Case Number: 1804376/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr S Juneja	v	City of Bradford Metropolitan District Council

Heard at: Sheffield (by CVP) **On**: 29, 30 November; 1, 2, 5, 6, 7, 20 & 21 December 2022

Before: Employment Judge James
Mr K Smith
Mr G Harker

Representation

For the Claimant: Ms E Banton, counsel

For the Respondent: Mrs J Callan, counsel

JUDGMENT

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

(2) The claims of harassment related to race (s.26 Equality Act 2010) are not upheld and are dismissed.

(3) The claims of victimisation (s.27 Equality Act 2010) are not upheld and are dismissed.

(4) The claim of discriminatory constructive unfair dismissal (s.13 Equality Act 2010) is not upheld and is dismissed.

(5) The claims of detriment for making a protected disclosure (s.48 Employment Rights Act 1996) are not upheld and are dismissed.

(6) The claim of automatically unfair constructive dismissal for making a protected disclosure (s.103A Employment Rights Act 1996) is not upheld and is dismissed.

REASONS

The issues

1. The agreed issues which the Tribunal had to determine are set out in Annex A.

The proceedings

2. Acas Early Conciliation was commenced on 27 May and was concluded on 15 June 2021. The claim form was issued on 27 August 2021. The claim form was initially rejected because it named the wrong respondent; Anne Lloyd, Director of Human Resources, was named in box 2.1. Following a request for reconsideration, the claim form was treated as having been received on 9 September 2021, 13 days later, against the current respondent.

3. A preliminary hearing for case management purposes took place on 15 November 2021 before Employment Judge Davies. The claimant was ordered to provide further and better particulars; a date was set for a final hearing; and related case management orders were made. The date for the hearing subsequently had to be postponed and rearranged.

The hearing

4. The hearing took place over nine days. Evidence and submissions on liability were dealt with on the first seven days. The Tribunal then met in private to arrive at its decision on the final two days which the Tribunal had arranged for that purpose. Judgment was reserved.

5. The Tribunal heard evidence from the claimant and Waheeda Shah, Attendance Team Manager; and for the respondent, from Sarah Griffin, Service Manager of the Youth Offending Team (YOT); Danielle Wilson, former Education Safeguarding Strategic Manager; Anne Lloyd, Director of Human Resources; and Kate Hopton, who at the time of the events we are concerned with, was employed as Education Safeguarding Lead Officer. There was an agreed hearing bundle of 999 pages, and an agreed Chronology and Cast List.

Further Documents

6. A number of documents were added to the bundle by agreement during the hearing. Witnesses and counsel were given time to consider those extra documents, as required.

7. On 7 December 2022, an application was made by the respondent to admit an extract from a spreadsheet relating to the allegation that on 9 March 2021, the claimant was questioned about an old piece of advice. At the time the document was first mentioned, Ms Hopton was halfway through her evidence, and she was the final witness for the respondent. Ms Banton opposed the admission of that document.

8. Just before the lunch break, the Tribunal briefly adjourned to consider the matter. The Tribunal concluded that it would not be appropriate to admit the document at this late stage. If the document were to be admitted, Ms Banton would require the meta data in relation to it to be disclosed. It may have been necessary to recall witnesses. We have the witness evidence from Mrs Hopton in relation to this issue together with the witness evidence from the claimant,

together with any submissions which both counsel made in relation to this evidence. We were at a late stage in the proceedings; we were expecting written submissions by 2.00 pm, and oral submissions at 3.00 pm. The listed hearing was due to conclude that day. The Tribunal had a lot to cover in relation to the relevant fact-findings, and subsequent conclusions during the two days that had been set aside for deliberations. Both days were likely to be required. It was far preferable to conclude evidence and submissions on 7 December. In those circumstances the Tribunal did not consider it proportionate or necessary to admit that document. It had been forwarded to the Tribunal panel members by the clerk, but all the members of the panel deleted that email without considering the document and it has not influenced our findings of fact below in any way.

Findings of fact

9. The claimant is a British Asian, of Indian heritage.

The claimant's role

10. The claimant started work for the respondent, Bradford Metropolitan District Council, on 1 September 2019 in the role of Education Safeguarding Officer (ESO), in the Education Safeguarding Department (ESD). He was initially employed on a fixed term contract, which was due to end on 26 February 2021.

11. The Education Safeguarding Department works with schools in the District to ensure that children are safeguarded and in education. This involves ensuring schools that were part of the Local Authority had the proper safeguarding setup and training; working with school attendance teams to ensure children were attending; providing safeguarding training and investigating safeguarding concerns on behalf of Ofsted and making recommendations; carrying out safeguarding reviews and giving advice about pupil risk assessments.

12. The ESD also works with the Special Education Needs (SEN) team. Sometimes, SEN students do not get their preferred schools and parents want to keep them at home. A sizeable number of the safeguarding concerns raised are about SEN students. In addition, the Department works with the Pupil referral units and the exclusions officer where children are excluded from schools and a safeguarding complaint/issue is raised. ESOs also work with the school admission team to address issues of school admissions for children for whom home education is not suitable; and the Youth Offending Team YOT (later the Youth Justice Team (YJT)) as pupils need to be placed into education after release from a Young Offender Institution.

Line management

13. Throughout the claimant's employment, the claimant's line manager was Kate Hopton (Ms Hopton), who became the Education Safeguarding Lead Officer in March 2019. The claimant was part of a team of about five or six ESOs.

14. Ms Hopton had been line managed in her previous role by Danielle Wilson from about July 2018. In her role as Education Safeguarding Lead Officer, Ms Hopton was also line managed by Danielle Wilson (Ms Wilson), Strategic Manager for the Education Safeguarding Team. In her new role, Ms Wilson had strategic responsibility for Elective Home Education, Access to Education, Children Missing Education, Attendance, Prosecution, Child Employment and

Entertainment Licencing, Out of School Settings and Unregistered Schools alongside safeguarding compliance and training for the district's 211 schools.

15. Ms Wilson led a team of around 50 full-time equivalent employees; directly managing nine members of staff of varying levels. About 50 per cent of the team are of a white racial background, and about 50 per cent identify as (so-called) 'minority' ethnic/BAME. (The Tribunal notes that there is currently an ongoing debate about the use of the term BAME. Given however that this is the term that has been used during the hearing, we have decided to use that acronym in this judgment.)

16. Both Ms Hopton and Ms Wilson sat on the interview panel which interviewed the claimant for the ESO role he was appointed to. Due to his experience and strong performance at interview, it was agreed that he could start at the upper end of the pay scale.

Friday afternoons

17. The claimant's evidence before the Tribunal was that the office was less busy on a Friday afternoon. Ms Hopton and Ms Wilson gave evidence to the contrary. On balance, the Tribunal prefers the evidence of Ms Hopton and Ms Wilson. There is no particular reason why school visits would take place on a Friday afternoon, compared to any other afternoon during the week. Further, we found persuasive Ms Wilson's evidence that there were regularly problems with the number of desks available for staff to sit at, meaning that sometimes members of the wider team had to sit elsewhere.

Danielle Wilson - alleged dissatisfaction with the claimant

18. The claimant says that during the first few weeks of his employment he would ask Danielle Wilson questions about some of the complaint cases he had; he perceived impression that Ms Wilson did not like him doing that and would express such dissatisfaction verbally and in body language which suggested she did not want to speak to him. Whilst the Tribunal does not doubt that was the claimant's perception, the Tribunal does not accept that Ms Wilson treated the claimant differently to other staff.

19. The reason for so finding is partly that, when it comes to the next issue below about Ms Wilson socialising with white staff outside of work and going to lunch with them, we have found that is not in fact what happened. On the balance of probabilities, we find that the claimant was mistaken in his perception of Ms Wilson's body language, just as he was mistaken about the level of socialising between Ms Wilson and her white colleagues. Further, the claimant's perception may have been influenced by the fact that Ms Wilson had an extremely demanding job, and was highly dedicated to it. She therefore had little time for talking through individual cases and the claimant may well have picked up on that. Such supervision was the responsibility of the claimant's line manager, Ms Hopton, not Ms Wilson. The Tribunal is satisfied that the claimant was treated no differently to other staff in that regard.

