") confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that they were dismissed by the employer (see s 95 ERA), but in this case the respondent admits that it dismissed the claimant.

77. S 98 ERA deals with the fairness of dismissals in two stages. First, the employer must show that it had a potentially fair reason for the dismissal within section 98 (1) and (2). Second, if the employer shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

78. Regarding the first stage of fairness, S 98 ERA provides, so far as is relevant:

> (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
>
> > (a) the reason (or, if more than one, the principal reason) for the dismissal, and
> >
> > (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2) A reason falls within this subsection if it— …
>
> > (b) relates to the conduct of the employee…

79. So in this case it is for the respondent to prove that the principal reason for the claimant's dismissal related to (mis)conduct.

80. The second stage of fairness is governed by s 98 (4) ERA:

> (4) … the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
>
> > (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
> >
> > (b) shall be determined in accordance with equity and the substantial merits of the case.

81. In deciding fairness, we therefore must have regard to the reason shown by the respondent and to the resources etc. of the respondent. In general, the assessment of fairness must be governed by the band of reasonable responses test set out by the EAT in *Iceland Frozen Foods Ltd* v *Jones* 1983 ICR 17. In applying s 98(4), it is not for us to substitute our judgment for that of the employer and to say what we would have done. Rather, we must determine whether in the particular circumstances of this case the decision to dismiss the claimant fell within the band of reasonable responses open to a reasonable employer.

82. In a misconduct case, the Tribunal starts with the test set out by the EAT in *British Home Stores Ltd* v *Burchell* 1980 ICR 303. Broadly, the question is whether the employer entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. The employer must show that:
    a. it believed the employee guilty of misconduct;
    b. it had in mind reasonable grounds upon which to sustain that belief; and
    c. at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

83. In considering (b) and (c) above it is however important to note that the *Burchell* test was formulated when the burden was on the employer to prove reasonableness – now that is no longer the case. The *Burchell* test also applies to the question whether it was reasonable for the employer to treat the reason as a sufficient reason to dismiss (although again the burden is not on the employer at that stage). In *Sainsbury's Supermarkets Ltd* v *Hitt* [2003] I.C.R. 111 the Court of Appeal held that the range of reasonable responses approach applies to the conduct of investigations as much as it applies to other procedural and substantive aspects of the decision to dismiss for a conduct reason.

84. By operation of s 207 Trade Union and Labour Relations (Consolidation) Act 1992, any failure to take account of the ACAS Code of Practice on Discipline and Grievance Procedures will be relevant to the issue of the fairness of the dismissal. In summary, the Code provides that employers must normally:
    a. carry out an investigation to establish the facts;
    b. inform the employee of the problem;
    c. hold a meeting with the employee to discuss the problem;
    d. allow the employee to be accompanied at that meeting;
    e. decide on the appropriate action;
    f. provide the employee with an opportunity to appeal the decision.

85. It will also be relevant whether the employer followed their own procedures. Other points relevant to whether the employer acted within the band of reasonable responses may include: the nature of the allegations, the position of the employee and the size and resources of the employer. A meticulous investigation of the kind that would be done in a criminal enquiry is not required.

Breach of contract (Wrongful dismissal)

86. By operation of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994/1623, an employee may complain to an Employment Tribunal about a breach by their employer of their employment contract, provided that the claim arises or is outstanding on the termination of their employment (subject to some exceptions that do not apply to this case).

87. One such breach could be failure to give notice, a "wrongful dismissal", which occurs where an employee is dismissed without notice (as the respondent accepts he was) where summary dismissal was not justifiable (which the respondent does not accept). Summary dismissal is justifiable where the employee has repudiated the contract in the circumstances set out by the Court of Appeal in *Briscoe* v *Lubrizol Ltd* 2002 IRLR 607: the employee's conduct "must so undermine the trust and confidence which is inherent in the particular contract of employment that the [employer] should no longer be required to retain the [employee] in his employment". The Court stressed that the employee's conduct should be viewed objectively, and so an employee can repudiate the contract even without an intention to do so.

88. In a claim for wrongful dismissal, the Tribunal must be satisfied, on the balance of probabilities, that there was an actual repudiation of the contract by the employee. It is not enough for an employer to prove that it had a reasonable belief that the employee was guilty of gross misconduct.

