RESERVED JUDGMENT
WITH REASONS

Case No. 2402549/2015

EMPLOYMENT TRIBUNALS

Claimant: Mr F Saleem

Respondent: Menzies Aviation PLC

HELD AT: Manchester **ON:** 30 and 31 January 2017
1, 2, 3, 6 and 7 February 2017

BEFORE: Employment Judge Franey
Ms CS Jammeh
Ms JA Beards

REPRESENTATION:

Claimant: Mr M Broomhead, Consultant
Respondent: Miss S Cowen, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that the complaint of victimisation contrary to section 27 of the Equality Act 2010 fails and is dismissed.

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Employment Judge Franey

17 February 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

21 February 2017

FOR THE TRIBUNAL OFFICE

REASONS

Introduction

1. By a claim form presented on 10 February 2015 the claimant complained that he had been victimised contrary to section 27 Equality Act 2010 during his employment by the respondent at Manchester Airport. The "protected acts" on which he relied were his support for a colleague, Lisa Gumbhir, who had brought a case of race discrimination against the respondent, and he identified a series of detriments between August 2013 and January 2015. His allegations centred upon two matters: firstly, the treatment of allegations of harassment made against him by two female colleagues which resulted in his suspension but no disciplinary action, and the handling of his grievance about such matters; secondly, his involvement in a redundancy consultation exercise in late 2014, his unsuccessful application for a duty manager post, and his grievance about that matter.

2. The claimant brought his complaint against both the respondent and an individual manager, John Henderson, but he had not undergone early conciliation in relation to Mr Henderson and his claim was not accepted against that respondent.

3. By its response form of 28 April 2015 the respondent resisted the complaints on their merits. It accepted that the claimant had done a protected act when he appeared as a witness in the hearing of Ms Gumbhir's race discrimination complaint before an Employment Tribunal sitting in Manchester chaired by Employment Judge Brain ("the Brain Tribunal"), but it denied that there had been any other protected acts. It denied that there was any causal link between any protected act and any alleged detriments.

4. The particulars of claim underwent two amendments, the final version being the re-amended particulars served on 3 July 2015. They incorporated allegations of victimisation postdating presentation of the claim form. The final version of the particulars ran to 24 allegations of victimisation.

5. In the course of the evidence to our hearing the respondent conceded that the claimant had done a protected act in accompanying Lisa Gumbhir at a grievance appeal meeting on 2 August 2013.

6. The issues to be determined by the Tribunal on liability were therefore as follows:

1. Protected Acts

In addition to his protected acts of (a) accompanying Lisa Gumbhir at her grievance appeal meeting on 3 August 2013, and (b) providing a witness statement in Lisa Gumbhir's Employment Tribunal complaint and giving evidence on her behalf to the Brain Tribunal on 1 October 2014, could the claimant establish that he did a protected act on 9 April 2013 in making an allegation of race discrimination against Leanne Woods?

2. Detriment Allegations

Was the claimant subjected to a detriment because of a protected act in any of the following respects?

1. **On 28 March 2014 the claimant was suspended and then investigated for harassment and intimidation. No proper consideration was made before the decision to suspend. The claimant was prejudged to have committed the disciplinary offences.**

2. **On 7 April 2014 the claimant was called into an investigatory meeting with David Harrison and informed that Joanne Bailey and Leanne Woods had led the investigation. He was not treated fairly.**

3. **On 7 April 2014 the claimant was informed that he was to be transferred to Terminal 3. The female colleagues who made the allegations against him were allowed to remain at Terminal 1.**

4. **On 8 May 2014 the claimant lodged a grievance about these matters, but it was not investigated in good faith or expeditiously.**

5. **On 14 May 2014 the grievance investigation was adjourned, causing increased distress to the claimant.**

6. **On 18 June 2014 the claimant was informed that he would have the outcome in seven days but did not receive it as promised.**

7. **On 13 August 2014 the claimant received an email enquiry from Mrs Carmichael as to whether he had received the outcome letter from John Byrne, Mrs Carmichael knowing that such a letter had not been sent.**

8. **On 15 August 2014 the claimant complained about not having received the grievance outcome letter but was informed that it could be a problem with his local Post Office.**

9. **On 4 September 2014 the claimant received the outcome letter by email but the letter had been backdated to 10 July 2014.**

10. **On 4 September 2014 the claimant was informed that he was to be transferred to Terminal 3; his two female accusers were not transferred.**

11. **On 10 September 2014 the claimant submitted his appeal against the grievance outcome but investigation notes and documents were withheld from him.**

12. **On 16 September 2014 the claimant was informed by Leanne Woods that he was to be involved in a restructure/redundancy and he was invited to attend an interview with her on 26 September 2014.**

13. **On 18 September 2014 the claimant had to take steps to pursue his grievance appeal; had he not done so it would have been allowed to stagnate.**

14. On 24 September 2014 the claimant raised concerns that Leanne Woods would be interviewing him, despite the fact that the respondent knew or ought to have known that he would not have any confidence in her.

15. On 21 October 2014 the claimant was informed that his grievance appeal had been rejected by Ruth Rabet. The appeal had been carried out in bad faith.

16. On 8 December 2014 the claimant was informed that his application for an acting Duty Manager position was unsuccessful, placing him at risk of redundancy.

17. On 5 January 2015 the claimant was told that if he did not accept the post of Senior Passenger Service Agent he would not be entitled to a statutory redundancy payment. The threat was unlawful in all the circumstances.

18. On 12 January 2015 the claimant was told that John Hough would be chairing his grievance, even though that was totally inappropriate given John Hough's involvement in the Lisa Gumbhir case.

19. On 14 January 2015 Melanie Butler made contact with the claimant by way of email in relation to his grievance appeal, such contact being totally inappropriate because he had lodged a grievance about her participation in the decision not to appoint him to the Duty Manager post.

20. On 27 January 2015 the claimant was told that the outcome of his grievance appeal would be provided within 14 days, and then told by email of 30 January 2015 that it was hoped it would be resolved within two weeks, but by the time of presentation of the claim form he had not received the outcome.

21. On 26 February 2015 the claimant's grievance concerning the interview process for Assistant Duty Manager was dismissed. The investigation was not carried out fairly or in good faith; the evidence of the respondent's employees was simply accepted.

22. On 31 March 2015 the claimant's appeal against the outcome of his grievance about false allegations of harassment was dismissed despite evidence to the contrary.

23. On 20 April 2015 the claimant's stage 2 appeal concerning the Duty Manager appointment was dismissed. There was no attempt to carry out the appeal fairly or in good faith.

24. On 3 July 2015 the claimant's stage 3 appeal against the Assistant Duty Manager appointment was dismissed. The appeal failed to carry out a proper investigation, failed to ensure that the claimant had the necessary documentation, and started from the premise that there was nothing to overturn the previous decisions. It was not carried out in a fair and impartial manner.

3. Time Limits

In so far as any of the matters for which the claimant seeks a remedy arise out of acts more than three months before the date of presentation of the complaint, allowing for the effect of early conciliation, can the claimant show that they formed part of conduct extending over a period which ended within that three month period?

Witness Evidence

7. The claimant gave evidence and called two other witnesses. Lisa Gumbhir was his former colleague who brought her own case against the respondent for race discrimination, leading to the Brain Tribunal, and Tomasz Gorkha was a colleague of the claimant who gave evidence about the circumstances of the investigation of the harassment allegations in March 2014.

8. The respondent called Aynsleigh Carmichael, a regional Human Resource ("HR") manager with involvement in some of the relevant grievances; David Harrison, a manager who dealt with the harassment allegations; and Richard Pardo-Gaffney (referred to in the papers as Richard Pardo) who dealt with the final stage of the claimant's grievance about the harassment allegation.

Ramage Application

9. The respondent had also intended to call Terry Brown, who dealt with the first stage of the grievance about the Duty Manager appointment. A witness statement was served for Mr Brown at the appropriate time. He left the respondent in March 2016 and was due to give evidence by Skype from the United Arab Emirates where he now works.

10. On 27 January 2017, however, the respondent applied for permission to call a different witness instead, Terry Ramage, who dealt with stage 3 of the same grievance. It supplied a witness statement from Mr Ramage and a witness statement from the HR Manager, Neil Pritchard, explaining that despite contact in December 2016, Mr Brown had not been contactable in January 2017.

11. At our hearing Miss Cowen applied for permission to call Mr Ramage instead of Mr Brown. There were five allegations of victimisation relating to the Deputy Manager appointment and the subsequent grievance, and Mr Brown would have been the only witness called by the respondent able to deal with such matters. She suggested the respondent would be significantly prejudiced if it were not able to call any evidence at all.

12. For the claimant Mr Broomhead resisted the application. He said that there were allegations made solely against Mr Ramage and yet the respondent had chosen not to seek to call him. The witness statement was served long after the time at which statements should have been served and he had not had a chance to take instructions yet from his client as they had been busy preparing for the hearing. Mr Broomhead did not identify any matters in Mr Ramage's witness statement with which he would not be able to deal given time to take instructions from the claimant before cross examination. However, he emphasised that the respondent should not be allowed to circumvent the case management timetable when the claimant's case had been struck out earlier on for similar non compliance.

13. Having heard submissions from the representatives the Tribunal deliberated and decided that the witness evidence for Mr Ramage would be admitted. We applied the overriding objective in rule 2. It is important to have a fair trial of the issues. Although the witness evidence for Mr Ramage was undoubtedly served at a very late stage, the respondent had explained the reason for that. It was a circumstance beyond its control. Although it would have been open to the respondent to have obtained a witness statement from Mr Ramage in any event, the respondent was to be commended for seeking to approach matters on a proportionate basis by calling a single live witness in relation to each of the two grievances rather than all six of the managers who dealt with each grievance at each of its three stages. Further, the comparison with the strike out of the claimant's case was inappropriate because the claimant had been the subject of an unless order due to previous non compliance.

14. Most importantly, however, we were satisfied that the claimant would not be unduly prejudiced if this witness evidence were to be admitted. There already appeared in the hearing bundle the notes of the claimant's meeting with Mr Ramage on 27 May 2015 and a reasoned outcome letter from Mr Ramage of 3 July 2015. The material which he sought to introduce in his witness statement was not new to the claimant. We were satisfied that there would be sufficient time for Mr Broomhead to take instructions from the claimant so that he was in a position to cross examine Mr Ramage when the time came for Mr Ramage to give evidence. In giving oral judgment on the application we confirmed to Mr Broomhead that more time would be allowed at that stage if requested[1].

15. It followed that the respondent would have been significantly prejudiced if unable to call Mr Ramage, whereas the claimant was not going to be significantly prejudiced if Mr Ramage gave evidence as he would be able to put his case effectively to Mr Ramage. The application was therefore granted.

16. We still had the benefit of Mr Brown's witness statement as a written document, but it was unsigned and we attached less weight to it than if he had attended the Tribunal hearing in person to answer questions.

Documentary Evidence

17. The parties had agreed a bundle of documents which ran to almost 400 pages. A number of documents were added to that bundle by agreement during the hearing, and allocated page numbers. Any reference in these reasons to a page number is a reference to that bundle unless otherwise indicated. In addition each party made an application during the hearing to introduce additional documents.

Brain Tribunal Notes of Evidence

18. At the outset of the hearing Mr Broomhead made an application for the Tribunal to provide copies of Employment Judge Brain's notes of evidence. This application had first been made on 19 December 2016 and refused by Regional Employment Judge Robertson. It had been renewed on 3 January 2017 but refused again by the Regional Employment Judge on 19 January 2017. An application for

[1] In fact Mr Broomhead did not request more time when Mr Ramage gave evidence.

reconsideration had been refused by the Regional Employment Judge on 25 January 2017.

19. Mr Broomhead renewed the application before our Tribunal at the outset of the hearing. He did not explain why the application had been left until December 2016, but explained that the claimant sought to prove what Leanne Woods said in the course of her evidence to the Brain Tribunal about the allegations made against the claimant. He suggested that her remarks could be relevant to the question of aggravated damages, and that it might also help the Tribunal determine Ms Woods' attitude towards the claimant and therefore be of relevance to some of the allegations of victimisation. Mr Broomhead confirmed that he had represented Lisa Gumbhir at the Brain Tribunal, but he had not produced any notes or sought to agree with the respondent what had actually been said by Leanne Woods in that hearing. Nor had the matter been addressed in the witness statement from Ms Gumbhir in these proceedings. There was no witness statement from Mr Broomhead himself. The full extent of the claimant's factual case on this point appeared in paragraph 67 of his witness statement.

20. Miss Cowen resisted the application. She relied on the delay in making it, and suggested that it was very unlikely that Employment Judge Brain's notes of evidence would show the nature of the question in cross examination to which the answer was given. She also suggested that it was irrelevant to any of the pleaded issues because any involvement of Ms Woods pre-dated the Brain Tribunal hearing. She confirmed, however, that she would not seek to challenge the factual account given by the claimant in his witness statement of what Ms Woods had said during the Brain Tribunal hearing.