20. The claimant also states in his witness statement that Ms Wilson often went to lunch with other white staff, or socialised with staff outside of work, but again only with white members of staff. The Tribunal accepts however Ms Wilson's evidence that she did not go out for lunch with staff at all. She brought her own lunch in and ate at her desk. The only staff lunch she went to was at the end

of the restructure in 2019, when she went out for lunch with Ms Hopton and Jasdeep Kaushal. During her employment for the respondent, Ms Wilson went to two Christmas socials, which Ms Hopton did not attend. Ms Hopton attended one Christmas social, which Ms Wilson did not attend. Neither socialise out of work with other staff.

LADO discussion with Ms Wilson – 27 September 2019

21. On 27 September 2019 the claimant took a call from a Head Teacher. The note produced by the claimant at the time states:

> *Parent (A) works at school and child is at school. School said - Stranger 'Jane' called a member of public - concern that A is leaving child to play late at night and A is leaving child 8yrs old in care of sibling child of 17yrs for long periods of time. DSL - spoke to child, no safeg[uar]ding concerns, no pr[e]vious concerns on CPOMS and aware of issues around the parent and malicious claims due to sexuality (lesbian). (sought advise from DW) Advised to log incident, DSL to, as well as speaking to child also to speak with member of staff. Discussed with DW input of LADO on this clarity needed.*

22. The claimant discussed the call with Ms Wilson. Ms Wilson advised the claimant that a referral to the Local Authority Designated Officer (LADO) did not need to be made and that advice was passed on. The same afternoon, the claimant queried the advice that had been given. Ms Wilson reiterated that there was no need to make a referral to the LADO in those circumstances.

23. Ms Wilson subsequently spoke with Ms Hopton about the matter, as she felt that the claimant needed to understand better the role of the LADO. This was not meant as a criticism or concern about the claimant; it was not expected that he would have had much experience of dealing with the LADO, in his previous roles. (The Tribunal notes that there is a dispute about the extent of that previous experience but has not found it necessary to resolve the conflict of evidence on that point, in order to determine the issues before us.)

Discussion with Ms Hopton about the LADO – 4 October 2019

24. On 4 October 2019, Ms Hopton spoke with the claimant. No notes were taken by Ms Hopton, because it was an informal conversation. The Tribunal would not have expected notes to be made of such informal conversations. Ms Hopton told the claimant that Ms Wilson had spoken with her about the LADO issue.

25. The claimant says that during this meeting, Ms Hopton told him that Ms Wilson had accused him of undermining Ms Hopton's authority by overstepping her and discussing cases with Ms Wilson. On the balance of probabilities, the Tribunal prefers the evidence of Ms Hopton, which is that she had noticed two occasions when the claimant had asked her about an issue, and the claimant had then gone to speak to Ms Wilson about the same matter. On the third occasion, Ms Hopton asked Ms Wilson what the claimant had asked her about. Ms Hopton noted that the claimant had already asked her the same question. That was the end of the conversation with Ms Wilson. It was Ms Hopton who approached Ms Wilson about that, not the other way around and Ms Hopton who then decided to speak to the claimant about it.

26. Further, neither Ms Hopton nor Ms Wilson raised the LADO issue as a complaint about the claimant; rather, it was seen as an area for potential development. There was an issue at that time about the EST as a whole, and schools across the District, not being clear when to make a LADO referral, or who schools should make the referral to. Changes were subsequently made. The current practice is that schools do not approach ESOs about a LADO matter; they approach the LADO directly. Further, Ms Hopton is now the only person within the Education Safeguarding Team who contacts the LADO.

Reference to 'the spectrum'

27. During the above meeting, the claimant asked Ms Hopton whether Ms Wilson had an issue with men, as he felt that she was offhand with him. He states that Ms Hopton suggested to him that Ms Wilson was 'on the spectrum'. The Tribunal finds that it is more probable that what Ms Hopton actually said is that all people are on a 'spectrum of social interactions', and that Ms Wilson was not a person who liked engaging in small talk. Before the Tribunal, Ms Hopton reflected on the fact that the wording she had used was open to interpretation and that she would not use the same expression in future - since it could be (and was understandably interpreted by the claimant in this case) as referring to someone who is neuro-diverse.

Alleged unequal treatment

28. The claimant alleges that the BAME staff were treated less favourably by Ms Wilson. This occurred for example in relation to start times and work patterns. From the evidence before the Tribunal however, this was not apparent. One of the BAME staff is allowed to start later, because of a disability. A BAME member of staff who works part-time hours is able to start later; indeed, it suits the team to have her working over the lunch break. No white members of staff were allowed to start after 9am. All other members of the team had to be in work by then, in order for the team to be available for liaising with schools; except for Salim Akhter, who was also able to start later when he worked in the evenings at work related events, which was required by his role.

29. The claimant also raised an issue about Rashida Hussain's working hours. He accepted however that the issue around her working hours had arisen before he started work with the Council. Ms Hussain did collapse at work, whilst the claimant worked there and an ambulance was called for her. The Tribunal has not heard direct evidence as to the cause of that. The Tribunal accepts Ms Wilson's evidence that Ms Hussain was really supportive of her, regarding difficulties Ms Wilson experienced with managing a white member of staff.

Evidence about named comparators

30. The Tribunal heard evidence about a number of alleged comparators. Those comparators are referred to by their name below, save where there is some issue alleged in relation to their work performance, which the Tribunal has not heard any detailed evidence in relation to, and which those individuals have not had a chance to answer. The Tribunal considers it fair to refer to those individuals by their initials, or some other shorthand, rather than using their full names, to protect their confidentiality. The Tribunal is satisfied that doing so does not conflict with the open justice principle.

31. LW worked in the Prosecution Admin team, and reported to Lyndsey Fallon. She had worked in that team before Ms Wilson arrived in 2017. Ms Wilson told us, and the Tribunal accepts, that Ms Wilson had a strained relationship with LW, due to a disciplinary issue that arose. Ms Wilson asked Lyndsey Fallon to take that up with LW.

32. Kate Hopton is a long-standing employee of the Council, and was also working there when Ms Wilson arrived in 2017. She was a direct report of Ms Wilson and somebody Ms Wilson would naturally turn to, to discuss issues. The Tribunal has of course heard live evidence from Ms Hopton.

33. Amy Petschak, is also a long-standing employee of the Council, who was working there when Ms Wilson arrived in 2017.

34. Lyndsey Fallon works as the Prosecution Lead Officer. Again she is a long-standing Council employee.

35. Sue Lowndes is the Strategic Manager for School Standards and Performance. She directly reported to Marium Haque, Deputy Director of Education and Learning.

36. The claimant referred to a disciplinary issue raised with a BAME member of staff, T. The Tribunal accepts Ms Wilson's evidence that this arose because the member of staff sent one email during a two-week period. That was dealt with as a conduct issue, through the relevant Council procedures, by T's manager, not by Ms Wilson.

Alleged Removal from Safeguarding Complaints Visits

37. On 9 October 2019, the claimant went to High Park Special School with Maryam Shaheen, whom the claimant had been shadowing on a safeguarding complaint investigation. On 11 October 2019 the claimant says that he was accused of leading the visit in a 1-2-1 meeting with Ms Hopton. He further recalls that he was told by Ms Hopton that Ms Wilson wanted him to stay off complaints visits. The Tribunal accepts the respondent's evidence that there is no such thing as a lead officer on safeguarding complaints visits. Indeed, the claimant accepted during cross examination, that both officers are equal participants during such visits. Having accepted that the respondent's witnesses' evidence is more reliable on the lead officer point, the Tribunal also accepts Ms Wilson's evidence that she did not give any such instruction to Ms Hopton. The Tribunal accepts too, Ms Wilson's evidence that during his probation, she wanted the claimant to attend such visits; there would be no reason to prevent him from doing so. Such visits were important for his development in the role.

38. Further, the Tribunal finds that Ms Hopton wanted the claimant to spend more time shadowing Ms Shaheen, rather than less, during his probation, due to her experience as an Education Social Worker. Ms Hopton did not allocate any further safeguarding visits to the claimant until Ms Shaheen requested he join her on a visit on 18 November 2019 to Victoria Primary School. But this was because there was a reduction in safeguarding visits, due to an overall reduction in safeguarding complaints at that time. Ms Hopton denied having any discussion with Ms Wilson about the claimant having led a safeguarding investigation. The Tribunal accepts that denial.