Discrimination Generally

89. The Equality Act 2010 ("EqA") prohibits discrimination on the grounds of various "protected characteristics", set out at sections 5 to 18. An employer must not discriminate against (or harass or victimise) an employee by (amongst other things) dismissing them or by subjecting them to any other detriment (sections 39 and 40). There was no dispute here that the claimant was the respondent's employee within the meaning of the Act. Nor was there any dispute that the respondent would be liable under s 109 for any contraventions of the Act done by other employees (e.g. the claimant's managers). The Tribunal's jurisdiction to hear complaints about contraventions of the provisions prohibiting discrimination in employment is established by s 120.

90. The Equality and Human Rights Commission Employment Code ("the EHRC Code" provides a detailed explanation of the EqA. The Tribunal must take into account any part it that appears relevant to any questions arising in proceedings (s 15 Equality Act 2006).

91. S 136 of the EqA makes provisions about the burden of proof. If there are facts from which the Tribunal could decide, in the absence of any other explanation, that there was a contravention of the Act, the Tribunal must hold that there was a contravention, unless the respondent proves that that there was not a contravention. S 136 requires careful attention where there is room for doubt as to the facts necessary to establish discrimination, but has nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or another (*Hewage* v *Grampian Health Board* [2012] UKSC 37). The

burden of proof does not shift where there is no evidence to suggest the possibility of discrimination (*Field* v *Steve Pye and Co (KL) Ltd* [2022] EAT 68). Guidelines on the application of s 136 were set out by the Court of Appeal in *Igen Ltd* v *Wong* [2005] EWCA Civ 142 and the importance of these was recently restated by the Employment Appeal Tribunal in *Field* v *Steve Pye and Co (KL) Ltd* [2022] EAT 68. We do not reproduce the thirteen steps of the guidance here, but we took account of all steps. One important point to note is that the question is whether there are facts from which a Tribunal *could* decide… It is not sufficient for the employee merely to prove a difference in protected characteristic and a difference in treatment. Something more is required (*Madarassy* v *Nomura International Plc* [2007] EWCA Civ 33). Unfair or unreasonable treatment on its own is not enough (*Glasgow City Council* v *Zafar* [1998] IRLR 36). If the burden of proof does shift, under the *Igen* guidance the employer must prove that the less favourable treatment was "in no sense whatsoever" because of the protected characteristic. Because the evidence in support of the explanation will usually be in the possession of the employer, tribunals should expect "cogent evidence" for the employer's burden to be discharged.

Disability

92. The question whether the claimant was disabled at any material time is to be decided by reference to section 6 of, and Schedule 1 to, the EqA, together with the Secretary of State's guidance document issued under section 6(5) EqA ("the SoS's Guidance") and the relevant case law.

93. Section 6(1) EqA provides:

> (1) A person (P) has a disability if—
>
> (a) P has a physical or mental impairment, and
>
> (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

94. In *Matthew Goodwin* v *Patent Office* [1998] UKEAT 57 the Employment Appeal Tribunal ("the EAT") gave guidance on the four-stage approach to be taken by this Tribunal ("the ET") in deciding whether someone is disabled (paragraph 3 of the EAT's guidance):

> (1) **The impairment condition**
> Does the applicant have an impairment which is either mental or physical?
>
> (2) **The adverse effect condition**
> Does the impairment affect the applicant's ability to carry out normal day to day activities in one of the respects set out in paragraph 4(1) of Schedule 1 to the Act, and does it have an adverse effect?
>
> (3) **The substantial condition**
> Is the adverse effect (upon the applicant's ability) substantial?
>
> (4) **The long-term condition**
> Is the adverse effect (upon the applicant's ability) long-term?

95. The EAT's guidance continues:

> Frequently, there will be a complete overlap between conditions (3) and (4) but it will be as well to bear all four of them in mind. Tribunals may find it helpful to address each of the questions but at the same time be aware of the risk that dis-aggregation should not take one's eye off the whole picture.

96. So far as the adverse effect condition is concerned, the authorities are clear that the focus of the Tribunal must be on what a claimant cannot do, rather than what they can do. Normal day to day activities relate to professional and personal life and various examples are given in the SoS's Guidance. By Schedule 1 Para 5A(2) of the EqA normal day-to-day activities are to be taken as including the person's ability to participate fully and effectively in working life on an equal basis with other workers.