21. Having heard submissions the Tribunal decided to refuse the application. The claimant put in his witness statement what he recalled Ms Woods having said. His account was not going to be challenged by the respondent. There was therefore no factual dispute between the parties on this point. The application was entirely unnecessary. Had it been necessary we would have had serious concerns about the lack of any attempt to evidence this remark by other means, the lateness of the application, the issue of principle about whether notes of evidence kept by an Employment Judge should be produced in such circumstances, and the fact the application had already been refused three times by the Regional Employment Judge.

Brain Tribunal Judgment and Reasons

22. In the course of cross examination of the claimant on the second day of the hearing Miss Cowen applied for permission to introduce into evidence the reserved Judgment and Reasons of the Brain Tribunal. She did not suggest that the Judgment contained any findings of fact on issues for this Tribunal to determine, but suggested instead it would be relevant to help the Tribunal assess if Ms Woods had been manipulating other managers to the detriment of the claimant. Mr Broomhead opposed the application, pointing out that if the respondent wanted to adduce evidence as to the mental processes of Ms Woods it should have sought to call her as a witness.

23. Having heard submissions the Tribunal rejected the application. It was unclear how findings made by a Tribunal in a different case could be of assistance on the

matters we had to determine. In so far as the findings of the Brain Tribunal might help us assess whether Ms Woods was likely to have sought to victimise the claimant, there were two significant concerns.

24. Firstly, the proper course of action to pursue that defence would have been to have called Ms Woods to give primary evidence about her mental processes. Secondly, the Brain Tribunal decision had presumably been available since early 2015 and yet the application to introduce it was only being made on the second day of the trial. We decided it would be contrary to the overriding objective to allow it to be introduced at such a late stage when the respondent had chosen not to call Ms Woods.

25. That application was renewed on the third day of the hearing when Miss Cowen was cross examining the claimant by putting to him that in the Brain Tribunal hearing his answers to questions had been that he did not think Ms Woods had treated him in a way that was to do with race. The application was on the basis that the Tribunal Judgment recorded the gist of the claimant's answers, and would therefore support the respondent's contention that Ms Woods had no reason to victimise him because of what he said in giving evidence in that hearing. Miss Cowen conceded in the course of her application that she was seeking to put the state of mind of Ms Woods in evidence and suggested that circumstances had changed since the same application had been rejected the previous day. Mr Broomhead objected to the application on the same basis as previously.

26. Having heard submissions the Tribunal decided to reject the application again. Our primary reason was that there were no allegations of victimisation made against Ms Woods personally after the Brain Tribunal hearing in October 2014. The claimant's case was about how she reacted to his earlier protected acts, not to what he said in that hearing. The point seemed therefore to be almost entirely irrelevant. In any event, we did not consider that anything had changed and even had the point been potentially relevant we would have rejected the application for the same reasons. If the respondent wanted to rely on evidence about Ms Woods' mental processes it should have called her as a witness, or at the very least introduced the Brain Tribunal decision at the proper time rather than once the final hearing was underway.

Relevant Legal Principles

Jurisdiction

27. The complaints of victimisation were brought under the Equality Act 2010. Section 39(4) prohibits victimisation of an employee by an employer subjecting him to a detriment.

Detriment

28. Something amounts to a detriment if the treatment is of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment – see paragraphs 31-37 of the speech of Lord Hope in **Shamoon v Chief Constable of the RUC [2013] ICR 337.**

Victimisation

29. Victimisation in this context has a specific legal meaning defined by section 27:

> **(1) A person (A) victimises another person (B) if A subjects B to a detriment because--**
>
> **(a) B does a protected act, or**
>
> **(b) A believes that B has done, or may do, a protected act.**
>
> **(2) Each of the following is a protected act--**
>
> **(a) bringing proceedings under this Act;**
>
> **(b) giving evidence or information in connection with proceedings under this Act;**
>
> **(c) doing any other thing for the purposes of or in connection with this Act;**
>
> **(d) making an allegation (whether or not express) that A or another person has contravened this Act.**
>
> **(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.**

30. This provision does not require any form of comparison. If it is shown that a protected act has taken place and the claimant has been subjected to a detriment, it is essentially a question of the "reason why". The Employment Appeal Tribunal and appellate courts have emphasised in a number of cases, including **Amnesty International v Ahmed [2009] IRLR 884**, that answering that question involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator to see whether the protected act had any material influence on the detrimental treatment.

31. The mental processes at issue are those of the decision maker alone. There is no room in Equality Act cases for the "composite approach" of imputing to the decision maker a motivation in the mind of another person, no matter how influential that person might have been in the formation of the material on which the decision is based: see the decision of the Court of Appeal in **CLFIS (UK) Limited v Reynolds [2015] EWCA Civ 439.**

Burden of Proof

32. Section 136 so far as material provides as follows:

> **"(2) If there are facts from which the Court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.**
>
> **(3) But subsection (2) does not apply if A shows that A did not contravene the provision."**

The section goes on to make it clear that a reference to the Court includes an Employment Tribunal.

33. Consequently it is for a claimant to establish facts from which the Tribunal can reasonable conclude that there has been a contravention of the Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

34. In **Hewage v Grampian Health Board [2012] IRLR 870** the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provision should apply. That guidance appears in **Igen Limited v Wong [2005] ICR 931** and was supplemented in **Madarassy v Nomura International PLC [2007] ICR 867**. Although the concept of the shifting burden of proof involves a two stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question. However, if in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

Time limits

35. The time limit for Equality Act claims appears in section 123 as follows:

> **"(1) Proceedings on a complaint within section 120 may not be brought after the end of –**
>
> **(a) the period of three months starting with the date of the act to which the complaint relates, or**
>
> **(b) such other period as the Employment Tribunal thinks just and equitable…**
>
> **(2) …**
>
> **(3) For the purposes of this section –**
>
> **(a) conduct extending over a period is to be treated as done at the end of the period;**
>
> **(b) failure to do something is to be treated as occurring when the person in question decided on it".**

Relevant Findings of Fact

36. This section of our reasons contains a summary of the facts required to put our decision into context. Any disputes of primary facts central to the determination of the issues will be discussed in the discussion and conclusions section unless otherwise indicated.

The Respondent

37. The respondent is a major employer with over 4,500 employees which operates at a number of different airports across the UK. It provides passenger and baggage services to a number of client airlines including easyJet. One of its bases is at Manchester Airport.

The Claimant and his Contract

38. The claimant was first employed on 12 March 2007. He was appointed to the role of Passenger Services Agent ("PSA"). His signed letter of appointment appeared at pages 135-136 and the statement of his terms of employment at pages 137-143. Those terms described his place of work as Manchester Airport, rather than any specific terminal, but he was based at Terminal 1. The terms also referred to a grievance procedure and disciplinary procedure. The grievance procedure appeared at pages 396-397. Once a formal grievance was raised and an outcome given, there were two further appeal stages. The procedure said that at each stage the grievance would be fully investigated. Responses should "where possible" be given within seven working days of the meeting at each stage.

39. The disciplinary procedure appeared at pages 398-402. Clause 3.2.4 reserved the right to suspend an employee from work on full basic pay pending further investigations. It made provision for an investigation to decide whether there was a case to answer before any disciplinary interview. The examples of gross misconduct on page 401 included "serious bullying or harassment" and "any act of discrimination".

2007-2012

40. The claimant's team was managed by Leanne Woods, the Service Delivery Manager. She was the lead contact with the primary client, easyJet. The team's role was to deal with easyJet passengers as they progressed through arrival, check-in and baggage drop through to boarding.

41. There were some difficulties between the claimant and Ms Woods in his first year or so. In June 2007 he was accused of manipulating the excess baggage charge system for personal gain. Shortly after this they had an argument about a different matter. When interviewed on 9 April 2013 (page 145b) the claimant said that the two of them had not got on at the time. He told us they had not spoken for about six months, but the relationship had been repaired since then. She wrote to him in complimentary terms on 28 May 2009 (page 144) and 13 February 2012 (page 145).

Lisa Gumbhir's Grievance 2013

42. During 2013 Lisa Gumbhir was working as a Passenger Service Duty Manager. She experienced difficulties in her relationship with Ms Woods. She was subjected to a disciplinary investigation and then brought a grievance against Ms Woods in March 2013 in which she alleged that Ms Woods had treated her in a manner which amounted to race discrimination.

43. Ms Gumbhir was not a member of a union, and as a colleague the claimant accompanied her at some of the disciplinary meetings and at her grievance meetings, culminating in a grievance appeal meeting on 2 August 2013 (pages 146a-146k). The respondent accepted that his accompaniment of Ms Gumbhir at the grievance meetings between March and August 2013 amounted to a protected act.

44. The claimant was also interviewed himself by management on 9 April 2013. The notes appeared at pages 145a-145b. The claimant alleged that what he said

during this meeting also amounted to a protected act. This was disputed and we will return to it in our conclusions.

45. Having accompanied Ms Gumbhir at her grievance appeal meeting on 2 August 2013, the claimant emailed the manager who dealt with it, John Henderson, the following day. His email appeared at pages 147 and 149. He said:

> **"Following the meeting yesterday in regards to Lisa Gumbhir's case I am concerned and fear for my position at Menzies Aviation. I feel as though with me accompanying a work colleague into these meeting[s] will be seen as causing concern at Menzies Manchester. Especially while I have spoken out with some serious issues concerning the management. I hope that whatever was discussed at the meeting remains confidential between us that were present at the meeting. I hope I am not looked upon to be assisting my manager and being a threat towards certain individuals at Manchester. Most of all I fear that I do not want to be next in the position Lisa is presently in."**

46. Mr Henderson was on leave and the reply came from the Regional HR Manager, Ms Fitzsimons. She said the points were noted but until there had been an investigation into the allegations made they could not comment on the validity of his concerns. The claimant thought this meant that his concerns would be investigated, but it appeared that the email referred to an investigation into the allegations made by Ms Gumbhir. In any event no-one came back to the claimant to give him the assurance he sought.

Sickness Absence Warning July 2013 and Appeal

47. At around this time the claimant was himself under scrutiny for sickness absence. He received a written warning on 26 July 2013 from Ms Woods (page 146). He appealed that written warning but his appeal was rejected by another manager on 27 September 2013.

48. The claimant pursued a grievance about this on 28 October 2013 (page 148), basing his grievance on the fact that records from the last five years had been looked at when it should have been a rolling 12 month period under consideration. He mentioned in his grievance that he thought that the appeal manager had taken advice from John Hough of HR who had been in the original meeting with Ms Woods. The claimant's grievance was rejected in January 2014 by Mr Elliott (pages 157-158) after a further meeting.

Harassment allegations March-April 2014

49. Before addressing the chronology of events in this period it is important to say that the notes of the investigation into harassment allegations made against the claimant were not produced to our hearing by the respondent. The HR support for that investigation came from Nicola Still, who left the respondent shortly after it was completed. By the time Mr Byrne came to deal with the claimant's grievance in May 2014 the notes could not be found. That remained the position almost 12 months later when at stage three of the grievance Mr Pardo interviewed the relevant individuals. However, he caused a further search of the office to be made and the notes were discovered prior to his decision of 31 March 2015. After he made his decision he returned the notes to the HR representative assisting him, Ms Butler, but the notes went missing again. Accordingly it is not possible to be precise about what was said and by whom in the course of this one month period.

50. According to Mr Harrison, Ms Bailey was made aware by another manager, Ms Lomas, that a female employee ("KK") was upset. She told Leanne Woods about it and the two of them informed Mr Harrison. He spoke to KK alone, and she told him that the claimant had picked her up to give her a lift home, driven to the staff car park, locked the car doors and grabbed her hand and placed it on his crotch. She also alleged that he had been constantly texting and telephoning her even though she had asked him to stop.

51. Mr Harrison rang Detective Constable Hart, a police officer from the airport police with whom he had previously dealt, and was put through to a Detective Sergeant. He made an appointment for KK with the Sergeant, and he and Ms Woods escorted her to the police station at the airport. Mr Harrison said he did not go into the interview but Ms Woods accompanied KK.

52. The claimant disputed that the police had been involved at all. He had been informed that neither the Criminal Records Office nor Greater Manchester Police had any record when he made an enquiry in June 2016 (pages 404-405). We rejected that and accepted Mr Harrison's evidence. He agreed that the police might not have had any contact with the claimant. He produced an email from Greater Manchester Police in the week of our hearing (page 406) which confirmed that if a crime report went no further there would not necessarily be any entry on the police national computer. That explained, we concluded, why there was no record of that when the claimant made formal enquiries in June 2016.

Suspension 27 March 2014

53. The immediate consequence of the allegations was that Mr Harrison suspended the claimant at a meeting on 27 March 2014. The notes appeared at pages 159-160. The claimant was told it was a neutral act and he would be suspended on full pay. According to the note he said that he "knew this was coming".