Meeting at Keighley Mosque – 9 December 2019

39. On 2 December 2019, the claimant attended a training event at Dixon Kings Academy with Jenny Fox, when the topic of Relationships and Sex Education (RSE) came up. This was at the time viewed as an extremely sensitive issue by Council leaders. Demonstrations were taking place at schools in Birmingham, and Council leaders were anxious to avoid similar demonstrations in the District. Senior managers were instructed to ensure that all officers gave the same line in relation to RSE. Namely, that it was not an initiative of the Council, but part of the National Curriculum, which schools had to implement.

40. During the week following the discussion with Jenny Fox, the claimant forwarded her a poster about an RSE event at a Keighley Mosque that he was aware of. That was brought to Ms Hopton's attention by Ms Fox. The claimant subsequently attended a 1-2-1 meeting with Ms Hopton on Monday 9 December and the event was discussed. Ms Hopton understood that local parents may be in attendance at this meeting as well as people who may disagree with RSE being on the curriculum. Ms Hopton had been informed by Council leaders that the event may have been in protest against RSE. Ms Hopton told the claimant that if he were to attend or publicise an event on RSE, he would need to make it clear that he was not doing so in his capacity as an employee of the Council.

41. Ms Wilson was not aware that the claimant was planning to attend the event; and did not instruct Ms Hopton to discuss with the claimant the event and ensure he would not be promoting any RSE views other than those in line with the Council. Ms Wilson was aware of the event because she had been asked by a Mr Hinchcliffe to ensure that it did not take place on council premises. Ms Wilson did speak to Jenny Fox, to make sure that she was clear of the narrative being given by the council leaders. The Tribunal accepts Ms Wilson's evidence that concerns about SRE were not just being raised by members of the Muslim community. The Council was engaging with other stakeholders, such as other religious congregations, such as the Diocese, and LGBTQ+ charities and communities. It was and remains a highly sensitive issue for many.

July 2020 – Grant Thornton report

42. In 2020, Grant Thornton was commissioned to deliver the Inclusive Employers Project, which was aimed at working in depth with two organisations to review their culture and diversity to identify opportunities to drive more inclusive practices. The respondent volunteered to be one of these employers, along with another participating organisation. The report was published in July 2020. The report notes:

> *For ethnicity, Council workforce data shows 28% of the workforce identifying as BAME, comparatively ONS data identifies 33% of the Bradford district as 'Other ethnic background' and 67% as 'White'. From our survey respondents 19% identified as 'Other ethnic background' and 81% as 'White'. These findings demonstrate the need for the Council to be more inclusive and to increase the ethnic diversity of the workforce; in both the Council workforce data and the survey response data, the ethnicity representation was slightly lower than that recorded by ONS for the district.*

Training on equality and diversity – Ms Wilson and Ms Hopton

43. Ms Wilson has undergone training in equality and diversity whilst working for the council, which is mandatory training. It is on on-line package. She also attended new managers training, which covers all aspects of management. Equality issues and discrimination were considered as part of that. Ms Wilson has completed a six day training course with the NSPCC on safeguarding, a lot of which covered equality issues. She is studying for an MSc in public leadership and management, and specific leadership modules on that degree involve the exploration of discrimination issues. Ms Wilson also subscribes to the Chartered Management Institute, which regularly send articles based on research, which she reads. One of the training modules completed relates to unconscious bias. Equality objectives are part of development and performance plans.

44. Ms Hopton completed an online course on cultural awareness, early on in her employment with the Council. The course was changed in about 2020. It is mandatory for all staff to complete it. Ms Hopton has completed that again since, as she wrongly thought it had to be completed annually (the same as for GDPR and Fire Safety). She has also been on a three day manager's course, which had a half day session on equality and diversity issues.

45. Ms Hopton also told us about concerning comments made by a white member of staff, during a training session run by a member of the Roma community. The white member of staff was heard speaking in Slovak, on her mobile phone, unaware that others could hear her. Afterwards, the Roma trainer told Ms Hopton that discriminatory remarks were being made about the Roma community. Ms Wilson subsequently asked Jenny Fox and Salim Akhter to prepare a course to consider issues of discrimination and harassment. A course has subsequently been developed and run about the Roma community. The course is based around a single story-line, with a view to exploring differences and understanding diversity. Ms Hopton went on that course, in 2021.

Attendance Lead Officer interview

46. There is a standard Council procedure for interviews. Questions are set out in a template for each interviewee. The questions asked are based on the requirements of the role. The members of the interview panel take it in turns to ask the questions. All candidates are asked the same questions. Marks are given, usually out of five, occasionally out of ten, by each interviewer. At the end of the interviews, the marks are discussed. The marks may be modified by the members of the interview panel, if they consider that appropriate; but there should be no pressure to do so. The marks for each candidate are then totalled up, and the candidate with the highest score is the first to be offered the position.

47. An Attendance Lead Officer role became vacant in July 2020, at grade P04, the same as the temporary ESO role that the claimant was working in at that time. The holder of the role reported directly to Ms Wilson. The role was advertised both externally and internally. At the conclusion of the shortlisting process, the respondent was not able to shortlist any applicants.

48. A colleague, Waheeda Shah, later mentioned the role to the claimant. In August 2020, following that conversation, the claimant met with Ms Hopton to discuss the role. He expressed an interest in applying. The role was therefore

advertised again, internally. The Council asked for 'expressions of interest' (EOI), rather than a full application. The claimant submitted an expression of interest on 4 September 2020. He was the only team member to do so at that time. Both Ms Wilson and Ms Hopton agreed that the claimant's submitted a strong EOI.

49. On 16 September 2020, the claimant was interviewed by Ms Wilson and Ms Hopton, two white women. The EST at that time was under an enormous amount of pressure. During the Autumn term, it was anticipated that there would be attendance concerns about young people across the District, following a period when attendance at school had not been compulsory, during the initial stages of the Covid-19 pandemic. Schools in the District already had some of the worst attendance rates in the country. Further, a lot of staff work term time only. Others took holidays to fit in with school holidays so September was always a busy month, even without the added pressures.

50. The pandemic had also resulted in severe staff shortages throughout the Council, which urgently required people to fill the vacant roles. The view was taken that the recruitment process for the Attendance Lead Officer post should not be delayed, whilst a diverse panel could be found, there having already been one unsuccessful recruitment exercise for the post. There was an intention to have Nabeel Hussain, Head of Service for Integrated Front Door, on the panel, but he did not have the capacity to attend due to an excessive workload.

51. During his interview, the claimant gave an answer in which he mentioned Gypsy, Roma and Traveller (GRT) families (whilst this is not necessarily a term the Tribunal would use, we again use the term that was used before us, for simplicity). He suggested that there would 'always be an issue with attendance' for such families. Ms Wilson was concerned about the remark and made a note next to it – 'Flag'. Ms Hopton was also concerned about the reference to GRT families. Both Ms Wilson and Ms Hopton had previously received advice from Sandra Williams, from HR, not to raise such issues with the interviewee at the time of the interview, to avoid putting the interviewee off their stride, but to mention such issues during feedback instead. Ms Wilson followed that advice with the claimant.

52. The question was also asked: 'H*ow would you manage safeguarding in your role"*? The claimant did not hear it in that way and did not immediately answer it. Seeing that the claimant was struggling, Ms Wilson tried to put the question in a different way. The claimant was awarded 1 or 2 marks out of 5 for most of the answers he gave; Ms Wilson gave him a 3 for one answer. Whilst there was no minimum standard set, three out of 5 would generally be seen as an acceptable answer.

53. On 17 September 2020, the claimant received a telephone call from Ms Wilson, who told him that he had not been successful at interview. Brief feedback was given as to why he was not appointed. The claimant accepted that he had not performed well at interview. Ms Wilson suggested that the claimant could have additional feedback at a later date from either her or Ms Hopton and advised him to put a meeting request in one of their calendars. The claimant thought Ms Wilson had agreed to arrange that; this was however based on a misunderstanding on his part. At no stage subsequently, did the

claimant tell Ms Hopton or Ms Wilson, that he had understood that Ms Wilson was going to arrange a more formal feedback meeting but had not done so.

54. The claimant spoke to Ms Hopton about his interview later that week. The claimant's answer in relation to Gypsy, Roma and Traveller communities (GRT) families was discussed (again, we use the term that was used before us). Ms Hopton explained why she and Ms Wilson were concerned about the answer given in relation to GRT families. Ms Hopton did not tell the claimant that the GRT families comment had been taken out of context by Ms Wilson. That is not backed up by the scores given by both Ms Wilson and Ms Hopton for that question. The Tribunal further accepts that the low score given was for the answer to the question overall, not just the GRT families comment.