97. So far as the substantial condition is concerned, the word "substantial" in section 6(1)(b) means, according to section 212(1) EqA, "more than minor or trivial". The SoS's Guidance suggests taking account of: the time taken by the person to carry out an activity [paragraph B2]; the way a person carries out an activity [B3]; the cumulative effects of an impairment [B4]; the cumulative effects of a number of impairments [B5/6]; the effect of behaviour [B7]; the effect of environment [B11] and the effect of treatment [B12].

98. So far as the long-term condition is concerned, Paragraph 2 of Schedule 1 provides:

> (1) The effect of an impairment is long-term if—
>
> (a) it has lasted for at least 12 months,
>
> (b) it is likely to last for at least 12 months, or
>
> (c) it is likely to last for the rest of the life of the person affected.
>
> (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

99. In the context of sub-section (2), the word likely has been held to mean that there is a real possibility or "it could well happen" and not whether it was probable or more likely than not. (*SCA Packaging Ltd* v *Boyle* [2009] UKHL 37.

100. The SoS's Guidance states that conditions with effects which recur only sporadically or for short periods can still qualify as long term impairments for the purposes of the EqA. If the effects on normal day to day activities are substantial and are likely to recur beyond 12 months after the first occurrence, they are to be treated as long-term.

101. By Paragraph 5 of Schedule 1 EqA, an impairment is to be treated as having a substantial adverse effect on ability to carry out normal day-to-day activities

if measures are being taken to correct it and but for that it would be likely to have that effect. Measures include medical treatment and the use of a prosthesis or other aid. This applies even if those measures have the impairment completely “under control”.

102. The question whether a person had a disability at any particular time is to be determined by reference to the evidence in existence at that time; it is not to be determined by reference to evidence which arises later than that time: *All Answers Ltd* v *W* [2021] EWCA Civ 606. That case also makes it clear that the time by reference to which the question whether a person was disabled is to be assessed is the time of the claimed discriminatory conduct.

Direct discrimination

103. Under s 13(1) EqA read with s 9, direct race discrimination takes place where because of race a person treats the claimant less favourably than that person treats or would treat others. Under s 13(1) read with s 6, direct disability discrimination takes place where because of disability a person treats the claimant less favourably than that person treats or would treat others.

104. By s 23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case. The circumstances need not be precisely the same, provided they are close enough to enable an effective comparison: *Hewage* (above). In many direct discrimination cases, it is appropriate for a Tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of a protected characteristic. However in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the “reason why” the claimant was treated as they were (*Shamoon* v *Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11; [2003] IRLR 285).

105. The protected characteristic need not be the only reason for the treatment, provided it had a significant influence on the outcome (*Nagarajan* v *London Regional Transport* [1999] IRLR 572, HL). The case law recognises that very little discrimination today is overt or even deliberate; people can be unconsciously prejudiced. A person’s motive is irrelevant, as even a well-meaning employer may directly discriminate.

Harassment related to race

106. S 40 EqA says that an employer must not harass an employee. Under 26(1) EqA read with s 9, harassment related to race takes place where there is unwanted conduct related to race which has the purpose or effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether the conduct has that effect the Tribunal must take into account the claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Victimisation

107. By s 27 EqA, victimisation occurs when a person A subjects another person B to a detriment because B does a protected act, or because A believes that B has done or may do a protected act. One type of protected act is making an allegation (whether or not express) that A or another person has contravened the EqA. So generally speaking a complaint of, for example, race or age discrimination will be a protected act. There is an exception where the allegation is made in bad faith, but it was not suggested that exception applied in this case. Detriment does not generally include harassment (s 212(1)) but for these purposes does include dismissal.

108. An employee suffers a detriment if, by reason of the act or acts complained of, a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work (*Shamoon* v *Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11). The detriment need not have been solely or mainly because of the protected act. Rather, the question is whether the protected act had a significant influence on the employer's decision, a significant influence being one which is more than trivial (*Igen Ltd and ors* v *Wong and other cases* 2005 ICR 931).

Time limits

109. By s 123(1) of the EqA, claims to the Employment Tribunal under the Act may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable. That period of three months is subject to provisions which extend it to take account of the mandatory early conciliation involving ACAS. Also, s 123(3) of the Act provides that conduct extending over a period is to be treated as done at the end of the period.