54. The terms of suspension were confirmed in a letter the same day at page 161. It said that there were:

> **"Serious allegations against you including that you have abused your position of a supervisory role to harass and intimidate other members of staff."**

Harrison Investigation

55. Mr Harrison told us that his investigation consisted of interviews of almost fifty staff. Female staff were interviewed by Ms Woods and Ms Bailey, whereas he interviewed the small number of male staff. Another female employee ("BB") said she had received explicit messages from the claimant too and that he had tried to kiss her.

56. By a letter of 31 March the claimant was invited to an interview. It took place on 7 April with Mr Harrison. No notes of this meeting were produced. The claimant was told that it was a police matter. He was understandably very concerned at this. He told Mr Harrison that he had evidence on his mobile phone which would show that the allegations were false, but he decided not to show any of it to Mr Harrison because he wanted to keep it for the police.

57. The following day the claimant delivered a letter to Mr Harrison which appeared at pages 164-165. They met in the smoking shelter at work. The claimant handed Mr Harrison the letter and showed him one of the text messages. The letter asked Mr Harrison to interview a number of staff to shed some light on how BB had behaved towards him. He said she was always seen flirting with him. He said there was a mobile phone chat history going over two months with conversations every single day. He asserted this showed he could not have been harassing BB. He made the same point about a history of messages with KK. He suggested that she had kissed him on his cheek on another occasion, and that she was the first one to make the advance towards him.

No Case to Answer 29 April 2014

58. At the end of the investigation Mr Harrison reached the conclusion there was no case to answer for the claimant because neither he nor KK was willing to provide the mobile phone messages. KK had said that the claimant told her to delete her messages from her phone, but the police had said they could retrieve those messages if she provided her phone to them. After speaking to her mother she had decided not to pursue the matter any further with the police. Mr Harrison learned this when he rang the police to say that he would be taking no further action himself, and the police said they had reached the same conclusion.

59. Mr Harrison called the claimant to a meeting on 29 April 2014. Ms Woods was present too. The claimant was informed that there was no case to answer for him and that his suspension was lifted. No note of this meeting was produced but the claimant sent an email on 3 May to his union representative (pages 167-168) in which he said he was not happy that no action was being taken against the complainants. His email said:

> **"I have been told that the girls won't face any action and that I should return to normal duties working with these girls as though nothing has ever happened.**
>
> **Menzies have told me I will be working on another product to move to Terminal 3. I asked why I am getting penalised and being moved to a different airline which I have no experience of. Their reply being that I am not getting penalised, they are moving me because that's where I am now required."**

60. Although he did not mention it in the email, the claimant said in his witness evidence that when he said to Ms Woods that the move to Terminal 3 would make it look as though he was guilty, she said to him:

> **"Now you know what it's like to be called a bully and a racist."**

We did not hear evidence from Ms Woods but we noted that when interviewed by Mr Pardo she denied having used those words but accepted she had said something which linked to the Lisa Gumbhir case. Mr Harrison in oral evidence said that Ms Woods had said to the claimant:

> **"Faheen, I know how you feel."**

We found as a fact that the claimant's evidence as to what was said was correct, not Mr Harrison's. He had much more reason to recall the comment than Mr Harrison

61. The claimant also raised in his email to his union representative a concern about the position of Joanne Bailey. Ms Woods had been promoted to Passenger Services Manager and Ms Bailey was now the Service Delivery Manager for the easyJet contract. She was also the partner of Mr Harrison. The claimant had been told by a colleague that Ms Bailey had conducted the investigation even though she had also made a statement that the claimant had told her that KK was "mad for sex". The claimant later said this was a false statement and he had not said any such thing.

62. His email to his union representative ended by saying that he thought Leanne Woods had conspired to do all this against him.

63. In these proceedings the claimant alleged that he was victimised in the suspension and investigation (allegation 1), the investigation meeting on 7 April 2014 (allegation 2) and in the decision to transfer him to Terminal 3 (allegation 3). We will return to these matters in our conclusions.

Claimant's grievance about harassment investigation

64. Following the lifting of his suspension the claimant did not return to work but remained on sick leave. He was certified sick because of "work related stress" by his General Practitioner in the months that followed. He had not returned to work at the time of our hearing.

65. He lodged his grievance about the investigation on 8 May at page 169a. he said:

> **"I believe the whole situation has not been handled with integrity, and this is an act of victimisation towards myself, therefore I would like to submit a grievance against the way my case of harassment and intimidating staff has been dealt with against Joanne Bailey, Service Delivery Manager, for fabricating a statement, [KK and BB] for making false allegations of harassment and intimidation towards myself. I also feel the investigation was not conducted in good faith by Leanne Woods and Joanne Bailey and therefore like to submit this letter as my request in raising a grievance against the persons stated in this letter."**

Harassment Grievance Stage One - Byrne

66. The grievance was acknowledged the same day and stage one was handled by the Operations Manager, Mr Byrne. He held a grievance meeting with the claimant on 14 May. Mrs Carmichael was present in her capacity as HR Manager. The notes appeared at pages 170a and 170b. There was a discussion of the role of Joanne Bailey, the fact that no action was to be taken against the complainants, and that Leanne Woods should not have been involved because she was involved in Lisa Gumbhir's case. The claimant felt her comment on 29 April about how it feels to be called a bully and a racist showed that the Gumbhir case had been on her mind. The move to Terminal 3 was also discussed.

67. There was a further meeting with Mr Byrne on 30 May. The notes appeared at pages 171-174. Mr Byrne began by saying that no-one in the investigation had been proven to be at fault because no-one had agreed to provide their mobile phone history and messages. He said that Ms Bailey had not been chairing the investigation but had been the workplace representative for KK. The move to Terminal 3 was for operational needs to cover sickness on a temporary basis, but

would not now happen because the relevant member of staff was coming back to work. The words used by Ms Woods had been intended to comfort and support the claimant. The sickness period would be removed from his file.

68. There was a final meeting to confirm the formal outcome of the grievance on 18 June 2014. The notes appeared at pages 177-178. The claimant was told that the seven days to appeal would be from when he received the letter.

69. The grievance outcome letter appeared in our bundle at pages 180-182. It was dated 10 July 2014. The claimant maintained that this was a fabrication and it had really been issued in September but backdated. We will return to this in our conclusions.

70. Having not had any written outcome of his grievance the claimant contacted ACAS to initiate early conciliation on 4 August 2014. He was also getting advice from Mr Broomhead, who was representing Ms Gumbhir in her Employment Tribunal proceedings. Witness statements in that case were exchanged at the end of August 2014, and the hearing began on 29 September 2014.

Correspondence about Appeal

71. Mrs Carmichael had not heard anything from the claimant about an appeal so on 13 August she emailed him to check he got the outcome (page 193). He responded on 15 August to say he had not received it. He said he had chased John Byrne up by email in late June but had still not heard. He emphasised the impact on him that the delay was having. The reply of 16 August from Mrs Carmichael at page 192 included the following:

> **"I would advise you to check with your local Post Office and perhaps check if there have been any issues with your post as it is neither the fault of you, or Menzies Aviation, that you did not receive the outcome letter.**
>
> **I have been liaising with Chris Goodstadt of Unite (your representative in the meetings we had) and he also has had no communication from you.**
>
> **I will issue another, recorded delivery and by email if that suits you."**

72. The claimant responded on 18 August at page 191. He said the outcome letter and accompanying documents should have been sent by recorded delivery and there had been no issues with the Post Office. He asked for all the documents to be reissued by email so he could appeal. That was done on 4 September by Mrs Carmichael (pages 189-190). She attached the notes from the grievance hearings, but said that the notes from the harassment investigation would not be provided because there were no disciplinary proceedings and therefore no requirement to send them. The claimant was given seven days to confirm the grounds of his appeal. She said she was going on leave for three weeks so he should correspond with John Byrne or Mr Harkin.

73. This exchange of emails formed the basis of allegations 6, 7, 8 and 9, and we will return to them in our conclusions.

74. The outcome letter received by the claimant on 4 September 2014 confirmed that there would be no apology from the people involved in the process, accepted

that Joanne Bailey should not have been present when another staff member was called for interview during the investigation, for which Mrs Carmichael apologised, confirmed the position regarding Terminal 3 and the removal of sickness absence from the claimant's record, and confirmed that no disciplinary action would be taken against the complainants. It ended with encouraging the claimant to speak to a manager if he was concerned about anything.

Harassment Grievance Stage Two - Rabet

75. The claimant appealed stage one of the grievance by email at pages 188-189 on 10 September 2014. He said the outcome had not been transparent and it had not been conducted in good faith, and was perverse. The information he had submitted had not been taken into consideration. He repeated his request for the harassment investigation notes.

76. His email of appeal was addressed to Mrs Carmichael and Mr Harkin. Mrs Carmichael did not respond because she was away on honeymoon. Neither did Mr Harkin. The claimant had to chase up the appeal on 18 September by email at page 188. Eventually by a letter of 3 October 2014 he was invited to a grievance appeal meeting with the Station Manager for Gatwick, Ruth Rabet.

77. There were two other matters affecting the claimant around this time. The first was the redundancy announcement and his “at risk” notification in mid September (see below). The second was that he gave evidence on 1 October 2014 to the Brain Tribunal hearing Lisa Gumbhir’s case against the respondent and Leanne Woods. Ms Woods gave evidence the following day.

78. The date for the meeting with Ms Rabet was changed to 15 October 2014. The notes appeared at pages 212-216. The points raised by the claimant in his grievance were discussed. The claimant was concerned that in her evidence to the Brain Tribunal on 2 October 2014 Ms Woods said he had been suspended for sexual harassment. That phrase had not been used when he was suspended – it was “harassment and intimidation”. He suggested that Ms Woods had lied to the Brain Tribunal.

79. Ms Rabet issued her stage two decision on 21 October at pages 231-233. She found that the harassment investigations had been carried out thoroughly but could not progress due to the lack of tangible evidence. Ms Woods had been involved in the allegations because she was the Passenger Services Manager. She also dealt with a concern raised by the claimant that KK and BB had been promoted. She confirmed that they had been promoted to a host role following due process and an application by them. It was easyJet who made the decision not the respondent. Ms Rabet declined to re-open the harassment investigation but suggested a facilitation meeting with Ms Woods to try and ensure a smooth transition for the claimant back to the workplace.

Harassment Grievance Stage Three - Pardo

80. The claimant appealed this decision on 29 October (page 249). He said the stage two outcome was not fair and the investigation had not been conducted thoroughly, and information he submitted had not been listened to. He alleged that he had been victimised by his grievance not being conducted in good faith.

81. The appeal was heard by Mr Pardo. He interviewed the claimant on 3 December at pages 257-263. There was then a delay caused in part by his other commitments. At the end of January 2015 Mr Pardo informed the claimant that he hoped to conclude his investigation within two weeks (page 296).

82. In fact Mr Pardo did not reach a conclusion until the end of March 2015. On 16 March 2015 he interviewed Ms Bailey, Mr Harrison, KK and spoke to Ms Rabet. The following day he interviewed Mr and Mrs Gorkha (both PSAs), BB, Mr Byrne, Ms Woods and Ms McLaughlin of easyJet. He also interviewed Ms Nelson, a PSA who the claimant had been told had heard KK say her words had been twisted by management. Ms Nelson said (page 236) that she had heard KK say her words had been twisted by the claimant, and when KK was interviewed by Mr Pardo (page 314) she denied having said that management had twisted her words.

83. Mr Pardo told our hearing that it was within his remit to require Mr Harrison to pursue disciplinary proceedings against the claimant or against KK and BB had he thought it appropriate. However, his investigations fell short of being a re-investigation of the harassment allegations themselves. He was asking questions about the way the investigation had been carried out, not questions about what had happened in the car or what messages had passed between the claimant and the complainants.

84. After his interviews Mr Pardo caused a further search of the office to be carried out and the harassment investigation file was discovered. He told our hearing that it contained seven or eight handwritten witness statements. He read three of them. His decision was set out in a letter of 31 March 2015 at pages 370-372. He confirmed that he had reviewed the investigation documentation and thought there had been a thorough investigation and that the suspension was appropriate. He said it was normal for Ms Woods to be involved given her position as a manager in the department. He upheld Ms Rabet's findings about the promotions of the complainants and the deployment in Terminal 3. He agreed with Ms Rabet that Ms Woods had intended to make a supportive comment to the claimant on 29 April 2014. The grievance was rejected and there was no right of appeal.

85. Allegation 22 concerned this decision and we will return to it in our conclusions.

<u>Redundancy Exercise</u>

86. On 9 September 2014 the respondent announced possible redundancies at Manchester Airport (page 201). There were seven lead agent posts affected but the view was that no one would be made compulsorily redundant. There were six assistant duty manager posts available and two other posts as senior agents with different airlines. Applications for voluntary redundancy were invited. The announcement said:

> **"Selection criteria for those within this specific pool will be by way of formal interview. Interviews will be made up of competency based questions, based on the requirements of the new roles available."**

87. As the line manager of the lead agent posts at risk Ms Woods wrote to the claimant to advise him that he was at risk of redundancy in a letter of 17 September

2014 at pages 202-203. It referred to the consultation process and invited him to a consultation meeting on 26 September 2014.