55. The role was again advertised externally. Some of the questions were changed. This is standard practice, so that internal candidates who had already had an interview were not given an unfair advantage. All candidates were still however asked: '*How would you manage safeguarding in respect of your role*'.

56. Following the interviews, a white male was appointed. The note of their interview was not considered by the Tribunal. (The Tribunal do not consider that it would not have been proportionate for that to have been disclosed or considered).

Diversity of interview panels

57. On 22 September 2020, a policy was issued, making it mandatory that all interview panels must be diverse. Prior to that date, diverse panels were seen as best practice, but were not mandatory. The Council's Equality and Diversity in Recruitment and Selection Panels guide states:

> *In September 2020 the Council decided that all panels would be diverse and Chair of Panels will need to factor this into their planning …*
>
> *All panels arranged from now on must be diverse, and have as a minimum, representation of ethnicity and gender. If you are the recruiting manager and/or chair of the interview panel it is your responsibility to ensure that the panel as a minimum:*
>
> > *includes a BAME (black, Asian and minority ethnic) panel member*
> >
> > *includes different genders*

58. The policy was rolled out from October 2020 onwards by senior managers, including Ms Wilson, who was responsible for circulating the policy to her wider team. All of this was after the interview with the claimant on 16 September 2020.

2 December 2020 – Interview Panel for YOT Manager post

59. On Monday 16 November 2020 the claimant was asked by Sarah Griffin to join a recruitment panel for a YOT manager position. Eve Remington, Parenting Practice Lead was also asked to join the panel. Ms Remington describes herself as 'Any other mixed race'. Ms Griffin had asked the claimant to join the panel as he was based in Education, there was a question on Education and she wanted someone with experience of that department. His inclusion also improved the diversity of the panel, making it compliant with the policy rolled

out in October 2020. There were two females, and one male; one is white, one 'any other mixed race', and one BAME.

60. Ms Griffin last undertook equality and diversity training about two years ago. She underwent recruitment training about five or six years ago. She has not had specific training on unconscious bias but is aware of it. Ms Griffin did not consider the Recruitment Policy before the interviews. Ms Griffin has conducted a number of interviews previously and since then. As part of management training provided in 2019/2020, which was a three-day course, there was half a day spent on recruitment and selection. This sounds like the same course attended by Ms Hopton and referred to above.

61. The role was not advertised internally first; it was advertised both internally and externally at the same time. The decision to do so was made by Mark Douglas, Former Director of Children's Services. That decision has nothing to do with Ms Griffin. It is not unusual for roles to be so advertised, even where an internal candidate is acting up in the role. The decision is one for senior managers. The person acting up is not automatically appointed; there has to be a recruitment process for the permanent position. Indeed, Ms Griffin herself had been acting up in her current role for some time, before that role was advertised externally. She therefore had to compete against external candidates herself.

62. The panel shortlisted candidates on Monday 23 November and invited candidates to interview on Monday 30 and Wednesday 2 December. The Council received 16 applications for the post, seven of whom were probably white. (They ticked the box 'English - it is assumed they meant white English, although that is not entirely clear.) Nine candidates were shortlisted, of which four were white.

63. The interviews took place on 30 November and 2 December 2020. The marks given were out of 20 for the presentation, and out of 10 for each of the subsequent questions. Candidates were marked against model answers.

64. The claimant's recollection of events is that both Ms Remington and Ms Griffin 'trash-talked' two internal BAME colleagues, Jagdev Ghataure and Nahida Shah. For the reasons which follow, the Tribunal finds that negative comments were not made.

65. No details were provided by the claimant as to what comments were made, save that the claimant says that Ms Griffin said Ms Shah lied in her application. The Tribunal finds, in relation to that allegation, that at the end of her interview, Ms Shah suggested that she was solely responsible for a piece of work on kite-marking status. Ms Griffin knew that had been the result of a team effort and said so to the other panel members. The claimant asked Ms Griffin if she was saying that Ms Shah was lying. Ms Griffin confirmed she was not saying that, she was just pointing out that Ms Shah was not solely responsible for the kite-marking status being attained, it was a team effort. The scores were not affected by this issue in any event, the comment was made after the scoring part of the interview had been concluded.

66. When questioned about this issue during the hearing, Ms Griffin denied making negative comments about the two internal candidates. On the contrary, she confirmed that in her view, Mr Ghataure had been doing 'a really good job' in the YJS. He had been there a number of years. Ms Griffin had previously

interviewed him, following which he was appointed into a senior position. This was about 12 to 18 months before the YOT Manager interview took place. Ms Griffin also sat on an interview panel for another post Ms Shah had applied for shortly after this interview panel; Ms Shah was appointed to that subsequent position. All of this is inconsistent with Ms Griffin having a negative attitude towards those two candidates.

67. The Tribunal also notes that Ms Griffin gave Mr Ghataure the highest score – 63, compared to Ms Remington's score of 56 and the claimant's core of 61. His overall score was 180, whereas the score of the successful candidates was 264 and 263. Ms Shah's score was 209; the claimant gave her a mark of 71, the other two members of the panel 69. Their scores were well below the scores of the successful candidates.

Alleged manipulation of scores

68. The claimant alleges that the interview process was skewed, by comments made by Ms Griffin, in order to ensure she got the candidates that she wanted. It is noted that Ms Shah and Mr Ghataure were given mainly sixes and sevens by all members of the panel, whereas the successful candidates scored mainly eights and nines for their answers. The Tribunal considers it inherently improbable that the scores could be manipulated to that extent by Ms Griffin. Scoring at interview is in any event not an exact science. The relatively small differences between the scores given by the member of the panel to each candidate do not appear to the Tribunal to be significant. On the contrary, they appear to be well within the range to be expected.

69. The claimant also recollects that scores were not given to the candidates after each question by him, but added in at the end, when the alleged manipulation took place. The Tribunal does not accept that is what happened. The interview records for the candidates discussed below, suggest that scores were entered by each member of the panel, as the interviews took place. We accept Ms Griffin's evidence that this is what happened. We find that more probable than the claimant's suggestion that all the scores were entered after the interviews had taken place. At the end of the first day of interviews, there was more time to discuss the answers. On the second day of the interviews, the process was somewhat rushed towards the end, but the Tribunal is satisfied that there was well over an hour, between the end of the last interview, and 7 pm, when they had to leave the building.

70. The difference between the score of the third best performing candidate, and the second candidate was only three points - 260, compared to 263. The BAME candidate, Nusurat, was scored 87 by Ms Remington, 86 by Ms Griffin, and 87 by the claimant. John Thompson, the successful white male candidate, was scored 264 overall, 89 by Ms Remington, 87 by Ms Griffin and 88 by the claimant. Michelle Crowther the successful white female candidate was scored, 263, 87 by Ms Remington, 91 by Ms Griffin and 85 by the claimant. It is apparent that the score given to Ms Crowther by Ms Griffin resulted in her being appointed, rather than the BAME candidate. The differences between the scores are again however, well within the range to be expected. In the Tribunal's judgment. The higher score given by Ms Griffin is no more an indication of bias, then the lower score given to her by the claimant or Ms Remington, is indicative of bias by them against that candidate. It is well within the range of difference to be expected.

71. Finally, the claimant says that Ms Crowther gave an answer which was very similar to the model answer a remarking candidates against. He found that suspicious and it suggested to him that there had been some collusion. The Tribunal is not convinced that collusion took place. As Ms Griffin stated during her evidence, the model answers given for questions asked of candidates are such that candidates can achieve a top score. That is what happened in this case.

72. For the above reasons, the Tribunal concludes that the interview process was not discriminatory, and discriminatory comments were not made.