110. A distinction is drawn between a continuing act (i.e. a policy, rule, scheme, regime or practice that continues to be applied) and an one-off act that has merely continuing consequences. But in *Commissioner of Police of the Metropolis* v *Hendricks* 2003 ICR 530, the Court of Appeal said that 'policy, rule, scheme, regime or practice' should not be treated as a complete statement of what amounts to a continuing act; the focus should be on the substance of the complaint. This was approved in *Aziz* v *FDA* 2010 EWCA Civ 304, where the Court noted that, in considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents.

111. There is no requirement that the 'conduct' extending over a period for the purpose of S.123(3) must all relate to the same protected characteristic. Similarly, there is no reason why conduct extending over a period cannot involve a number of different types of prohibited conduct, such as a mixture of harassment and direct discrimination. It may be more difficult to establish that there has been discriminatory conduct extending over a period where the acts that are said to be linked relate to different protected characteristics and different types of prohibited conduct, but there is no absolute bar. (*Worcestershire Health and Care NHS Trust* v *Allen* [2024] EAT 40, para 13)

112. Unproven or non-discriminatory acts cannot be relied on as conduct extending over a period (*South Western Ambulance Service NHS Foundation Trust* v *King* 2020 IRLR 168; *Lyfar-Cisse* v *Brighton and Sussex University Hospitals NHS Trust and ors* EAT 0100/19).

113. So far as the discretion to extend time is concerned, it has been said that the exercise of the discretion is the exception not the rule (*Robertson* v *Bexley Community Centre t/a Leisure Link* 2003 IRLR 434). But an extension does not require exceptional circumstances. In exercising the discretion a Tribunal may (not must) have regard to the checklist contained in S.33 of the Limitation Act 1980, as modified by the EAT in *British Coal Corporation* v *Keeble and ors* 1997 IRLR 336. As summarised by the authors of the *IDS Manual*, this suggests the Tribunal consider the prejudice that each party would suffer as a result of the decision reached and have regard to all the circumstances of the case, in particular: the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the respondent has cooperated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the complaint; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

CONCLUSIONS

Time limits

114. The claim in this case was presented on 3 October 2022, with early conciliation having taken place on the same day, 3 October 2022 (i.e. it started and finished on the same day). Therefore, any complaint about something that happened before 4 July 2022 was out of time (unless it was a part of conduct extending over period which ended on or after that date). All of the complaints made under the Equality Act 2010, save for those relating directly to the claimant's dismissal, relate to events before that date.

115. Time limits were another topic about which, despite it being clearly identified in the list of issues, the claimant's statement was silent. When asked in cross-examination why he had not gone to ACAS any sooner, the claimant said that he had not had confidence in the respondent's investigation (which does not appear to us to be a meaningful answer to the question) and said that he had only been able to include the further allegations on his further and better particulars of claim after getting legal advice, having been ordered at a preliminary hearing [i.e. on 20 April 2023] to provide the further and better particulars.

116. Regarding the complaints about things that happened in 2021 or before, these were made well outside of the applicable time limits (and this would have been the case even for those which were included on the main claim form rather than those which were added later by way of amendment). We find that these things were not part of conduct extending over a period ending on or after 4 July 2022. This applies to the following complaints in the List of Issues:

a. 6.2.1, 8.2.3 – non-referral to OH in 2020. The conduct alleged here had no substantial link to the claimant's dismissal two years later beyond the fact that some of the same people were involved.
b. 8.2.1 – non-action on the claimant's complaints (in 2020). It is a complaint about a discrete point. Again, the conduct alleged here had no substantial link to the claimant's dismissal two years later beyond the fact that some of the same people were involved. Any lack of action cannot be properly characterised as an ongoing situation – as we have found, the claimant's 2020 grievance had been closed and all those concerned had forgotten about by 2022. The fact that the claimant sought during these proceedings to say that it was a reason why Mr Dobe should have recused himself in 2022 does not in our judgment make it part a series of acts ending in 2022.

117. We further find that it would not be just and equitable to extend time for those complaints. There is no good reason why, in our judgment, the claimant could not have complained to the Tribunal in 2020 or 2021; that the claimant did not seek legal advice until after a preliminary hearing in 2023 does not change that. But more significantly, it was clear to us during the course of the evidence that allowing those complaints to proceed so far out of time would have caused substantial injustice to the respondent – there was little contemporaneous documentary evidence and the respondent's witnesses had genuine and obvious difficulty recalling the events concerned. In contrast, the claimant would be caused little prejudice as he would still be able to pursue the substance of his complaint, which was about his dismissal.