88. Allegation 14 concerned the invitation to a meeting with Ms Woods and we will return to it in our conclusions.

89. The claimant objected to having to see Ms Woods by email of 24 September 2014 at page 187. He pointed out he had submitted a grievance against her. Mr Harrison responded later the same day to confirm that Laura Kelly, the Service Delivery Manager, would conduct the consultation meeting on a different date. That meeting occurred on 9 October and the notes appeared at pages 207-208. The claimant expressed a preference for the assistant duty manager role as he had acted up in that role previously whilst Lisa Gumbhir had been on sick leave.

90. The interview of the claimant for that role took place on 28 October 2014. He was interviewed by Ms Kelly and Ms Butler. The interview notes in respect of the claimant appeared at pages 236-239. They were preceded by the handwritten note of what answers the interviewers were looking for. The first question was about safety and security, and amongst the points the candidates were expected to cover were "MORSE" and "SLS boards".

91. The benchmark for passing the interview was twenty marks but the claimant only scored sixteen. The interviewers agreed that he should have three marks for four questions but two for the others. One of the questions where he only scored two marks was in relation to safety and security. The notes kept by Ms Kelly did not record any reference to SLS boards or to MORSE. The note recorded:

> **"H + safety in book avail to refer back to."**

92. The note kept by Ms Butler of the answer given by the claimant also contained no reference to MORSE or the SLS board. The note said:

> **"Handbook T1 anything not aware of would refer back to this."**

93. At a second redundancy consultation meeting on 8 December the claimant was informed by Ms Kelly and Ms Butler that he had not been successful in securing the assistant duty manager role. The claimant was offered feedback (page 267). He asked for a copy of his interview notes and was told that they could go through them now. A letter of the same date at page 267a-267b recorded that the claimant had said feedback was not necessary. A copy of the interview notes was attached to the letter. There was to be a further consultation meeting on 15 December, but that was cancelled by the claimant.

Assistant Duty Manager Grievance

94. Instead he lodged a grievance (page 268) about the decision on the assistant duty manager application. His grievance of 12 December 2014 at page 268 read as follows:

> **"I received my interview documents regarding my interview dated 28 October 2014. From gaining legal advice and advice from the Unite union I believe the decision was biased due to an ongoing case involving myself with the company. Therefore I would like this email to be considered as an appeal and would like to take this opportunity to**

> **submit a grievance against the decision Laura Kelly and Mel Butler have taken regarding the acting duty manager's job."**

95. The claimant later made it clear that he considered he had the experience to be an assistant duty manager because he had acted up in the past with no adverse comments, and he also later relied on the fact that BB had been seconded into such a role with effect from 1 February 2015 when she had no prior experience of it. His allegation that he was refused the role because of victimisation formed allegation 16 and we will return to it in our conclusions.

Redeployment Correspondence January 2015

96. On 5 January 2015 (pages 274-275) Mrs Carmichael wrote to the claimant offering to redeploy him into a role of Senior Passenger Service Agent. His salary would be red circled until the rate for job caught up. A 28 day trial was offered but the letter said that:

> **"We believe this to be a suitable alternative to redundancy, meaning that should you decline this offer of alternative employment you will not be entitled to a statutory redundancy payment."**

97. The claimant accepted the role and signed the letter on 9 January 2015. He maintained that the threat to withdraw his redundancy payment was a further act of victimisation (allegation 17) and we will return to it in our conclusions.

Assistant Duty Manager Grievance Stage One - Brown

98. On 10 January 2015 the claimant supplied grounds for his grievance (pages 270-271). He made clear that because he had given evidence in the Employment Tribunal in another case he felt it had had a detrimental effect on the decision making of Ms Kelly and Ms Butler. Mrs Carmichael asked for more information but the claimant said he thought he had provided enough (page 269).

99. Mrs Carmichael informed the claimant by email of 12 January 2015 that the Regional HR Manager for the South, John Hough, would be chairing the grievance meeting. The claimant responded immediately objecting to this. He said John Hough had been present at the Brain Tribunal hearing, and that he had been very disappointed in John Hough's performance at the meetings he had attended. He wanted a different person to chair his grievance. Three days later Mrs Carmichael confirmed (15 January page 277) that a different HR Manager, Diane Allan, would assist Terry Brown, the VP North, in dealing with the grievance.

100. The claimant alleged that the suggestion that Mr Hough hear his grievance was a further act of victimisation (allegation 18) and we will return to it in our conclusions.

101. In the meantime the claimant had received a further email from Mel Butler of 14 January at page 278. It was copied to Richard Pardo and was a letter about his grievance appeal. Ms Butler had taken the notes at the stage three hearing on 3 December. We did not see the letter but inferred that it was an update. The claimant alleged that this contact from Ms Butler amounted to victimisation (allegation 19) and we will return to it in our conclusions.

102. The stage one meeting with Mr Brown took place on 27 January. Notes taken by an admin officer (not Ms Allan) appeared at pages 282-286. The claimant made clear that Mel Butler should not have been involved in the interview/consultation process because she had taken notes in his first grievance (a reference to the stage three meeting with Mr Pardo on 3 December). He also made clear he did not agree with the scoring and said that the notes showed that he had referred to "the wall", meaning the SLS board. In response Mr Brown suggested that the interviewers had been looking for a more comprehensive answer including reference to MORSE. He did not think he should have only scored two for the other question on which he was allocated that score. The claimant pointed out that BB had been seconded to an Assistant Duty Manager position which he should have had. Mr Brown ended the meeting by saying:

> **"Ok, I will investigate the claims made and get back to you, hopefully within a week or two."**

103. The allegation of delay to the outcome after this meeting formed allegation 20 and we will return to it in our conclusions. Mr Brown interviewed Ms Butler the same day (pages 287-289), and the following day he interviewed Ms Woods and Ms Kelly (pages 290-295). Ms Butler said that the claimant had not given a sufficiently comprehensive answer on health and safety but that he had not been the lowest scoring candidate. Ms Kelly confirmed she had been aware of the Tribunal case as that was the reason Ms Woods could not do the interview, but she said the claimant had not mentioned the SLS in his answer about safety and security. She said that in her note she had written "avail" rather than "wall". He definitely had not mentioned MORSE which was a key part of the scoring.

104. Ms Woods was interviewed about why BB had been seconded. She said there had been really good feedback when she worked as a host, particularly from easyJet. She said that BB had done two particular courses which the claimant had not done, and added that:

> **"Attendance issues may well have hindered his selection as we have to take that into account when selecting the best candidate for the role."**

105. She denied having had any input into the interviews conducted by Ms Kelly and Ms Butler, saying that she kept well out of it.

106. On 17 February Mr Brown updated the claimant by a letter at page 298 in which he said that he would write to the claimant within a week to detail his findings. His outcome letter was in fact just over a week later, on 26 February. It appeared at pages 299-302. He confirmed that Ms Butler had not previously been involved in any grievance meetings at the time of the interview on 28 October 2014. She was brought in at short notice and was new to the company. He was satisfied that both interviewers had acted objectively, and he explained why the claimant had only received the scores he had on the two lower scoring questions. He gave a detailed explanation of another question too. He concluded that there had been no outside influence on the interview panel, and that the decision as to which individuals should later step up into the Assistant Duty Manager role was based upon business requirements, feedback from the client airlines and the skills/experience of the individuals concerned. The grievance was therefore rejected.

107. The decision of Mr Brown to reject the grievance was said by the claimant to be a further act of victimisation (allegation 21) and we will return to it in our conclusions.

Assistant Duty Manager Grievance Stage Two - Hamilton

108. The claimant appealed the grievance, although we did not see his appeal letter or email. Ms Allan asked him to provide grounds for his appeal on 10 March 2015, but the claimant's reply of 12 March (page 304) simply asserted that his complaints had not been dealt with correctly or in good faith because he had assisted Lisa Gumbhir in her race discrimination Tribunal case.

109. The grievance meeting was arranged with Mr Hamilton for 25 March. The notes appeared at pages 353-357. Mr Hamilton was not there. Ms Allan explained that there had been confusion over the meeting dates and his travel had been booked for the following day. The notes recorded the claimant saying he was happy to proceed on the basis that Ms Allan would listen to his appeal and then pass the matter to Mr Hamilton to investigate. In the discussion the claimant made clear that he had mentioned the SLS board in his answer but had not been given proper marks for that question, and he referred to the secondment of BB to the Assistant Duty Manager role. He also suggested that Mel Butler had been trying "to push redundancy" on him. He suggested that by the time he got the decision he had been unsuccessful she had been in the grievance meeting with Richard Pardo on 3 December. He made a reference to discussions which appeared to have been "without prejudice". Ms Allan was confused by the fact the claimant was raising matters which were not part of his grievance about not getting the Assistant Duty Manager role. He raised his concern about the delay by Mr Brown between the meeting on 27 January and the outcome letter of 26 February.

110. Although we saw no documentation, Mr Ramage told us that Mr Hamilton had spoken to Mr Brown and the management team. Mr Hamilton's decision was contained in a letter of 20 April at pages 374-376. It said he had reviewed the interview documentation as well as interviewed a number of individuals. He found no evidence that Ms Kelly and Ms Butler were biased in the interviews; they had been highly professional and objective. He reached the same conclusions as Mr Brown in relation to the scoring of the claimant's application. The appeal was rejected. The minutes of the meeting on 25 March were attached.

111. The decision to reject the appeal was said by the claimant to be a further act of victimisation by Mr Hamilton (allegation 23) and we will return to it in our conclusions.

Assistant Duty Manager Grievance Stage Three - Ramage

112. The claimant appealed Mr Hamilton's decision by email of 20 April at page 373. He did not give any grounds. His appeal simply said:

> **"I would like to appeal the grievance as I feel the outcome of the grievance is not fair, nor has the investigation been conducted thoroughly, in good faith and [it] was not transparent. I feel as though my concerns have not been adequately addressed."**

113. By a letter of 22 May the claimant was invited to a stage three appeal meeting before Mr Ramage (page 377). That meeting took place on 27 May 2015. The notes appeared at pages 378-383. The claimant was accompanied by Lisa Gumbhir.

114. Mr Ramage asked the claimant to outline the background in terms of his service with the respondent, and the meeting turned to the specific points of the grievance. There was a discussion about whether the SLS board was mentioned at the interview, and the claimant said that Mr Hamilton had not answered certain questions he had put to Ms Allan. He said that Ms Kelly and Ms Butler had been dishonest, and that the outcome had been influenced by his first grievance against Ms Woods following the harassment complaint. The claimant made clear (page 381) that he regarded John Hough as having been advising Mr Brown and Mr Harrison, and said that John Hough was aware that everything that had gone on with Lisa Gumbhir and his own case. He said he had spoken out against Leanne Woods and David Harrison and he did not think they were going to let him get the Duty Manager job.

115. After the meeting Mr Ramage spoke to Mr Brown, Mr Hamilton and others. No notes were kept or produced to us. His notes were destroyed when he left the respondent in 2016.

116. By a letter of 24 June 2015 Mr Ramage called the claimant to a meeting on 30 June to be given the outcome. The notes of that meeting appeared at pages 386-388.

117. Mr Ramage confirmed there had been no formal meetings but he had spoken to people in person or over the telephone. He said that Mr Hamilton had not taken minutes of his investigation interviews. It was denied that John Hough had had any influence over the earlier decision. He concluded the claimant had provided nothing new to justify a different conclusion from that taken at stage one and stage two. The appeal was dismissed.

118. There was a brief adjournment whilst the claimant was given and allowed to read the minutes from the meeting on 27 May. After the adjournment Mr Ramage confirmed that he had not seen any evidence that the Lisa Gumbhir Employment Tribunal case had been taken into consideration by the managers involved.

119. His conclusions were recorded in a letter of 3 July 2015 at pages 391-392.

120. The decision to dismiss his appeal at stage three constituted allegation 24 and we will return to it in our conclusions.

Submissions

121. At the conclusion of the evidence each representative made a submission to the Tribunal.

Respondent's Submission

122. On behalf of the respondent Ms Cowen had helpfully prepared a written skeleton argument which ran to 13 pages. The Tribunal read it before we heard oral submissions. As the details had been recorded in writing it is not necessary to repeat

them here. Ms Cowen supplemented her submissions by going through some of the allegations and summarising the respondent's position. In broad terms the position of the respondent was that a number of the allegations were factually misconceived, particularly those in which the detriment was said to be an act by the claimant himself, that for some of them the claimant had not proven the detriment which he asserted from the treatment by the respondent (particularly those where there was no evidence of any medical consequence) but that in any event there was no evidence provided by the claimant to show that any of his protected acts had any material influence on the treatment he received. She invited us to conclude that the reasons for the treatment at each stage, even if detrimental, were readily apparent and unconnected to any protected acts. She drew attention to how she maintained the claimant had behaved, pointing out that he had been in receipt of legal advice since June 2014 but had chosen to pursue every possible challenge open to him with a view to litigation thereafter. She invited us to dismiss all the complaints.