Protected acts - 4 December 2020

73. On 4 December 2020, the claimant emailed Kersten England and Anne Lloyd as follows:

> *I have just been through an interview process as a panel member and would like to raise some concerns.*
>
> *Please can you let me know when I can speak with you confidentially.*

74. A meeting was arranged for 15 December 2020. The claimant emailed Ms England on the day of the meeting as follows:

> *Dear Kersten,*
>
> *Thank you for arranging this meeting.*
>
> *While I understand why Anne Lloyd may have been invited, I want to be clear here that I am raising a concern about my observations of a process which in many ways seems to echo some of the experiences of perceived discrimination that BAME staff had brought up in meetings earlier this year.*
>
> *And as you quite clearly and also quite rightly stated, that any such concerns should be brought up with you directly, hence why I have asked for a meeting.*
>
> *What I want to raise I would like to be kept confidential and while I would prefer to keep this simply between me and you, I am happy to agree to Anne being present if you feel she also needs to hear what these concerns are.*

75. The meeting duly took place on 15 December 2020 by video (Webex). Ms Lloyd was asked to attend the meeting by Ms England and she made handwritten notes [231].

76. The Tribunal accepts the note as an accurate reflection of the discussion. The claimant confirmed that he was not raising a formal complaint, he wanted to share on a confidential basis his personal experience of the interview process and wider concerns about discriminatory practices, which were shared by other BAME staff. The claimant queried why the interview did not go internal first. It was explained that the decision in that respect was made by the director Mark Douglas. The claimant spoke about negative talk around one of the candidates, Ms N Shah. He said there was a lot of talking up of an internal white female candidate. He stated that the scoring had only started at 6:30 pm when the building closed at 7 pm and all candidates were done right at the end rather than at the time of each interview. The process was rushed. He felt the panel was scoring white candidates higher without critically analysing the evidence. The successful white female candidate achieved a score of 10 out

of 10 which he felt was a little odd given that she had not worked in YOT. He raised the possibility of collusion.

77. The Tribunal accepts Ms Lloyd's evidence that she did not speak to anyone else about the conversation. She respected the claimant's expressed a desire to keep the conversation confidential. Ms Lloyd did however commission the Council's Recruitment and Redeployment Manager and Head of Audit to develop a new recruitment audit system for the Council that would also audit and quality assure a sample of recruitment schemes annually across a range of factors.

78. Neither Ms Wilson nor Ms Hopton knew that the conversation had taken place, or the content of it. Similarly, Ms Griffin only became aware of the conversation in May 2021, after the request for feedback by Ms N Shah.

79. Ms N Shah raised a grievance about the matter on 7 December 2020. Neither Ms Lloyd nor Ms England were notified of that grievance. Nor would the Tribunal have expected them to be informed.

Permanent role as Education Safeguarding Officer

80. On 17 December 2020 the claimant was interviewed for the permanent position of Education Safeguarding Officer (ESO) by Ms Hopton and Ms Alice Ngondi. He was formally offered the position on the same day. Up to that point, he had been working on a fixed term contract. He received very positive feedback after his interview. Alice Ngondi remarked that it was one of the best interviews she had witnessed. The claimant was employed for four days per week on this permanent contract, which formally commenced on 1 February 2021. He continued to work one day a week on a temporary contract.

81. The claimant was informed by Ms Hopton at his interview that there would be progression opportunities in the department. This was also mentioned by Ms Hopton during a 1-to-1 meeting with the claimant on 27 January. He was specifically told that there would be a Senior Education Safeguarding Officer position that would soon be advertised and he was encouraged to apply for it when it was advertised.

Risk Assessment Training

82. In late 2019, Ms Hopton had several discussions with the claimant , during which they identified gaps and areas he could work on to improve the Education Safeguarding Service. It was decided that he would create a course for schools around risk assessment for children who may pose risks to themselves or others, with the aim of supporting schools to be confident in assessing and mitigating risks if they asked for help.

83. An Evolve note entry dated 30 December 2019 refers to a training course. The note states:

> *I still have to plan into this the development of a teacher training course related to managing the behaviour of children in crisis.*

84. This work was then put on hold until around October 2020, due first to other priorities, and subsequently, the pandemic. Ms Hopton revisited the topic with the claimant at that point, and asked if he could start to put together the course. The claimant had recently been on a course with Dr Karol Papis from Be Positive Pathways, which had discussed some trauma-informed strategies. The

claimant asked Ms Hopton if he should try to incorporate this into the risk assessment training. She agreed with the claimant's suggestion that it might be interesting for Dr Papis to contribute to this course. Ms Hopton's intention was the claimant would develop the risk assessment training and then show this to Dr Papis to ask if he had any interesting trauma-informed contributions which could be added to it. The claimant thought Ms Hopton was suggesting that Dr Papis should have a more direct input.

85. During late 2020 and the first few months of 2021, the workload of the Safeguarding Team was exceptionally high. Ms Hopton was working up to 70 hours per week. Her children were at home due to the second lockdown and she was trying to home-school. There were numerous children within the district who were stuck abroad. Ms Hopton came close to being overwhelmed by her workload on a number of occasions during this period.

86. On 15 January 2021 the claimant began to finalise the risk assessment training material. On 19 January 2021 Ms Hopton emailed the claimant and asked him to send to her the draft training materials and risk assessment. The claimant sent them on 20 January 2021. The title of the PowerPoint was *Assessing Risks - Introducing the Bradford Individual Pupil Risk Assessment (IPRA)*. Ms Hopton thought the response was a good start, but still needed significant work. Neither the slides nor the risk assessment mentioned 'disrupted attachment'. Ms Hopton sent the Bradford PowerPoint template to the claimant on 27 January 2021, because the training would be run by the Council and if it was to be sold to schools, had to be correctly branded.

87. On 28 January 2021, the claimant was asked to ensure that the risk assessment tool document (IPRA) was also available in an Excel format. Ms Hopton says she made that clear in supervision on 27 January 2021. The note records [269] – '*Risk assessment – needs to be a word and excel version'.* The Tribunal accepts Ms Wilson's evidence that she was not involved in, nor did she instigate that request. Ms Hopton's email of 28 January stated:

> *Can you send me the more final versions of RA – ie with the option of either excel or word? And the training if you can get onto the Bradford template? I think there are a few bits I'd like to look at and reword a little.*
>
> *Is the 16th March separate training from your contact?*

88. The claimant responded:

> *The 16th March it will be Dr Karol Papis who will go through strategies to work with children with risk, and I will also deliver the introduction to and the philosophy behind the IPRA. [274]*

89. On 23 February 2021, Ms Hopton wrote to the claimant asking him to send the most recent version of the training and to include the Excel version of the risk assessment IPRA as well. The claimant had to spend some time learning how to use Excel and subsequently put together the IPRA in Excel format. The clamant mailed that to Ms Hopton on 25 February 2021. His covering email stated:

> *Here is the IPRA updated so it's in line with the guidance doc.*
>
> *Added an extra page on multi agency work and made some areas easier to use.*

I can now claim I'm a self-taught Excel pro!

90. Ms Hopton relied on 1 March 2021:

Many thanks – this is very pleasing! Well done on Excel. Can I take a look at the slides for the training please?

91. On 4 March 2021, the claimant emailed Ms Hopton and Dr Papis. The subject heading of the email was '*Training Course - Evidence Based Psychology on Working Effectively with Children with Disrupted Attachment and Associated Risk Assessment'*. The email stated that the aim of the course was:

To outline strategies to enable school staff to effectively assess and manage risks present with children with disrupted attachment. This would include a wide spectrum of children across the education landscape and would be applicable to a range of risk mitigation situations.

92. Ms Hopton was concerned about the apparent change of focus of the course. She emailed the claimant two minutes later stating:

I really need to see the slides on this ASAP, just to make sure we're on the same page. I know I'd asked you to alter a bit, and then I was going to look at the presentation?

93. The claimant replied to say that he was working on it and as soon as it was done he would send it across. Ms Hopton was at a training course that day with Ms Wilson and during a break they discussed the claimant's proposed course. At 17.11 Ms Hopton emailed the claimant to say:

I'm discussing this with Danielle and we have some concerns around this. I think we need to quality assure this and take a more considered approach.

Danielle asks that we not go ahead with this at this time. We need to understand more about the aims and have more input into it. I think these are two separate courses in a way. I had not realised that the IPRA things would be together with trauma?

94. The reference to 'trauma' in the email was an error, as discussed further below. The claimant replied to Ms Hopton's email:

No worries, I completely agree that whatever goes out needs to be quality assured. I'll send you what I have and then maybe shall we discuss tomorrow?

95. Ms Hopton replied as follows at 17.17:

That's great yep. I think that we are sort of talking about two courses really.

I wonder if there needs to be one 'Risk Assessment' – which helps schools to risk manage effectively.