118. We took a different view on the following complaints:

a. 6.2.2, 8.2.2 – Allegations made by Mr Coke.
b. 6.2.3, 8.2.4 – Mr Dobe's investigation.
c. 7.1.2 – Mr Coke's allegations not being put in writing.
d. 7.1.3 – Letters asking the claimant to return to work.

119. To the extent that those things happened before 4 July 2022, we do accept that (if proven) they could properly be said to be part of conduct extending over a period which ended with the claimant's dismissal, after the "cut-off date" for time limits purposes. Although the allegations made by Mr Coke were not the reason the claimant was dismissed, they plainly were linked to the reasons for the claimant's absence, which was ultimately what led to his dismissal. Mr Dobe's investigation clearly related directly to the dismissal. Even if these things were not part of conduct extending over a period, we would have considered it just and equitable to have extended time, given the clear evidential overlap between them and the reasons for the claimant's dismissal.

120. Regarding 7.1.1 (Mr Malik and Mr Dobe applying policies differently to the claimant from 2018), it is unclear whether this could have been said to have taken place within the applicable time limits, but given our findings that the claimant has failed to prove that the conduct took place, there is no need for us to decide that point.

121. The remainder of the complaints were in time, since the claimant was dismissed after 4 July 2022.

Unfair dismissal

122. On the basis of our factual findings above, the respondent has shown that the reason for the claimant's dismissal was related to misconduct, namely the claimant's failure to attend work after 19 April 2022 without having provided a reasonable explanation. We accept that Mr Dobe on the respondent's behalf genuinely believed that the claimant had committed misconduct.

123. In our judgment the respondent's decision to dismiss the claimant in the circumstances was well within the band of reasonable responses. Once the fit note covering the claimant's pancreatitis had expired, he did not, as we have found, inform the respondent of the reasons for his absence, beyond making clear that he would not attend work because of his (incorrect) belief that the respondent was obliged to provide him with a statement from Mr Coke. That was not a good reason for the claimant's absence. It was only during his disciplinary interview with Mr Dobe that the claimant suggested to the respondent that his absence was related to his mental health. Even after that point the claimant did not provide any medical evidence to the respondent in support of his assertion, when in our judgment it would have been perfectly possible for him to have sought such evidence from his GP. As is the case with very many employers, the respondent's policies required that someone who is too ill to work should provide medical evidence of that fact. It was clear in our judgment that by the time Mr Dobe made his decision, it was reasonable for him to have concluded that such evidence would not be forthcoming. In short it was reasonable for Mr Dobe to have concluded that there was no good reason for the claimant's absence, which by now had persisted for some months. Further, it was reasonable for Mr Dobe to have concluded that the situation was unlikely to change and that therefore dismissal was the proportionate response. The procedures adopted by the respondent were perfectly fair and in accordance with the respondent's own policies. It was open to the claimant to appeal Mr Dobe's decision to an independent person and the claimant did not take that opportunity. The claimant was therefore not unfairly dismissed.

Wrongful dismissal

124. We further find that the respondent's decision that the claimant was guilty of gross misconduct was correct. He was absent from work from 13 April 2022 (i.e. after his special leave expired) until his dismissal in July without having provided a good reason for his absence, and he had ignored several invitations to attend meetings to discuss Mr Coke's allegations. Even after asserting on 20 June that his absence was related to his mental health, he did not provide the respondent with any medical evidence of that, despite having been invited to.