Claimant's Submission

123. After dealing briefly with the question of time limits, Mr Broomhead began his submission by emphasising the role of Leanne Woods. He said that she was highly influential in the whole process and was regarded as a tough manager. Her comment on 29 April to the claimant had not been empathetic but just the opposite. He described her as the "spider at the centre of the web".

124. Mr Broomhead then addressed the individual allegations or groups of allegations one by one, summarising the claimant's case and drawing attention to the evidence which he said supported the contention that there had been victimisation. He emphasised how a move to Terminal 3 would have looked in the light of the harassment allegations wrongly brought against the claimant and suggested the claimant should not be criticised for exercising his right to appeal at each stage of the process. He invited us to conclude that the failures to give the claimant the notes from the harassment investigation and from subsequent grievance stages was inexplicable for a company of the size and resources of the respondent and was supportive of the victimisation complaint. He then addressed the redundancy exercise and the allegations which arose out of it and out of the grievance which ensued. He submitted that there had been no intention at each stage of the grievance to uphold what the claimant was saying, and the absence of any notes of the investigations undertaken at each stage supported that. He invited us to conclude that the multiplicity of errors supported the claimant's case that managers had closed ranks and had worked together to ensure that nothing would be decided in his favour once he had done his protected acts.

125. At the conclusion of the oral submissions the Tribunal reserved its judgment.

Discussion and Conclusions – Protected Acts

126. The first matter the Tribunal had to determine was the dispute about the occasions on which the claimant had done a protected act. The claimant relied on three matters in his claim form.

127. The first matter was when he accompanied Lisa Gumbhir to her grievance meetings following her grievance about race discrimination. The respondent accepted that the appeal meeting on 2 August 2013 was a protected act in this

respect. We also found that he had accompanied her at one or more meetings at an earlier stage of her grievance. These were all protected acts even though no precise dates were provided to us.

128. The second matter on which the claimant relied was when he was interviewed about Ms Gumbhir's grievance on 9 April 2013. The notes appeared at pages 145A and B. He was interviewed by Mr Harkin. Mr Harkin made clear that it was a grievance about race discrimination. On a number of occasions the claimant disavowed any allegation of racism about Leanne Woods in response to specific questions from Mr Harkin. He said:

> **"Wouldn't class as racism."**

129. The following exchange was recorded on page 145b:

> **"CH: Any behaviour you have seen any part of this as being racist?**
>
> **FS: Can be different with different cultured people directly or indirectly.**
>
> **CH: How do you mean?**
>
> **FS: In the past can be different, can give people a hard time, change from the past."**

130. Later on in the interview the claimant said he had never seen the behaviour as racist.

131. Miss Cowen submitted that this could not amount to an allegation of a breach of the Equality Act because the claimant expressly disclaimed any racism by Ms Woods and the reference to treating people of different cultures differently was not only consistent with an allegation of discriminatory treatment on one of the protected characteristics covered by the Act. However, we preferred Mr Broomhead's submission. The claimant was being interviewed about his own line manager. Although he had had some difficulties with her when he first started, and they had not spoken for six months, he had broadly been getting on well with her for the last few years. We concluded that he was reluctant to be seen to use the label "racist" or "racism" in that situation when he had not seen her behave in a way which was overtly racist. He thought it might be unwise to put matters so clearly if unsure of his ground. However, we concluded that the reference to "different cultured people" being treated differently was a subtle and coded reference to treatment which was discriminatory on the grounds of race, even though the claimant did not regard it as treatment which would commonly be thought "racist". Such treatment could be in breach of the Equality Act 2010, which does not require a finding that anyone is "a racist" in order for liability to be established. Accordingly we concluded that the claimant was on this occasion acting within the scope of section 27(2)(d), in that he was making an allegation (not expressly) that Leanne Woods had contravened the Equality Act 2010 even though he did not feel confident enough to directly accuse her of being a racist. Our unanimous conclusion was that this was a protected act by the claimant.

132. The third matter on which the claimant relied as a protected act was giving evidence at the Brain Tribunal hearing on 12 October 2014. The respondent accepted that this was a protected act. It was not in dispute that the respondent knew that the claimant was going to give evidence towards the end of August 2014

when it received his witness statement from Ms Gumbhir's representative. Accordingly in terms of causation this third protected act could have been in play in relation to allegations 9-24.

Discussion and Conclusions – Detriment Allegations

Self-Direction

133. In considering each of the twenty four allegations of victimisation the Tribunal bore in mind the legal framework summarised above.

134. As it was established that the claimant had done protected acts, the question for us was whether the respondent had subjected him to a detriment because of any of those protected acts in the sense that any of the protected acts had any material influence on subsequent detriment treatment. That required consideration of the mental processes of the decision maker in each instance. Because of the Court of Appeal decision in **Reynolds** it was not possible to impute to the decision maker any motivation on the part of other people.

135. However, that exercise had to be approached in accordance with the burden of proof. If the claimant proved facts from which the Tribunal could reasonably conclude that any of his protected acts had a material influence on subsequent detrimental treatment, his case would succeed unless the respondent could establish a non-discriminatory reason for that treatment. We approached that exercise having considered all the evidence before us.

136. It followed that if the Tribunal concluded that a protected act played no part in the treatment of the claimant, the victimisation complaint would fail even if that treatment was otherwise unreasonable, harsh or inappropriate. It is well established that unreasonable behaviour itself does not necessarily give rise to any inference that there has been discriminatory treatment. Further, where there are errors or mistakes which affect a number of people as well as the individual claimant, there is no necessary connection between such errors and any discriminatory approach. However, where errors affect only the claimant the Tribunal must be particularly careful in its scrutiny of the decision making process to see whether the respondent's explanation withstands that scrutiny, or whether the error in truth masks a discriminatory decision making process.

137. In considering each of the allegations we bore in mind that we had first to resolve any disputed facts, then decide whether the treatment in question could reasonably be seen by the claimant as a detriment, and finally deal with the question of causation in the mind of the decision maker(s).

Literal or Purposive Reading of Claim Form?

138. There was an issue about how to read the allegations of detriment that appeared in Schedule B to the re-amended particulars of claim. Miss Cowen urged us to read them literally because the claimant had had legal advice and his claim form was drafted by a lawyer. An example was allegation 4. Read literally it said that the act concerned was an act of the claimant in lodging his grievance of 8 May 2014. The claimant's own act could not be something for which the respondent was responsible.

139. We rejected that argument. It seemed to us that the correct approach was to look at each of the allegations as a whole, taking account of the words in the detriment column as part of understanding what the claimant was saying, notwithstanding that he had had professional assistance in preparing his claim form. Allegation 4 was in essence an allegation that his grievance was not investigated in good faith and expeditiously, those words appearing in the detriment column. We were satisfied that to take a literal approach would be contrary to the overriding objective, not least because the respondent had adduced evidence as to the substantive merits of this complaint not simply resisted the complaint on the basis that the claimant could not complain about his own act. We therefore looked for the substantive allegation underlying each of these matters, notwithstanding the way in which some of them had been drafted.

140. We also ignored the fact that some of the pleaded dates of alleged detriments proved to be in error once the facts had been considered (e.g allegation 3 was 29 April not 7 April).

The Allegations

141. For convenience each of the allegations of detriment will be reproduced before we set out our reasoning and conclusions on it.

> **(1) On 28 March 2014 the claimant was suspended and then investigated for harassment and intimidation. No proper consideration was made before the decision to suspend. The claimant was prejudged to have committed the disciplinary offences.**

142. It appeared to us that the way in which the investigation was conducted fell more naturally under allegation (2), and therefore that allegation (1) was concerned with the commencement of the investigation and the decision to suspend the claimant. The gist of the allegation was that it had been assumed that the claimant was guilty and that he had been suspended without any proper consideration of the allegations being made.

143. We addressed first of all the possibility that the allegations themselves were part of the alleged victimisation of the claimant, although this was not a matter clearly pleaded. The Tribunal was hampered by not having access to copies of the file created when the allegations were made and investigated. The information as to exactly how these matters arose was found in the interviews of Ms Bailey, Ms Woods and Mr Harrison conducted some 12 months later by Mr Pardo at stage 3 of the grievance, and in what Mr Harrison told us in his oral evidence. Piecing that together, it appeared that KK first went to a colleague, Ms Lomas, who then made Mr Bailey aware that KK was very upset. Ms Bailey spoke to KK herself and then she and Ms Woods spoke to KK too. They took the matter to Mr Harrison. He interviewed KK alone and then took the decision to suspend the claimant and commence an investigation.

144. The making of the allegations of harassment against the claimant was plainly a detriment, but there was no evidence from which we could conclude that it was because of any protected act. There was no evidence that KK or BB was aware of any protected act, nor any suggestion that they would have any reason to victimise

the claimant for having assisted Ms Gumbhir. We therefore rejected the implicit contention that the allegations themselves only arose as victimisation.

145. The claimant was critical of the role of Ms Woods in particular, and we noted that she was made aware of the allegations very soon after they were made and that she played a part in taking them to Mr Harrison. However, the allegations were serious in nature and if true would potentially amount to a criminal offence. We were satisfied that the reason Ms Woods decided to take them to Mr Harrison was because of the allegations themselves, not by way of victimisation. She would have done exactly the same had the claimant not undertaken any protected acts. It would have been remiss of her to have done anything else. There was no victimisation in the matter being escalated by Ms Woods in that way.

146. As to the decision to suspend, we accepted the evidence of Mr Harrison that it was his decision alone. The disciplinary procedure at pages 398-399 recognised that suspension may be appropriate pending further investigations. That accorded with the industrial experience of this Tribunal which is that suspension can be undertaken before any investigation of the matter.

147. We were satisfied that suspension could reasonably be seen as a detriment by the claimant. Whilst officially a neutral act, removal from the workplace is commonly viewed in a suspicious light by colleagues.

148. However, it did not suggest that there had been any prejudgment of the truth of the allegations against him. It was a sensible step whilst the respondent looked to see whether the allegations were true or not. Had the respondent taken no action to separate KK and BB from the claimant whilst the matter was investigated, and had further allegations of inappropriate behaviour then arisen, the respondent could rightly have been criticised. We were satisfied that suspension was not in any sense influenced by any protected act, not simply because there was no evidence that Mr Harrison knew of any protected act, but because it was an obvious and prudent step to take given the nature of the allegations which had been made.

(2) On 7 April 2014 the claimant was called into an investigatory meeting with David Harrison and informed that Joanne Bailey and Leanne Woods had led the investigation. He was not treated fairly.

149. This allegation was centred upon the role of Leanne Woods and Joanne Bailey in the investigation into the harassment allegations. The claimant maintained that the two of them had led the investigation. He regarded that as victimisation because Ms Woods had been aware that he had supported Lisa Gumbhir in her grievance against Leanne Woods, because Leanne Woods and Joanne Bailey worked closely together as managers, and because Joanne Bailey was the partner of Mr Harrison. The claimant's case was that the investigation was conducted by Leanne Woods with the assistance of Joanne Bailey in a way which amounted to victimisation.

150. It is right to note once again that the Tribunal was hampered by the complete absence of any contemporaneous documentation from the investigation. That did not assist us in getting to the bottom of how the investigation was carried out.

Ms Bailey

151. Dealing first with the role of Ms Bailey, the claimant's case was that she had led the investigation (with Ms Woods). We found as a fact that Ms Bailey was the note taker for Ms Woods in the vast majority of interviews carried out during the investigation. However, Mr Harrison confirmed that he interviewed the claimant rather than Ms Bailey and Ms Woods, and also that he did the formal interviews of KK and BB. We rejected the contention that the investigation had been led by Ms Bailey. We found as a fact that the claimant was not told this. It was a conclusion he mistakenly drew from what Mr Harrison said.

152. There was, however, a dual role for Ms Bailey. As well as taking notes during the interviews of other members of staff, she made a statement towards the end of the process recalling that the claimant had received a text from KK some six months or so earlier and that she had heard him laugh and say "she's mad for sex". Ms Bailey confirmed at her interview by Mr Pardo on 16 March 2015 that she believed the claimant had made this comment. Strictly speaking she should not have been involved both as a witness and as an interviewed. However, given that her role as a witness arose only at the end of the investigation it was difficult to see how that could have been avoided by Mr Harrison.

153. In any event there was no evidence from which we could properly conclude that Ms Bailey's involvement was attributable to any of the protected acts of the claimant. There was no material suggesting that she was appointed to deal with the interviews as a consequence of any protected act, rather than because she was the manager with direct contact with the client (easyJet) for whom the agents primarily worked.

154. It was curious that at the conclusion of stage one of the grievance about this matter Mr Byrne appeared to have misunderstood the position significantly. His outcome letter at page 181 said that Ms Bailey had been "a workplace representative to another member of staff who had become extremely distressed". It also said that she had been present when another staff member was called for interview. It appeared to us that neither of these was factually correct. She was not a workplace representative for KK but had been approached as a manager by her colleague, Christine Lomas; nor was she present by chance at an interview, if that was what Mr Byrne sought to imply. Ms Bailey was part of the interviewing team. Nevertheless this did not amount to any evidence that the claimant had been victimised by Ms Bailey's role during the investigation of the allegations against him.