And then a separate course is what appears to be around working with children with disrupted attachment. My worry is that there is too much in the course with Sara Burgess and Karen Roper having brief input on a huge area?

Let's discuss tomorrow. Happy for us to meet on 16th and tease out what is needed.

96. The Tribunal accepts Ms Hopton's evidence that the reference to 'disrupted attachment' in this email, was what she had meant to say in her earlier email

too, rather than referring to 'trauma'. As noted above, following their meeting in October 2020, Ms Hopton understood that Dr Papis would be asked if he had any interesting trauma-informed contributions to add to it.

97. On 5 March 2021, the claimant sent an email to Karen Roper, with a circulation list, at 10:47. The list did not include any of the ESOs, but included six people from two schools. Ms Hopton sent an email to Karen Roper, cc the claimant, on 8 March 021 at 10:49 in which she said:

> *I've asked Shaqib to cancel this meeting for the time being. I think there has been some crossed wires. Danielle and I have not had chance to quality assure this training.*
>
> *I think we need to have a further conversation on whether this is actually two separate courses.*

98. After further discussion between Ms Hopton and the claimant, it was agreed that the training would go ahead as planned on the 16 March, but just to Council employees, not the two schools who were also invited at that stage. In an email sent the same day, the claimant asked Ms Hopton whether Ms Wilson wanted to attend and share her input. Ms Hopton replied:

> *No Danielle will be happy to have input when we plan our own training around Risk Assessment – which will be able to be developed as proposed from your training. She will leave Sara and colleagues to lead on the course around Working Effectively with Children with Disrupted Attachment.*

99. Ms Hopton and Ms Wilson agreed that the latter part of the proposed course would be better run by Educational Psychologists or the Behaviour Support Service, who had the necessary expertise, not the ESO team.

100. Ms Hopton was subsequently not able to attend the training session, due to her being involved in interviews. She informed the claimant of that by email on 10 March 2021:

> *Really sorry but I need to interview on Tuesday so won't be able to attend the discussion about the working with children with Disrupted Attachment. Is that going to be passed for Sara Burgess to consider running as a course?*

101. On 15 March 2021, Ms Hopton sent an email to Maryam Shaheen stating:

> *I noticed you'd be[en] invited to the meeting tomorrow about working with disrupted attachment. I'm not sure this is necessary. I don't think it would be a good use of your time given that our Risk Assessment training will be separate from this and I was hoping you'd contribute your ideas separately to our specific training.*
>
> *Perhaps there was a miscommunication – will be very glad to have your suggestions for our ES training on this.*

<u>YOT Meeting – 25 February 2021</u>

102. The claimant was invited to a YOT meeting on 25 February 2021 with Lisa Brett, Sarah Griffin, Ms Wilson and Ms Hopton. The claimant found the tone in the meeting uncomfortable. It was apparent from what managers were saying that YOT staff did not understand the education offer and were expecting more from 'Education' than could be given. At one stage, Ms Wilson said to the claimant:

Shaqib, you should not feel that you are to blame for the ongoing issues in the YOT with regards to the education provision.

Agreement to work 4 days a week

103. The claimant emailed Ms Hopton on 29 January 2021 as follows:

I've accepted the offer of Head of Operations and Safeguarding Lead at My Foster Family. It's a part time 2 day role, one over the weekend and one on Wednesday.

I have given notice that I can move into the role at the end of February and would like to give notice to the council that my temporary Wednesday only contract should end on the 24th of February. However I will continue with my permanent 4 day a week role.

Kate, I also want to thank you for supporting me in getting this, I have been volunteering with them for some time now and I'm really excited about this new role.

104. Ms Hopton agreed to the claimant's request. The claimant continued to work for the respondent for four days a week in line with his permanent ESO contract, from 24 February.

Role of Senior Education Safeguarding Officer

105. It is the claimant's case that all BAME staff were discouraged from applying for the post of Senior Education Safeguarding Officer. The Tribunal considers that contention to be improbable. The claimant accepts that Ms Hopton had informed the claimant about the role at his successful ESO interview in December 2020. The Tribunal considers it to be unlikely that only a month or two later, Ms Hopton would be discouraging the claimant or any of his colleagues from applying for the post. The Tribunal also considers that improbable, since only ESOs were likely to have the skill set required for the more Senior ESO role. The Tribunal therefore finds that Ms Hopton informed all of the ESOs about the role, including the claimant. Further, see the emails from Ms Hopton to the team on 1 and 3 March 2021, referred to below. The content of those emails is inconsistent with what the claimant alleges.

106. The claimant contends that he was told by Ms Hopton in February 2021 that he would not be eligible to apply for the role of Senior ESO unless he worked full-time. The Tribunal considers the evidence of Ms Hopton to be more reliable on this point. Ms Hopton's says at #39:

I had a [telephone] conversation with Mr Juneja about the role and said that we would require a full time manager in this role, but the process would dictate that if he applied and was appointable and asked about working part time, then we would look to make arrangements to this end (page 454 of the Bundle). We currently have several people working in Principal Officer roles part time, three of whom are BAME and it is therefore clear that we do make these arrangements where appropriate candidates are appointable. I did not say that Mr Juneja would not be successful or make it clear that he would not be eligible for the role. I also did not say that he would have to leave his job at the charity. From what I recall, Maryam Shaheen or Jasdeep Kaushal, Education Safeguarding Officer, told me that Mr Juneja had approached another Education Safeguarding Officer, Rashida Hussain, to ask if she would 'job share' the role with him. I said that I didn't believe it was for him

to find a 'job share' partner, but that the role was full time and would require full time cover and that any job share arrangement would have to be a result of both candidates being appointable at interview and us making arrangements to accommodate this.

107. The Tribunal accepts the evidence of Ms Wilson that what was said by Ms Hopton was not in any event instigated or influenced by Ms Wilson. These were operational matters, for Ms Hopton to manage.

108. Further, during the call with Ms Hopton about whether he should apply for the senior role, the claimant concluded that he might be better developing his new role at My Foster Family. Further, that because he'd only just been appointed to the Education Safeguarding Officer role permanently, he would rather concentrate on these two roles, at that time.

109. On 1 March 2021, Ms Wilson emailed staff as follows:

You will remember I emailed to inform you about upcoming roles for Elective Home Education, these roles will be initially available to anyone in redeployment to express their interest in this week. They will then go out for internal advert. There are 5 additional roles available; one Senior Education Safeguarding Officer, one Prosecution Officer, One Referral Officer and two Elective Home Education Officers. Details will be emailed to all staff when these are released. Additionally there will be some further operational roles to support Persistent Absence improvement, as part of the Raising Attainment Strategy, these roles are yet to be agreed and defined but as they are agreed I will update you on these.

110. The fact that roles were to be offered for redeployment first was because that is the Policy of the Council. The policy has been agreed with the recognised trade unions. Neither Ms Wilson nor Ms Hopton had any input into, or influence over, that decision.

111. The role of Senior Education Safeguarding Officer was subsequently advertised on Bradford Engageats, an external platform on 3 March (along with the two Elective Home Education Officer roles). Ms Hopton emailed the EST on 3 March 2021 as follows:

Two vacancies have gone live on Engageats – Bradford.engageats.co.uk – Senior Education Safeguarding Officer and 2 x Elective Home Education Officers. Please feel free to contact me for a discussion about these roles.

112. On 8 March 2021, an email was sent out by Ms Hopton to the team, letting them know that there were a couple of people in redeployment who were interested in the role of Elective Home Education (EHE) Officer role. The staff were asked to offer them a shadowing session to help them understand the work of the team and the role.

113. On 10 March 2021, Ms Hopton emailed Amanda Clegg in HR as follows:

Please can we pull the job adverts for these two roles off the system/pause the process? It is all becoming too much as we are having quite a few redeployees expressing interests and I just don't think it is fair on internal candidates to put in applications whilst we have interviews going on for candidates through redeployment?

114. The only redeployee who was eligible to apply for the role was a white British female. She was not appointed. It was clear, following the interview, that she was not suitable for the role.

115. As a result, the role was again advertised internally on 29 March 2021. The role was not offered externally at that stage. Two internal ESO candidates applied for the role, Ms Shaheen and Jasdeep Kaushal. Subsequently, Ms Shaheen, a BAME employee, was appointed. Ms Wilson, Ms Hopton and Nabeel Hussain sat on the interview panel.