Direct discrimination

125. For the reasons set out in more detail above, to the extent that the things listed in 6.2 of the List of Issues did happen, they were in our judgment nothing to do with any protected characteristic of he claimant. Further, there is in our judgment no basis upon which a Tribunal could conclude that the claimant was

treated worse than Mr Sullivan or worse than any hypothetical comparator (i.e someone of a different race or who was not disabled). Taking each point from 6.2.1 onwards in turn:

a. Regarding the lack of referral to OH, as best as we could tell given the time elapsed, Mr Dobe in fact appears to have referred the claimant as requested, but since we have declined to extend time there is no need for us to make formal a finding about this.
b. As regards the allegations made by Mr Coke, there is in our judgment no basis for any conclusion other than that they were made by Mr Coke in good faith, even if the claimant might have a different recollection to Mr Coke about the precise nature of their conversation. There is no basis for a conclusion that the fact Mr Coke made the allegations had anything to do with the claimant's race, or with the claimant's mental health (putting aside for the moment whether that amounted in law to a disability). We also note that there was no evidence that Mr Coke even had any knowledge about the claimant's mental health, in which case his actions cannot have been because of it.
c. We do not consider that there is any proper cause for complaint about Mr Dobe's conduct of the disciplinary proceedings against the claimant. We accept that Mr Dobe's conduct had nothing whatever to do with the claimant's race or mental health (whatever the extent of Mr Dobe's knowledge about the latter was). There is no basis for a conclusion that Mr Dobe would have treated a comparator any differently to the claimant in these circumstances.
d. The same points as set out in (c) above apply also to Mr Dobe's decision to dismiss, which was objectively perfectly reasonable.

Harassment related to race

126. The claimant failed to produce any evidence that Mr Dobe and Mr Malik applied policies differently to the claimant, whether because of his race or for any other reason. That part of the harassment complaint, 7.1.1 therefore fails.

127. As regards 7.1.2, as we have explained, there is no evidence that Mr Coke personally refused to put his allegations about the claimant in writing, but is it correct to say the respondent (through Mr Malik) declined to provide the claimant with a statement from Mr Coke. Clearly that was unwanted conduct. But in so doing, contrary to the claimant's belief, Mr Malik was acting entirely in accordance with the respondent's policies. Mr Malik's conduct had nothing to do with the claimant's race, nor did it have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Taking into account in particular whether it was reasonable for the conduct to have had that effect (it being conduct in accordance with the respondent's policy) nor did it have that effect.

128. As regards 7.1.3, it was entirely reasonable for the respondent to have sent letters to the claimant about his absence and his failure to attend the meetings relating to Mr Coke's allegations, though we accept that it was unwanted conduct. It was perfectly reasonable of Mr Malik to have rescheduled meetings when the claimant did not attend and for him to have told the claimant about it.

The communications had nothing to do with the claimant's race, nor did they have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. Taking into account in particular whether it was reasonable for the conduct to have had that effect, it did not have that effect.

Victimisation

129. There was no real dispute that the claimant did do the protected acts set out at 8.1 in the List of Issues.

130. As regards Issue 8.2.1, we have already decided that it would not be appropriate to extend time to allow us to consider complaints about whether the respondent did not investigate the complaints made by the claimant in 2020 to Mr Dobe (in the formal grievance) and Mr Ashraf (informally). We made the same finding in relation to Issue 8.2.3, whether Mr Dobe had failed to refer the claimant to OH. Had we needed to make findings on the limited evidence available, we would have concluded that there was no basis for finding that either of those things were done because of the claimant's protected acts. Indeed, as we have already observed, it appears that Mr Dobe did in fact refer the claimant to OH and that the formal grievance was closed by Mr Dobe simply because the claimant had not attended meeting to discuss it.

131. As regards Issue 8.2.2, on the basis of our findings above, we see no proper basis for a conclusion that Mr Coke made his allegations against the claimant for any other reason that that he genuinely believed that the claimant had been rude to him. Mr Coke did not make his complaint because of the previous Tribunal proceedings, or because the claimant had made complaints to Mr Ashraf, Mr Malik or Mr Dobe – indeed there was no evidence that Mr Coke was even aware of the complaints made to those other three.

132. That leaves Issues 8.2.4 and 8.2.5 – Mr Dobe's conduct of the disciplinary proceedings and his decision to dismiss the claimant. On the basis of the findings we have made above, the respondent has shown that its treatment of the claimant had nothing to do with the protected acts. As we have concluded, there were objectively good grounds in which to investigate and then to dismiss. The claimant was dismissed, not because he had done protected acts, but because he was not attending work and had not provided a good reason for his absence.

Disability

133. Given the findings we have already made, there is strictly no need for us to make findings about whether the claimant was disabled within the meaning of the EqA at the material time, but we would have concluded that he was not, for the reasons which follow.