Ms Woods

155. Ms Woods was involved in four different ways. Firstly, she received via Ms Bailey and Ms Lomas notification that KK was upset and spoke to KK herself. Secondly, she escalated the matter to Mr Harrison. Thirdly, she accompanied KK during the meeting with the police. Fourthly, she carried out the vast majority of the interviews of staff about the allegations, albeit working to a script of questions prepared by Mr Harrison.

156. The first question was whether Ms Woods knew of the claimant's protected acts in supporting Lisa Gumbhir during 2013. She plainly did because he gave evidence at the hearing at which she was a respondent.

157. The second question was whether her actions during the investigation amounted to a detriment to the claimant on which his protected acts had any material influence. We addressed her involvement first before considering the way she conducted the investigation.

158. Could the claimant reasonably view her involvement in the investigation at all as a detriment? We noted the claimant's unchallenged evidence that following a falling out with Ms Woods at the commencement of his employment with the respondent they did not speak for some six months. It was clear that he regarded her as a person who could “give people a hard time” as he said in his interview in April 2013. He knew that he was supporting Ms Gumbhir in 2013 in a very serious allegation of racism against Ms Woods, and he was sufficiently concerned to express that to Mr Henderson in his email of 3 August 2013 at pages 147 and 149. To find out that the manager about whom he had such concerns was now centrally involved in the investigation of serious allegations against him could reasonably be viewed as a detriment by the claimant.

159. Was her involvement because of a protected act? The decision that Ms Woods would have a role in the investigation at all was made by Mr Harrison. He explained that it was a consequence of her position as the manager of the relevant team, and because most of the people who would be interviewed were female and he thought that with a sensitive subject matter those witnesses might be more forthcoming if interviewed by women rather than men. Whatever the merits of that latter assumption, there was no evidence from which we could conclude that Mr Harrison was aware of the protected acts, and therefore no evidence from which we could conclude that the decision to allocate Ms Woods a role in the investigation was victimisation. Although the claimant clearly believed that Ms Woods would have discussed with Ms Bailey his role supporting Lisa Gumbhir, and that Ms Bailey would have discussed that with Mr Harrison as her partner, no evidence in support of that belief was provided, and Mr Harrison denied any knowledge.

160. We then turned to the steps actually taken by Ms Woods during the investigation. We were hampered (as were Mr Byrne and Ms Rabet at stages one and two of the grievance) by not having access to the investigation notes and statements. However, in cross examination the claimant made clear his view that the allegations had been “boosted” by Ms Woods and that she had “pulled the investigation along”. He was unable to be more specific than that. It followed from what we found above, however, that Ms Woods did have a role in escalating the allegations to Mr Harrison before she engaged in the interviewing process. We considered carefully whether there was any evidence that Ms Woods had acted during the interview process in a way which was detrimental to the claimant. The claimant relied on two matters that he submitted showed that she must have done: the absence of notes, and the comment of 29 April 2015.

161. Dealing with the notes, it was surprising and concerning that the respondent had not produced the notes of that investigation. We could understand why those notes had not been placed on the claimant's personnel file following the decision that there was no case for him to answer. It would have been unfair and inappropriate for there to have been any record of these allegations on his file for future reference. However, it was very odd that the notes could not be found by the time Mr Byrne conducted his enquiries in May 2014, and even more strange that they remained unavailable for a further ten months or so until discovered by Mr Pardo in late March

2015. By that stage the claimant had commenced these Employment Tribunal proceedings (having presented his claim on 15 February 2015) and one would have expected those notes to have been securely retained given that the allegation he made about that investigation was plain from the outset of this case. Surprisingly, however, the respondent was not able to explain why those notes were no longer available. All Mr Pardo could say was that at the end of his enquiries they were returned to HR. There the trail went dead. Mr Broomhead invited us to draw an adverse inference from the absence of these notes.

162. As to the comment on 29 April, we found that Ms Woods said to the claimant*:*

> **"Now you know how it feels to be called a bully and a racist."**

163. There was a dispute during our hearing whether this remark was intended to be empathetic or whether (as the claimant perceived) it was an expression of satisfaction that he had now gone through what she had gone through, namely to be accused of discriminatory behaviour. On balance the Tribunal was satisfied that the claimant was correct in his perception. The picture painted of Ms Woods was that she was a firm manager rather than someone generally empathetic with staff. As the respondent chose not to call her to give evidence we did not have any direct evidence from her to help us assess her mindset. We concluded that she had made the comment because she took some satisfaction from the fact that the claimant had supported Ms Gumbhir in her allegations against Ms Woods and was now in a similar position himself.

164. Putting these matters together, and noting that we did not hear evidence from Ms Woods, the Tribunal concluded that had the investigation been conducted inappropriately by Ms Woods the burden of proof would have shifted to the respondent, and without her evidence to discharge that burden the complaint of victimisation would have succeeded (subject to time limits).

165. However, that presupposed that the investigation was not conducted properly. That was not established by the claimant. The only specific suggestion of any impropriety by Ms Woods in the interview process was in the evidence of Mr Gorkha who said in paragraph 8 of his witness statement that Heidi Nelson heard KK say that "they had twisted her words". This matter was investigated by Mr Pardo. He interviewed Ms Nelson on 17 March 2015. The notes appeared at pages 325-326. Those notes recorded that Ms Nelson had not heard KK use these words. She said to Mr Pardo:

> **"It was ages ago and I know she was upset and crying but I think she had said it was Faheen Saleem who had twisted her words."**

We concluded that this did not assist the claimant in establishing impropriety on the part of Ms Woods in the investigation. There was no other specific criticism of the way she conducted the investigation.

166. Despite the extremely surprising failure of the respondent to produce the notes, therefore, and despite her ill-advised and negative comment on 29 April 2014, we concluded that the claimant had not proven facts from which the Tribunal could properly conclude that Ms Woods had behaved in a way during the investigation which amounted to a detriment to the claimant because of a protected act. The investigation of which she was part resulted in a decision by Mr Harrison that there

was no case to answer. The claimant could not reasonably view the conduct of that investigation (as opposed the involvement of Ms Woods at all) as being a detriment because he had no information about how that investigation had been conducted. There was no evidential basis for his suspicions.

167. The allegation of victimisation in the involvement of Ms Woods and in how the investigation was conducted by Ms Woods and Ms Bailey therefore failed.

> **(3) On 7 April 2014 the claimant was informed that he was to be transferred to Terminal 3. The female colleagues who made the allegations against him were allowed to remain at Terminal 1.**
>
> **(10) On 4 September 2014 the claimant was informed that he was to be transferred to Terminal 3; his two female accusers were not transferred.**

168. We decided to address these two matters together because they were in truth manifestations of the same decision. The claimant was first informed on 29 April 2014 (not 7 April as alleged) that he would be moving to Terminal 3. Allegation 10 was simply his receipt of the outcome letter for his grievance about that matter. It was not a fresh decision of its own.

169. Factually it was not in dispute that the claimant was informed on 29 April that he would move to Terminal 3. He included this in his grievance which Mr Byrne heard at stage one. During the meeting on 30 May 2014 Mr Byrne told the claimant (page 173) that he had spoken to Leanne Woods who had said that the move was due to operational requirements because of the sickness of another member of staff, but she was due back at work that weekend and therefore the claimant would be returning to duty at Terminal 1. In fact the claimant did not return to work and therefore never worked at Terminal 3.

170. The first question was whether the claimant could reasonably see this as a detriment. We recognised that in some senses the move might be thought to be for his benefit because of the concerns he expressed about how the respondent could protected him from further allegations of harassment. Separating him from the two complainants would be a way of achieving that. However, on balance we concluded that the claimant could reasonably view this as a detriment. Most if not all of his immediate colleagues were aware of the investigation. According to Mr Harrison, almost fifty people had been interviewed during the enquiry in April 2014. The claimant could reasonably think that if he was moved whilst the complainants remained at Terminal 1, an impression would be created that management regarded him as in some sense at fault. Accordingly the decision to move him to Terminal 3 could reasonably be seen as a detriment.

171. The question was therefore whether that decision was influenced to any material extent by his protected acts during 2013. Although the claimant was told that the move was for operational reasons, we concluded that was only partly true. There was a need for a lead agent in Terminal 3 due to the sickness absence of a colleague. The reason the claimant was selected for that move rather than one of the other lead agents, we concluded, was because of Mr Harrison's belief that there was something in the allegations against the claimant even though they could not be proven[2], and because he had a concern that there was a need to separate the

[2] Mr Harrison confirmed in his oral evidence that he had this view.

claimant from KK in particular. He was not entirely forthcoming to the claimant about this aspect of his reasoning, although when interviewed by Mr Pardo in March 2015 he accepted that the transfer "killed two birds with one stone".

172. However, the claimant's protected acts in 2013 played no part in his reasoning; for the reasons identified above there was no evidence from which we could conclude that Mr Harrison was aware of those protected acts, and we accepted his oral evidence that the decision to move the claimant was his alone. Accordingly although the claimant's suspicion about this move had some rational basis, in that he was not given a complete explanation of the reasoning behind it, we rejected his contention that it amounted to victimisation.

(4) On 8 May 2014 the claimant lodged a grievance about these matters, but it was not investigated in good faith or expeditiously.

(5) On 14 May 2014 the grievance investigation was adjourned, causing increased distress to the claimant.

(6) On 18 June 2014 the claimant was informed that he would have the outcome in seven days but did not receive it as promised.

173. It was convenient to deal with these allegations together since they related to the stage one grievance conducted by Mr Byrne. There were two strands to these three allegations. The first related to delay, and the second to the allegation that the respondent failed to investigate the grievance in good faith. We addressed the question of delay first of all.

Delay

174. As summarised above, the claimant's grievance was lodged on 8 May 2014 at page 169a. He had an initial grievance meeting with Mr Byrne on 14 May (page 170a and b). Mr Byrne spoke to Ms Woods and Mr Harrison and the grievance meeting reconvened on 30 May 2014 (pages 171-174). Mr Byrne then invited the claimant to a grievance outcome meeting on 18 June 2014 at which the claimant was informed that his grievance had been rejected (pages 177-178).

175. The first point we considered was whether this timescale represented a failure to deal with the grievance expeditiously. The grievance was not a simple grievance. It raised a number of different matters. Mr Byrne did carry out some interviews although the notes of those were never made available to our hearing. He also had to see whether there were notes of the harassment investigation available. It transpired later (although not apparent to the claimant at the time) that those notes were not available. The grievance procedure at page 396 did not give any overall timescale for stage one, saying only that "where possible" the meeting should occur within seven days of the receipt of the grievance (which happened) and that the outcome should be given in writing within seven working days of the meeting (which did not happen). Overall we concluded that the timescale from notification of grievance to notification of outcome was at the outer limit of what would be reasonable in a case of this kind and we were satisfied that there was no failure to deal with it expeditiously.

176. The second point concerned allegation 5, which was the fact the grievance was adjourned on 14 May following the initial meeting. It would not have been

practicable for the claimant to have been given a response to his grievance immediately following that meeting because there were plainly further investigations to be carried out. The grievance he had lodged was a brief email of 12 lines (page 169a) and he can hardly have expected the details of his grievance to have been investigated and a conclusion reached without a further meeting following the initial meeting. We rejected the contention there was any failing in the grievance process in this respect. Indeed, the note of the meeting on page 170b recorded the claimant agreeing that Mr Byrne should open the case again. We rejected this allegation on its merits.

177. The final strand of delay was the failure to give a written outcome within seven days of the meeting on 18 June. The handwritten note of that meeting appeared at page 176 but seemed to be incomplete. The typed unsigned version appeared at pages 176-178 and did not make any reference to such a promise, although there was discussion of the seven days for appeal running from when the letter was received.

178. Given that Mr Byrne had made his decision, and given that the grievance procedure envisaged a written response within seven working days, we concluded that the respondent was at fault in not providing that written response within seven days. However, the claimant provided no evidence from which we could conclude that this minor failing to comply with the timescale in the grievance procedure was influenced in any way by a protected act. This part of the allegation failed.

Good Faith

179. We considered the allegation that Mr Byrne did not investigate the grievance in good faith, and that this failure to do so amounted to victimisation.

180. We concluded that there were significant flaws in the way the grievance was investigated by Mr Byrne. His understanding of the role of Joanne Bailey was not accurate. The extent to which that was a reflection of the lack of availability of the notes was unclear, but even though an apology was offered for her dual role the position was not accurately stated in the outcome letter at page 181. Further, he did not get to the bottom of the claimant's concern about the move to Terminal 3. The notes of the 30 May meeting at page 173 showed the claimant raising a query as to why he had been selected rather than another lead agent. There was a break in the meeting at that point after which Mr Byrne indicated that the claimant could go back to Terminal 1. However, in his outcome letter he did not address the key question of why the claimant had been picked for the move rather than anyone else.