Alleged removal of the claimant's name from YOT expected attendee's list

116. On 4 March 2021 the claimant emailed Ms Hopton about a YOT meeting. He had been included in a circulation list for the meeting, but his name was not included in the attachment, the YOT Improvement Plan, as the Operational Lead. The Claimant believed that he was until then named as the Operational Lead. The Tribunal finds, for the reasons which followed, that he is mistaken in that regard. The claimant emailed Ms Hopton to say:

> *As operational lead for this do you feel it would be better you attend this meeting rather than I?*

117. Ms Hopton replied:

> *Yes probably for now - I can't attend today though? Have you attended?*
>
> *Don't want you to think there are too many YOT meetings! I have asked about that other meeting why YJS/SEN/ES meeting we have all been sent invites for - will let you know.*

The claimant responded:

> *No worries, I'll attend in your place today and will let Shani/Lisa know.*

118. The YOT Strategic Plan was prepared pre-Covid, after an inspection but had not been progressed further after that, due to the pandemic. The document was produced by YOT. Ms Hopton would always have been named as the Operational Lead, since she was the manager of the ESO Team.

119. Ms Wilson had nothing to do with the compilation of the list of attendees for YOT meetings from February 2021 onwards.

Protected act/protected disclosure 2 – email to Marium Haque

120. On 9 March 2021 the claimant emailed Marium Haque, Deputy Director of Education and Learning, as follows:

> *I feel it is right that I bring to your attention an issue that being perceived as discrimination against BAME staff within the team.*
>
> *I am reaching out to you as I do not have confidence that my own line managers would be able to address this issue. Please treat this with the utmost confidentiality and please do not share this email with my line managers as that would put me in a very vulnerable situation.*
>
> *… Please let me know when you might be available today to discuss this in confidentiality.*

121. On 10 March 2021 the claimant met with Ms Haque. The claimant explained how he felt that managers were advertising posts externally so as to cast the net wider and improve the prospects of recruiting a White British candidate.

He explained that there was a general sense amongst staff that White British staff were given favourable treatment compared to their BAME counterparts despite the fact that BAME staff were praised by Ofsted. He also discussed how there was no BAME representative for staff in their area. Marium Haque was not comfortable being put forward as the representative, so the claimant informed her that he would contact Nahid Hussain and the BAME representative for Education. The claimant asked Ms Haque to '*do the right thing and pull the role*'. The claimant said that the role that should be offered to staff on the redeployment list should be an Education Safeguarding Officer role, not a Senior Education Safeguarding Officer role, given that the latter is a developmental role. He argued that should therefore have been ring-fenced for Education Safeguarding Officers alone.

122. We accept Ms Hopton's evidence that she was not made aware of this disclosure. Ms Wilson was made aware of the email on 10 March and spoke with Ms Haque about it. She subsequently sent an email to her stating:

> *[A]ll ESO's have had an individual discussion about the upcoming roles and have been made aware of the complexities as a result of the redeployees.*
>
> *Further, in relation to the diversity of the interview panel for the Attendance Lead job, I have accepted that the panel may not have been as diverse as I would normally try to achieve (also, I raised this via email towards the end of last year, the policy around interview panels was updated but was not shared with managers), there are circumstances around some appointments where this can be difficult, particularly in the current pandemic. However, I would like to note that two other interviews, firstly the member of staff's initial interview to be appointed into a temporary role within the LA and subsequently one after the referenced interview, where the member of staff was given a permanent role was made up of the same panel. No concerns were raised on any of the three occasions.*
>
> *I do want to outline what you would suggest next steps to be in terms of feedback to the member of staff and reflect on if there are any other actions within the service that would help us lead some conversations around diversity, equality and equity. I, as you know, do have diversity within the management team although I often reflect that this does not necessarily reflect the wider team in terms of diversity, for example LGBTQ+, disability and other minority groups and I am keen to engage staff in conversations and reflection on how we develop our service further in this area.*

Being questioned about old work completed

123. On 9 March 2021, the claimant says that Ms Hopton questioned him as to whether advice that he had given to a school in the past was correct, when it had not been questioned at the time. The claimant was not able to be more specific as to what the advice was about.

124. The Tribunal accepts Ms Hopton's evidence that during a meeting on 9 March 2021, a case he was dealing with at Woodside was discussed. Ms Hopton did not catch the specifics but it sounded to her that the claimant could have been a little unclear on how or why you 'dispense with consent' to make a safeguarding referral. She therefore spoke with the claimant to clarify the reasons he had advised the school to dispense with consent. She advised the claimant to pick this up with Ms Shaheen, as an experienced ESO. The

claimant subsequently assured Ms Hopton via email that his advice had been correct and that Ms Shaheen had advised him about this. Ms Hopton was satisfied with that response and did not pursue the issue any further.

125. The Tribunal accepts Ms Wilson's evidence that she was not involved in this issue at all.

Claimant told he was 'running away with an idea'?

126. In or around March 2021, the claimant was asked to set up an education attendance clinic for YOT and discussed this with Sarah Goddard. The claimant received a call from the attendance team about this and says that he was informed that they had been told by Ms Wilson that the claimant '*was simply running away with an idea'*. Ms Hopton says that after the claimant resigned, Ms Wilson asked her to pursue this plan with another ESO, which the Tribunal accepts.

127. The Tribunal also accepts Ms Wilson's evidence on this point in it's entirety (#29), which is corroborated by Ms Hopton's evidence above. Ms Wilson states:

> *I sat on the Strategic Board for the YOT and there was continued concern about school attendance of children who were known to the service which we had also discussed in the meeting with Ms Brett and Ms Griffin mentioned above. As a result, around March 2021 I had asked Mr Juneja to set up a pilot education attendance clinic for the YOT in conjunction with the Attendance Team Managers. It was my view that he was able to provide invaluable support to do this following the success of his previous work. At no point did I inform the Attendance Team that he was 'simply running away with an idea', I did not meet with the Attendance Team at all to discuss the YOT project and I would have never discussed such an issue with multiple staff within a team. It was my idea to set up the attendance clinic and following Mr Juneja's resignation (page 319 of the Bundle), I asked Ms Hopton to instruct another member of the team to establish this clinic as there was an appetite from the YOT to have such a resource.*

Access to the Evolve system notes

128. On 19 March 2021, the claimant had a one-to-one meeting with Ms Hopton. He had found that he was unable to access the notes he had previously had access to on the Evolve system. He was concerned that everything he had done was being erased.

129. Ms Wilson had no knowledge or influence about that. When the claimant raised this with Ms Hopton, she agreed to try to contact Evolve to see if, when the performance management cycle is complete, the information is difficult to access.

130. The Tribunal accepts that the notes did disappear when the performance review has been completed but that glitch has since been fixed by the provider. Further, there is no facility for the respondent's managers or any other staff to delete the Evolve notes of another member of staff.

Deteriorating health

131. During the following three weeks, the claimant was only able to work two days per week. The claimant reflected on his conversation with Ms Haque and

decided to help Naheed Hussain to set up the BAME network and to put himself forward as the BAME representative in Education.

Request to work from London

132. On 5 April 2021, Easter Monday, the claimant spoke to his father. His father had contracted Covid in January and was still suffering from long-Covid symptoms. The claimant also spoke to his mother, who told him that she was not feeling well either. The claimant's wife was also unwell at this time. The claimant subsequently went to see his parents in London. He felt the situation was not good for them, and on or about 12 April, asked Ms Hopton if he could work from London.

133. Again, there is a conflict of evidence as to whether the claimant use words to the effect that he wanted this arrangement to be longer term or not. The Tribunal prefers Ms Hopton's evidence that that was what she understood the claimant was asking. That is consistent with the contemporaneous notes made by the claimant's GP during consultations on 26 and 30 April 2021; as well as the content of his resignation letter dated 30 April. Further, the claimant told the Tribunal that at this time his mental health was not good. For all of these reasons, the Tribunal finds that the claimant's recollection of this conversation is less reliable than Ms Hopton's.

134. Ms Hopton advised the claimant that his role could not be delivered remotely longer term. Ms Hopton advised the claimant that although Covid had necessitated working from home, the Council would soon be required to be out and about in the Bradford district and that it was not feasible for the claimant to work from London. The claimant mentioned a 'sabbatical'. Ms Hopton suggested he look at the Council's sabbatical leave policy. In any event, the Tribunal is satisfied that even if Ms Hopton misheard the claimant, it was her genuine understanding that the claimant was asking to work in London longer term, not just for a few weeks.