134. Given that. following our decision on time limits, the only Issues relating to disability which remained live were 6.2.2 to 6.2.4, the material time here would be 1 March 2022 (the conversation with Mr Coke) to 6 July 2022 (dismissal).

135. First, we consider that the claimant has failed to show that he had PTSD at the material time. The GP's letters provided by the claimant do not quite in our view amount to confirmation of a diagnosis – the GP only goes so far as to say the claimant's symptoms are "consistent with" post-traumatic stress. Further, in the absence of more detailed evidence, it is not possible to say whether the absence of the word "disorder" in the letters is of any significance, not whether the GP would be in a position to diagnose PTSD even were he purporting to. More significant than all of that, however, is that the GP's conclusions relate to 2025. It is unclear whether the GP is himself saying that the claimant's symptoms were caused by the previous Tribunal hearing, or whether he is merely reporting what the claimant has said. Even if it is the former, in the absence of medical evidence on the point, we consider that it would be overly simplistic to conclude that if the claimant had post-traumatic stress in 2025 because of something that happened in 2018, he must have had it in mid 2022. There was, for example, a potentially important intervening event in late 2022, when the claimant presented this claim and began to move again through the Tribunal process – in the context of someone traumatised by previous proceedings, that may or may not be significant, but in the absence of expert evidence, we simply do not know.

136. That there is no formal diagnosis relating to 2022 is not , of course, the end of the matter. The statutory test for disability does not depend upon whether there is a diagnosed disorder. The evidence from the claimant was somewhat unclear about when he began experiencing each of the symptoms he described, but we do accept that the claimant was experiencing significant emotional upset at the material time. His own account shows that, as does the fact that the claimant had a number of weeks of therapy in 2020/2021. But whether that had a substantial adverse effect upon his ability to carry out day-to-day activities, and whether he was experiencing a long-term impairment, are different questions. In general, people may experience trauma, which benefits from counselling, without it being long-term or having the substantial effect referred to in the EqA.

137. There was, in our judgment, no substantial adverse effect of the claimant's ability to carry out day-to-day activities. Whilst keeping in mind that the focus must be on what the claimant could not do, rather than what he could, the sleeplessness etc. did not prevent the claimant from taking on alternative work with Uber (once he had recovered from the pancreatitis). It is reasonable to conclude that there was no physical impediment to his returning to work for the respondent. There was an absence of evidence about what the claimant was unable to do, beyond attending work for this respondent. It appears to be the case that the claimant experienced his symptoms mainly when he thought about what had happened in his employment with the respondent – any barrier there was to the claimant returning to work was related only to his returning to work for this particular respondent. But as we have already said, it seems to us that in reality the barrier was the claimant's belief that he should have been provided with a statement from Mr Coke – the claimant has not produced any evidence that satisfies us that that belief had anything to do with his mental health. The claimant was able to participate fully and effectively in working life, albeit that he was unwilling to work for this particular respondent.

138. We also consider that the claimant has failed to establish that *at the material time* the effects upon him were likely to last at least twelve months; indeed, at the time there was every reason have concluded that in the normal run of things the claimant would recover from his upset (as we deal with in more detail in the next paragraph).

139. We also do not accept that during all of this the claimant had provided Mr Dobe, and therefore the respondent, with sufficient information for the respondent to have concluded that he had a disability, i.e. in particular a long-term condition which had a substantial and adverse effect. Even after the claimant's disciplinary interview, the respondent knew little more than that the claimant was asserting that he felt stressed and unable to come back to work because he was aggrieved at the actions of Mr Dobe and Mr Malik, and at the result of the previous Tribunal proceedings. The latter had not prevented the claimant from working (i.e. in this context there was no reason for the respondent to conclude that there was a substantial effect) until Mr Coke made his allegations in 2022. In the absence of any medical evidence – which the claimant did not provide – there was no reason why the respondent could or should have concluded at that time that the effect of whatever impairment there was likely to persist for 12 months.

Contributory fault, breaches of the ACAS code etc.

140. Given the findings we have already made on liability, there was no need for us to consider any issue relating to remedy.

Final remarks

141. Employment Judge Dick apologises to the parties for the time it had taken for him to prepare this judgment, due to pressure of other work and annual leave.