181. More broadly, however, we were satisfied that despite those flaws this was still a grievance handled in good faith by Mr Byrne. He reached a conclusion favourable to the claimant on the dual role of Ms Bailey and on the removal of the sickness record from the claimant's file. He also decided that the claimant should be paid sick pay from the first date of his absence to the date of the outcome letter. Most importantly, his conclusions on the other points in the grievance were reasonable: there was no prospect of an apology to the claimant from the complainants, and no prospect of disciplinary action against KK or BB for the same reason as no action had been pursued against the claimant.

182. We therefore rejected the contention that Mr Byrne had failed to investigate the grievance in good faith, and as a consequence this allegation of victimisation failed.

(7) On 13 August 2014 the claimant received an email enquiry from Mrs Carmichael as to whether he had received the outcome letter from John Byrne, Mrs Carmichael knowing that such a letter had not been sent.

(8) On 15 August 2014 the claimant complained about not having received the grievance outcome letter but was informed that it could be a problem with his local Post Office.

(9) On 4 September 2014 the claimant received the outcome letter by email but the letter had been backdated to 10 July 2014.

183. It was convenient to deal with these allegations together because they all concerned the period after 18 June when the claimant was not in receipt of the outcome letter. We found as a fact that he did not receive it until it was emailed to him on 4 September 2014.

184. The claimant maintained that the letter was only prepared around that time and had been falsely backdated to 10 July 2014. He relied on an email of 16 August 2014 from Mrs Carmichael which told him that Mr Byrne had issued a grievance outcome letter in June. Mr Broomhead submitted that could not be a typographical error and showed that there had been a deception over the date of the letter.

185. Having evaluated the evidence we concluded that the letter had been written in early July, but we also accepted that it had either not been sent to the claimant or if it had been sent it had gone astray. Although there might be reason for an employer to refrain from issuing a formal outcome in order to create a time problem if there was a subsequent appeal, for three reasons that was not consistent with the way in which the respondent acted on this matter. Firstly, it was agreed at the meeting that time for appeal would only run from when the claimant received the letter. Delaying the letter would therefore not prevent any appeal. Secondly, it was Mrs Carmichael who queried whether the claimant had had the letter by her email of 13 August at page 192. She raised the matter with him. Thirdly, when the claimant did appeal there was no suggestion by the respondent that he was out of time for doing so.

186. We concluded that the reference to June in the email of 16 August was a simple error. There had been some correspondence between the claimant and Mr Byrne on 26 June as the claimant had previously advised (page 192). We rejected the contention that the outcome letter had only been prepared in early September. It had been prepared in early July but had gone astray. Allegation 9 failed.

187. It followed that allegation 7 also failed: the enquiry by Mrs Carmichael was a genuine enquiry.

188. Similarly, when Mrs Carmichael suggested in her email of 16 August that the claimant should check with his local Post Office, that could not reasonably be seen as a detriment. It reflected a real possibility that the letter had gone astray in the post. Allegation 10 failed. We rejected the contention that this exchange of emails could amount to victimisation.

(11) On 10 September 2014 the claimant submitted his appeal against the grievance outcome but investigation notes and documents were withheld from him.

189. In cross examination the claimant was asked which notes and documents had been withheld. He said it was the notes of his meeting with Mr Byrne on 14 May 2014. We regarded this as a mistake on his part. It was clear from the exchange of emails culminating in the claimant's email of 10 September 2014 at page 188 that it was the investigation notes from the harassment investigation which had been withheld and which he regarded himself as entitled to see. We therefore assessed this allegation on that basis.

190. The claimant was reasonably entitled to see the withholding of these notes as a detriment. His grievance was in part about the way that investigation was conducted. It was more difficult for him to argue his case without access to the investigation file. The question was whether this detriment was imposed on him by reason of a protected act. By this stage the respondent knew that the claimant was going to be giving evidence for Ms Gumbhir in her Employment Tribunal case due to start at the end of that month. The question for us was whether that fact, or his protected acts in 2013, had any material influence on the decision not to give him the notes of the harassment investigation itself.

191. Although her email to the claimant did not say so, Mrs Carmichael did not have access to those notes. Her attempts to find them for stage one of the grievance before Mr Byrne had been unsuccessful. Her email gave a different reason, which was that because the investigation had resulted in no further action, the notes would not be released as a matter of policy. It was unclear whether this represented the real reason, or whether Mrs Carmichael was saying this to conceal the fact that the notes were no longer available. She was not to know that a more thorough search six months later by Mr Pardo would locate those notes.

192. Either way, however, we concluded that there was no evidence that any protected acts by the claimant played a part in this decision. It was either a reflection of the fact that the notes were no longer available, or a decision made pursuant to a policy about not releasing notes in those circumstances. The allegation of victimisation failed.

(13) On 18 September 2014 the claimant had to take steps to pursue his grievance appeal; had he not done so it would have been allowed to stagnate.

193. It was convenient to deal with this allegation next because it arose directly out of the appeal that formed the basis of allegation 11. The complaint was that the claimant had to chase up his appeal on 18 September 2014.

194. The outcome letter from Mr Byrne of 10 July 2014 was attached to Mrs Carmichael’s email of 4 September at page 189. She asked for the grounds of appeal within seven days. Her email ended by saying she was going on annual leave for three weeks and she asked the claimant to correspond with Mr Byrne or Mr Harkin. The claimant's response of 10 September which contained his appeal was sent to Mrs Carmichael but copied to Mr Harkin. Having heard nothing he chased it up by an email of 18 September at page 188 which was addressed to both of them

again. He had to remind them about if in an email of 24 September at page 177 sent in relation to his redundancy consultation. There was some delay before he was invited to a grievance appeal before Ms Rabet by a letter of 3 October 2014 at page 204.

195. The gist of the allegation was that because of his protected acts the respondent was intending to ignore his grievance appeal, which otherwise would have been progressed swiftly.

196. It was certainly remiss of Mr Harkin not to have dealt with the email from the claimant. Although the email from Mrs Carmichael saying that she was going away for three weeks and that he would deal with it was not copied to him, we inferred that he would have been aware of it had he scrolled down the email chain once the claimant replied in order to lodge his appeal. However, the claimant offered no evidence in support of his proposition that Mr Harkin was influenced by his protected act. Mr Harkin was aware of the protected act done in April 2013 because he interviewed the claimant, but there was no trace of any detrimental treatment of the claimant by him in the intervening period. The claimant had a choice of three other people with whom he could have corresponded according to the email from Mrs Carmichael but chose to copy his response to Mr Harkin. That suggested that he did not regard Mr Harkin as a person likely to act against him because of his role in 2013.

197. It seemed to us much more likely that the inaction of Mr Harkin was due to a failure to appreciate properly that it needed his attention because Mrs Carmichael was away for three weeks.

198. Accordingly although this delay did cause a relatively minor detriment to the claimant, there was no evidence from which we could conclude that it was because of a protected act done almost 18 months earlier and the allegation of victimisation failed.

(12) On 16 September 2014 the claimant was informed by Leanne Woods that he was to be involved in a restructure/redundancy and he was invited to attend an interview with her on 26 September 2014.

(14) On 24 September 2014 the claimant raised concerns that Leanne Woods would be interviewing him, despite the fact that the respondent knew or ought to have known that he would not have any confidence in her.

199. It was convenient to deal with these two matters together as they turned on the same point: the fact that when the claimant was informed that he was at risk of redundancy he was invited to a consultation meeting with Ms Woods. It was her letter to him of 17 September 2014 at pages 202 and 203 which invited him to that interview. On 24 September he sent an email (page 187) in which he objected to Ms Woods conducting the consultation meeting because of his grievance against her. The response the same day from Mr Harrison said the consultation would be conducted by Laura Kelly instead.

200. We were satisfied the claimant could reasonably regard this as a detriment. He had made serious allegations against Leanne Woods and had accused her of not acting in good faith. The redundancy consultation was a very important matter in which his job was at risk.

201. However, we were satisfied that it had nothing to do with any protected act. Ms Woods was the manager of the pool of lead agents who were at risk. There was nothing unusual about an invitation to a consultation meeting with a manager in that position. There was no suggestion that the other lead agents were to be interviewed by anyone else. In any event once the claimant raised his concern the position was immediately addressed by Mr Harrison. The reason Leanne Woods was chosen to interview the claimant in the consultation meeting had nothing to do with any protected act. The complaint of victimisation failed.

(15) On 21 October 2014 the claimant was informed that his grievance appeal had been rejected by Ruth Rabet. The appeal had been carried out in bad faith.

202. This allegation was that in dealing with stage two of his grievance about the harassment investigation Ms Rabet acted in bad faith.

203. The appeal against the stage one decision was lodged on 10 September at page 188. It did not contain much detail. It simply said that the outcome had not been transparent, the grievance had not been conducted in good faith and was perverse. The claimant said that information he submitted had not been taken into consideration. He also raised the question of the Terminal 3 move.

204. Ms Rabet had a meeting with the claimant on 15 October. The notes appeared at pages 212-216. In the course of that meeting (page 213) the claimant raised his concern about what had been said by Ms Woods and Mr Harkin in the Brain Tribunal hearing earlier that month. It had been said that he had been suspended for sexual harassment whereas he maintained he had only been suspended for harassment. He raised his concern that KK and BB had been promoted since the allegations were made and wondered whether it was a reward.

205. The outcome letter was dated 21 October 2014 and appeared at pages 231-233. Ms Rabet found that there had been a thorough investigation of the allegations made by KK and BB, she reached the same conclusion as Mr Byrne as to the involvement of Ms Woods in the investigation, and said she could not investigate the alleged statements at the Employment Tribunal until the Tribunal decision was available. She concluded that the promotion of KK and BB to a host position was a result of applications made and had nothing to do with the investigation. The appointments required the approval of easyJet. Some other points raised by the claimant were also addressed.

206. From the evidence available to us it was difficult to see that any substantial investigation at stage two had been done by Ms Rabet. She had a meeting with the claimant at which she responded in defensive terms to most of the points he raised, and her outcome letter was issued only six days later. She said in that letter that she had investigated the points but it was unclear what steps she had actually taken. Mr Pardo did go through stage two with her when he was dealing with stage three (Pardo witness statement paragraph 23) but there was no notes available of that discussion either. It appeared to us that stage two was handled in a relatively cursory fashion by Ms Rabet, certainly when contrasted with the investigations which Mr Pardo undertook at stage three.

207. The cursory nature of the Rabet investigation could reasonably be seen as a detriment by the claimant. The investigations she undertook, if any, were unclear. However, there was no evidence which suggested that this was because of a protected act as opposed to other reasons. Other reasons in play included that she was a manager at Gatwick, which might explain an apparent lack of interest in the matter, or it may simply have reflected an example of managers closing ranks. There was nothing which suggested that the approach of Ms Rabet to this grievance had altered in any way as a consequence of the claimant's protected acts. Indeed, the only protected act of which it appears she was aware was his support for Ms Gumbhir in her Employment Tribunal complaint. We concluded that the claimant had failed to shift the burden of proof on causation and therefore this allegation failed.

(16) On 8 December 2014 the claimant was informed that his application for an Acting Duty Manager position was unsuccessful, placing him at risk of redundancy.

208. The redundancy announcement made clear that there would be a competency based interview process for the six roles at a higher rate of pay, and the benchmark documents showed that the "pass mark" was twenty marks. The claimant scored sixteen. He and another candidate who had been thought able to do the role were unsuccessful. The claimant maintained that this was victimisation and that the scoring of him had been artificially low because Ms Kelly and/or Ms Butler were aware of his protected acts.

209. Mrs Carmichael told our hearing that she believed the process had been carried out on a purely objective basis, taking into account verifiable factors such as sickness absence. In fact the scoring was in relation to competencies only and there was no trace of sickness having played a part.[3] The claimant disputed that he had made no mention of the SLS, saying that he had made reference to the "wall". However, when interviewed by Mr Brown Ms Kelly confirmed that her note did not say "wall" but "avail". She and Ms Butler confirmed that the claimant had not mentioned MORSE. There was also an explanation for his low scoring on another matter.

210. Overall we were satisfied that the protected acts played no part in this decision. The claimant appeared not to have appreciated that it would be a competence based interview and that he could not expect to be successful simply because he had acted in that role successfully in the past. He failed to demonstrate the required competencies to the required level during the interview and the decision to refuse his application was made for that reason.

211. The fact that BB was later seconded into the role (because insufficient candidates had achieved the benchmark score in the redeployment process) did not support his case, surprising as he might have found that. As Ms Woods explained on page 291, his absence from work since March meant that there were courses she had done which he had not done, and of course he was off sick at the time. It would

[3] We concluded that when Ms Woods was interviewed by Mr Brown on 28 January 2015 at pages 290-291 and referred to the claimant's attendance issues affecting selection, she was talking about the later selection of BB to be seconded into the role.

have made little commercial sense for the respondent to have seconded into the role a person who was not there to do it.