APPENDIX:

Edited Version of the List of Issues set out by Judge Davison following the hearing of 11 April 2025

1. Time Limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 4 July 2022 may not have been brought in time.

1.2 Were the discrimination, harassment and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period? 1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

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

2. Unfair dismissal

2.1 What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

2.2 If the reason was misconduct, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

2.2.1 there were reasonable grounds for that belief;
2.2.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
2.2.3 the respondent otherwise acted in a procedurally fair manner;
2.2.4 dismissal was within the range of reasonable responses.

3. Remedy for Unfair dismissal

[…]

4. Wrongful dismissal / Notice pay

4.1 The claimant was dismissed without notice or notice pay.

4.2 Was the claimant guilty of gross misconduct such that the respondent was entitled to dismiss him without notice?

4.3 If not, what damages is the claimant entitled to in respect of nonpayment of notice?

5. Disability

5.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

5.1.1 Did the claimant have a physical or mental impairment: mental health.
5.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
5.1.4 Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?
5.1.5 Were the effects of the impairment long-term? The Tribunal will decide:
5.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
5.1.5.2 if not, were they likely to recur?

6. Direct race/disability discrimination (Equality Act 2010 section 13)

6.1 The claimant says he was born in Nigeria. He says his disability is mental health.

6.2 Did the respondent do the following things:

6.2.1 In November 2020, the Claimant was not referred to Occupational Health after three referrals for further treatment. This was to be actioned by Jas Dobe which did not occur. The claimant had a witness in the person of Kwesi Dazie;
6.2.2 The allegations made by the Kenneth Coke following the conversation between the Claimant and the Respondent on 1 March 2022. Kenneth Coke alleged the Claimant was aggressive and rude during this conversation. There were no witnesses;
6.2.3 The investigation made by the Jas Dobe following the alleged misconduct after the phone conversation on 2 March 2022. There were witnesses in the investigation meeting which was the Claimant's Union Representative (Fosi Shirwai);
6.2.4 The dismissal on 6 July 2022 by Jas Dobe.

6.3 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 he was treated worse than Danny Sullivan, an employee welfare manager who left the respondent's employment in 2016, or a hypothetical comparator.

6.4 If so, was it because of race or disability?

7. Harassment related to race (Equality Act 2010 section 26)

7.1 Did the respondent do the following things:

7.1.1 Jas Dobe and Mohammed Nadeem Malek applied policies to the Claimant differently to his white counterparts in the workplace from 2018.
7.1.2 Kenneth Coke's refusal to formally write his allegations against the claimant from the conversation following 1 March 2022.
7.1.3 Persistent letters sent to the Claimant by HR asking him to return to work from April 2022.

7.2 If so, was that unwanted conduct?

7.3 Did it relate to race?

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

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

8. Victimisation (Equality Act 2010 section 27)

8.1 Did the claimant do a protected act as follows:

8.1.1 In July 2017, the Claimant made a claim to the employment tribunal for race discrimination (the respondent accept that this is a protected act);

8.1.2 In Sept 2020, the Claimant made a verbal grievance to Aaron Ashram regarding the way in which company policies were being applied differently to ethnic minority staff in comparison to their white counterparts in the centre. (the respondent accept that this is a protected act);

8.1.3 From 2020, the series of complaints made against Nadeem Malik Mohammed and Jas Dobe to HR by the Claimant (the respondent accept that this is a protected act).

8.2 Did the respondent do the following things:

8.2.1 No action taken by the Respondent to investigate the complaints made by the Claimant regarding race discrimination. The Respondent, as per company policy, should have investigated each complaint.

8.2.2 The allegations made by Kenneth Coke following the conversation between the Claimant and the Respondent on 1 March 2022. Kenneth Coke alleged the Claimant was aggressive, disrespectful, and rude.
There were no witnesses.

8.2.3 In 2021, Jas Dobe failed to refer the Claimant for further treatment after the Occupational Health Service recommendations.

8.2.4 The investigation made by the Jas Dobe following the alleged misconduct following the phone conversation between the Claimant and Kenneth Coke on 2 March 2022.

8.2.5 The dismissal on 6 July 2022 by Jas Dobe.

8.3 By doing so, did it subject the claimant to detriment?

8.4 If so, was it because the claimant did a protected act?

9. Remedy for discrimination, harassment, victimisation

[…]

Approved by:

Employment Judge Dick

2 September 2026

JUDGMENT SENT TO THE PARTIES ON 3 September 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

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