212. For those reasons we concluded that the claimant failed to shift the burden of proof to the respondent, and we were satisfied that even if the burden had shifted the reason why the claimant was not appointed was because of his relatively poor performance in interview. This allegation failed.

(17) On 5 January 2015 the claimant was told that if he did not accept the post of Senior Passenger Service Agent he would not be entitled to a statutory redundancy payment. The threat was unlawful in all the circumstances.

213. The letter of 5 January 2015 at pages 274-275 offered to redeploy the claimant into a role of Senior Passenger Service Agent. The job description was provided. His salary was to be red circled until the salary for that role caught up. All other terms and conditions remained the same.

214. The letter went on to say that if he refused the offer no statutory redundancy payment would be payable. This was not unlawful: it reflected the provisions of the Employment Rights Act 1996, offering as it did a trial period. There was no evidence from which we could conclude that the inclusion of this provision in a redundancy consultation letter, which in the experience of this Tribunal is standard practice where an ostensibly suitable alternative role has been identified, could be causally linked to any protected act.

215. The allegation failed.

(18) On 12 January 2015 the claimant was told that John Hough would be chairing his grievance, even though that was totally inappropriate given John Hough's involvement in the Lisa Gumbhir case.

216. The claimant was notified by email of 12 January 2015 at page 269 from Mrs Carmichael that John Hough would chair the grievance meeting about the Duty Manager position. The claimant objected the same day, and on 15 January Mrs Carmichael said that Mr Brown would deal with it instead.

217. The claimant alleged that Mrs Carmichael had chosen Mr Hough to deal with it by way of victimisation, because she knew that he had concerns about Mr Hough's treatment of him in the past. Mrs Carmichael denied that and said that she had asked Mr Hough to deal with the grievance because she was serving out her notice and was due to leave in a couple of weeks so would not be able to see it through.

218. The claimant had no evidence that any protected act had played a part in Mrs Carmichael's decision. Even if the burden of proof had shifted we accepted her evidence as to the reason she chose Mr Hough to deal with it. The position was changed as soon as the claimant objected to it.

219. The allegation of victimisation failed.

(19) On 14 January 2015 Melanie Butler made contact with the claimant by way of email in relation to his grievance appeal, such contact being totally inappropriate because he had lodged a grievance about her participation in the decision not to appoint him to the Duty Manager post.

220. On 14 January 2015 Ms Butler emailed the claimant attaching a letter updating him on his grievance appeal. The letter was never produced but we inferred it was in relation to Mr Pardo's stage three investigation. Mr Pardo had interviewed the claimant with Ms Butler present on 3 December 2014 but his decision was still awaited. The claimant suggested that it was victimisation, but when asked in his evidence why that was he said that it was because he had raised a grievance against her about the Duty Manager position that she should not have had any contact with him. He did not allege in his oral evidence that this contact was because of any protected act and there was no basis for any such conclusion. It was clear that the reason Ms Butler contacted the claimant was simply because she was acting as HR support to Mr Pardo at stage three of the harassment grievance. The allegation of victimisation failed.

(20) On 27 January 2015 the claimant was told that the outcome of his grievance appeal would be provided within 14 days, and then told by email of 30 January 2015 that it was hoped it would be resolved within two weeks, but by the time of presentation of the claim form he had not received the outcome.

221. Mr Brown interviewed the claimant at stage one of the Duty Manager grievance on 27 January 2015. The notes appeared at pages 282-286. According to the typed note (which was not signed) Mr Brown said at the end:

> **"Ok, I will investigate the claims made and get back to you, hopefully within a week or two."**

222. That fell short of being an assurance that there would be an outcome within 14 days, although the claimant appears to have understood it that way. Mr Brown did contact him on 17 February at page 298, where he said that he had completed his investigation and would write within a further week to detail his findings. The outcome letter was issued on 26 February 2015 at pages 299-302, two days outside that deadline. It is worth noting that at the time the claimant lodged his Tribunal complaint and first made this allegation (15 February 2015) he had not received the update letter let alone the grievance outcome. This allegation was not the subject of amendment later in the proceedings.

223. We rejected the premise on which this allegation was based. Mr Brown dealt with the matter reasonably quickly. There was no promise to give an outcome within 14 days of the meeting. It was a promise to get back to the claimant. Mr Brown did so on 17 February 2015, only five days outside that deadline. He missed his further deadline of a week for the outcome by only two days. There was no basis on which we could find that this was influenced in any way by a protected act of the claimant. Mr Brown conducted three further interviews after seeing the claimant and his outcome letter was the fruit of some detailed consideration. He had to review the interview documentation as well as carry out those further interviews. This allegation failed.

(21) On 26 February 2015 the claimant's grievance concerning the interview process for Assistant Duty Manager was dismissed. The investigation was not carried out fairly or in good faith; the evidence of the respondent's employees was simply accepted.

224. The allegation that this grievance was not conducted in good faith appeared to have little basis save for the claimant's dissatisfaction that his grievance was rejected.

225. The only point specifically raised was that at the outset of his interview with Mr Brown, Mr Brown said that he thought the interviewers were after a more comprehensive answer in relation to safety, mentioning MORSE. The claimant inferred from this that Mr Brown had spoken to the interviewers before interviewing the claimant, rather than the other way round as it appeared from the investigation notes. However, Mr Ramage explained that with his experience Mr Brown would have known that MORSE was an expected reference for a candidate in relation to this role. We accepted that explanation.

226. More broadly, we were satisfied that Mr Brown did conduct a fair and thorough investigation. He reviewed the primary documentation and interviewed not only those who scored the claimant but also Ms Woods. He set out his conclusions in detail in his outcome letter.

227. The allegation that the grievance was not fair or not done in good faith was not proven. There was no victimisation of the claimant and this allegation failed.

(23) On 20 April 2015 the claimant's stage 2 appeal concerning the Duty Manager appointment was dismissed. There was no attempt to carry out the appeal fairly or in good faith.

228. We left allegation 22 for later and addressed the other allegations about the Assistant Duty Manager grievance.

229. The Tribunal did have some concerns about aspects of Mr Hamilton's handling of stage two. It was concerning that he did not attend the stage two meeting. However, the note at page 353 recorded that both the claimant and his union representative were happy to proceed on the basis that Ms Allan would listen to the appeal and then go to Mr Hamilton with points for him to investigate. Secondly, the claimant was concerned that Mr Brown must have had some information before he interviewed the claimant because of his reference to the need to mention MORSE in the answer about safety and security. This was a point which Mr Hamilton seemed not to address. He confirmed in his outcome letter at pages 374-376 that Mr Brown had interviewed the other people after seeing the claimant, but did not explain how Mr Brown could have referred to the answer omitting MORSE before those interviews.

230. However, we concluded that these flaws fell short of establishing that the stage two grievance was not handled fairly or in good faith. Mr Hamilton did consider the core point, which was why the claimant was not appointed to the role. The fact that he reached the same conclusion as Mr Brown was hardly surprising given that the information before him was the same as that before Mr Brown. The claimant did not provide any new information which undermined the view Mr Brown took after his interviews of the main participants.

231. The claimant's concern was based in part on a lack of transparency as no notes were produced of the interviews which Mr Hamilton undertook. That was understandable, but it fell short of being evidence from which we could conclude that Mr Hamilton declined to undertake a good faith grievance investigation because of any protected act. The factual basis of this allegation failed. There was no victimisation.

(24) On 3 July 2015 the claimant's stage 3 appeal against the Assistant Duty Manager appointment was dismissed. The appeal failed to carry out a proper investigation, failed to ensure that the claimant had the necessary documentation, and started from the premise that there was nothing to overturn the previous decisions. It was not carried out in a fair and impartial manner.

232. Mr Ramage dealt with the appeal against the decision of Mr Hamilton. He interviewed the claimant on 27 May. The notes appeared at pages 378-383. He then conducted some interviews and investigations of his own. He kept informal notes in a notebook but when he left the respondent he returned the notebook to the respondent and it was no longer available for our hearing. Having made a decision he called the claimant to a meeting on 30 June to inform him of the conclusion. The notes of that meeting appeared at pages 386-388. He identified the people with whom he had spoken and explained why no notes existed from Mr Hamilton's enquiries. He said there was nothing new on the table at stage three and the end result was that the appeal was dismissed. He upheld the decision of Mr Brown. There was a discussion about minutes from 27 May which were provided in the course of this meeting and an adjournment took place to allow the claimant to read them. The claimant ended by making the point that in the past he had been appointed unfairly to a post and he felt the same thing had happened to different people here.

233. The conclusion was issued on 3 July in a letter at pages 391-392.

234. We were satisfied that this stage three grievance appeal was conducted in good faith by Mr Ramage and was a genuine look at the issues the claimant had raised. It was surprising that Mr Ramage or a colleague did not preserve the notes of his interviews when one of the claimant's concerns was that Mr Hamilton had not done so. That aside, however, he addressed the points the claimant raised. He explained why there were no notes from Mr Hamilton. He dealt with the core point of why the claimant had not been successful at the interview. The reason he reached the same conclusion as Mr Brown and Mr Hamilton was because he had the same information. The claimant provided nothing new. There was no basis on which we could conclude that the investigation had not been a proper investigation or that any protected acts played a part in it. The allegation of victimisation failed.

(22) On 31 March 2015 the claimant's appeal against the outcome of his grievance about false allegations of harassment was dismissed despite evidence to the contrary.

235. Mr Pardo told us in evidence that he was investigating the whole matter afresh, but in fact that was not quite the scope of his investigation. He said he would have had power to have recommended that the claimant face disciplinary proceedings for the harassment allegations but he did not reinvestigate those

allegations. He did, however, interview those who conducted that investigation as well as some others identified by the claimant.

236. Mr Pardo also succeeded in finding the notes from the original investigation. He read two or three of those statements. He did not read the whole file, and appears to have thought that there were only seven or eight other statements whereas in fact there were more than forty other statements, albeit brief ones. It was a surprise that he failed to ensure that that file was secured, particularly given that this litigation was well under way by that stage, but his evidence was that he gave the file to the HR Business Partner and was unable to assist with where it had gone since then.

237. More broadly, however, the allegation was that he had no intention of upholding the grievance appeal. It was effectively an allegation of bad faith and that he was just a rubber stamp for the decision made by Mr Byrne and Ms Rabet at stages one and two. We rejected that contention. We were satisfied that Mr Pardo did carry out a genuine investigation into the matters raised. He took steps to interview a number of protagonists and proper notes were taken and retained. We were satisfied that he was acting in good faith and that he would genuinely have upheld the grievance appeal had there been grounds to conclude that the original grievance was soundly based. The fact he did not do so reflected the conclusions he reached after his own investigation, not a failure to engage with the grievance appeal at all.

238. There was no material from which we could reasonably conclude that he dealt with the grievance as he did by way of victimisation for any protected act, and therefore this allegation of victimisation failed as well.

Cumulative Effect

239. Having decided for the reasons set out above that none of these individual allegations amounted to victimisation, we nevertheless considered whether taken cumulatively there may be a case for that. We recognised that the claimant had expressed a concern about being victimised immediately after his assistance to Lisa Gumbhir in August 2013. It appeared that he was likely to view any detrimental treatment by management as victimisation in the months that followed. He plainly saw later events through that prism.

240. Viewed objectively, however, the respondent behaved properly in relation to the two matters which subsequently arose and which gave rise to almost all of the allegations in this case. The first was the handling of serious allegations of harassment made against the claimant by a female colleague. The second was the redundancy exercise and the unsuccessful application for the Assistant Duty Manager role. Both of those matters were handled appropriately by the respondent. The harassment matter was resolved in his favour. Although the claimant performed poorly at the Assistant Duty Manager interview, the redundancy exercise resulted in redeployment with protected pay. As Mr Broomhead said, the claimant was entitled to pursue a grievance about each matter through to the final stage, but equally the respondent's managers were entitled to reject those grievances at each stage because they were simply not well founded. Accordingly the fact that his grievances were unsuccessful at each stage provided no support for an allegation of victimisation.

241. The claimant also relied on the alleged involvement of Mr Hough behind the scenes. It was accepted that in his senior HR role Mr Hough was aware of all Tribunal complaints against the respondent, but there was no evidence that he had been influencing or directing individual managers in the way the claimant believed.

242. Even cumulatively, therefore, the Tribunal concluded that there had been no victimisation of the claimant.

243. As there had been no victimisation it was not necessary for the Tribunal to consider the question of time limits.

Further Matters

244. Unless there are any further applications by either party, the sole outstanding matter appears to be the application made by the claimant for a costs order against the respondent arising out of its application to strike out the claim rejected by Regional Employment Judge Robertson on 12 August 2015. Paragraph 3 of that judgment adjourned the application to the conclusion of the proceedings. The claimant should confirm within 21 days of the date on which this judgment is promulgated whether that application is still pursued.

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Employment Judge Franey

17 February 2017