135. Ms Wilson had no involvement in the decision not to allow the claimant to work from London. Again, this was an operational decision, for Ms Hopton to make, not Ms Wilson.

Suggestion of annual leave to cover absence

136. Ms Hopton told the claimant he could take annual leave to cover the week 19 to 23 April 2021. Ms Hopton consulted the leave policy and believed the claimant had to take annual leave to cover his absence. She had granted compassionate leave to the claimant in the summer of 2020 due to marital issues. Compassionate leave was not requested by the claimant at this time. Ms Hopton did not consider the compassionate leave policy applied to the situation discussed with her by the claimant in April 2021.

137. Ms Wilson was not involved in this decision. Again, this is an operational decision. Ms Wilson had no reason to micro-manage her direct reports and in any event was far too busy to do so, given the demands of her role.

138. After the claimant returned to Bradford, he was feeling depressed. On 26 April, he telephoned his GP who advised that the claimant take a week off work due to stress. His GP's note of 26 April 2021 states:

Going through a rough time in personal/family life;
both parents in London - not well;

they are asking that he moves to London;
Wife also not well; …
This is causing him some stress;
Needs some time to sort things out;
Yet to speak with manager;
works at council;
I have advised to speak to manager;
I have also booked with social prescriber;
No reports of suicide/self-harm/psychosis thoughts.

Resignation emails

139. On 30 April 2021, the claimant sent an email to Ms Hopton at 10:16, saying he wanted to resign. His email states:

I have given this much thought and this has been a very difficult decision to make. However I have come to a decision that it would be best for me resign from my position as Education Safeguarding Officer at Bradford Council.

I have really enjoyed working with you and the team and I know that so much has been achieved in the almost two years now that I have been with you. I am sure that success wi[ll] continue and it certainly has been a privilege to have been part of this team.

It has been difficult for me over the past few weeks with my parents' health and I am feeling increasing pressure to be with them at this time in London and I feel this is the right thing to do. It has been a hard decision and I will need … some time to think through how I can make the transition from this position into one that is more London based or gives me the flexibility to work from London as well as here in the north. …

Please also let me know if I need to put this as a formal letter or something or address to anyone else. …

I feel there might probably be a lot more we need to discuss and I do hope I get a chance to see everyone and do goodbyes properly.

Wishing you all the best

140. Ms Hopton responded at 10:43 in the following terms:

Thank you for your email. I am of course saddened to have to accept your resignation. You should feel very proud of the difference you have made during your time and we will all miss you very much.

As you know, it wouldn't be a position that could work remotely long term, but I would hope that we can work something out during your notice period in order to enable you to work in London during that time.

I know this has been a difficult decision for you; I hope you will be able to take this slightly different experience, add it to your repertoire and continue to make a difference to children whether it is in London or Bradford.

I would be happy to meet on Tuesday – either 11.30 or 3pm would work. We will be able to meet in MMT. Anthony and Karen will be on their first day.

With my very best wishes,

141. The claimant spoke to his GP on 30 April 2021, after the exchange of emails above. The GP note records:

> *Resigned from work.*
> *Family in London with health issues see above.*
> *Unknown time frame,*
> *works in education - council,*
> *Feels responsible for his parents.*
> *Booked in for next week*

Return to work on 4 May and subsequent sick leave

142. The claimant returned to work on 4 May. Ms Hopton was not there when she arrived. Ms Wilson welcomed the claimant, found a desk for him, and then got on with her work.

143. When Ms Hopton arrived, she discussed with the claimant how she could support him during his final few weeks. Ms Hopton confirmed to the claimant that he could work in London during his notice period.

144. The claimant was subsequently given a fit note, covering the period 5 to 14 May. The medical reason given was '*personal issues (stress)'*.

145. On 6 May 2021 the claimant emailed a letter of resignation to Ms Hopton which he asked to be treated as effective from 10 May 2021. The letter stated:

> *After much deliberation I have decided it would be best for me to resign from my position as Education Safeguarding Officer at Bradford Council.*
>
> *Please accept this as a letter of resignation effective from the date above.*
>
> *I would also like to reiterate that it has been a privilege to have worked with you and the team and I wish all of you the best in future.*

Email to Mark Douglas on 19 May

146. On 14 May 2021 the claimant saw Mark Douglas at a Fasting Friday event. The claimant subsequently wrote to him on 19 May to say:

> *I have decided with a heavy heart to resign from my role … I am at the same time deeply concerned about the level of discrimination that BAME staff in my team feel towards a certain line manager … Danielle Wilson treats white colleagues in the team differently to BAME colleagues.*

147. Mr Douglas thanked the claimant for his comments on 21 May 2021 and said that he was:

> *concerned about your reflections of your time in the education service*,

and that he was:

> *fully committed to ensuring all staff can come into the workplace and fulfil their potential without fear of discrimination. To this end I am committed to challenging racism and discrimination in all its forms so will be looking more formally at the issues you have raised*.

148. The claimant returned to work on 20 May 2021. He was contacted that day by a number of BAME staff about a planned restructure of the Education Safeguarding department. The staff felt that Salim Akhter and his team were now depicted as an external service, and Waheeda Shah had been stripped

of some of her responsibilities. In contrast, Ms Hopton, Tara Watson, and Jenny Fox were to be automatically promoted. BAME staff considered this to be both a clear example of discrimination and a proof of institutional racism. The claimant decided to raise his concerns with the Director of Children's Services and others.

149. The Tribunal accepts that this was the genuine perception of staff. But having heard from Ms Hopton, the Tribunal accepts that although Ms Hopton's title changed, her role remained the same, and she remained on the same pay and grade. Tara Watson was assimilated to a new role, under the terms of the restructuring policy, on the same grade. Jenny Fox was assimilated from a PO5 role to a PO4 role; this was also within the terms of, and resulted from the application of, the restructure policy.

150. Further, the position of Mr Akhter had not in fact changed. He and his team were funded by the Department for Education, so were not part of the proposed restructure and were not affected by it. His team with still very much part of education safeguarding, but since it was not affected by the proposed restructure, his team was not shown as one of those affected by it. As for Ms Waheeda Shah, this Tribunal is grateful to her for making herself available. The Tribunal notes that she has taken a separate claim against the Council, which is currently before the Leeds Employment Tribunal. It is for that Tribunal to decide whether Ms Shah was stripped of her responsibilities or not. It would not be appropriate for this Tribunal, on the basis of the limited evidence we have heard on this issue, to make findings of fact about the affect of the restructure on Ms Waheeda Shah.

151. On 21 May 2021, the claimant received an email from Lisa Brett, Head of Service Prevention etc, asking for feedback in relation to the interview he had been a panellist for. Ms Brett told the claimant:

> *You may or may not be aware but NS is requesting feedback regarding her interview for Eve and Shaqib. Eve, can I ask you organise this with NS. Shaqib if you can support Eve that would be great.*
>
> *Sarah can you provide me with the paperwork and I will ensure NS receives this.*

152. The claimant responded as follows on 23 May 2021 with an email to Ms England and Ms Lloyd:

> *I am deeply troubled by the request below from Lisa.*
>
> *If you both recall … our meeting on 15th December 2020, I had many reasons to conclude that there was some discriminatory practice taking place during this interview process and I came to you both as a whistle-blower, to highlight these concerns of mine. I had made clear then, and still insist now that I do not want to have any further part of this process and I do not want any of my judgments on any candidate to be considered in any way other than null and void.*
>
> *I had also made it clear back then in December that I felt I had been chosen to be on this panel as a 'token' BAME panellist so that a particular person could be appointed without it seeming that there was any wrongdoing. I clearly felt that there was wrongdoing and I spoke out to both of you and because of that I have been left vulnerable and in fear of some reprisal*

against me. I do believe that there have been reprisal actions against me and that I have been victimised and I will elaborate on this in another email.

I do not feel that it would be right for me to respond to Lisa below and in order to protect myself from any further harm I ask that either of you respond to this.

And so that you are both aware, I have submitted my resignation for a number of reasons including this and I will also elaborate on this in another email.

153. Ms Lloyd responded on 25 May 2021. Referring to the meeting with her and Ms England on 15 December 2020 Ms Lloyd stated:

The discussion you had with us was around this experience and how uncomfortable you were with this recruitment exercise and why, and you wanted to share this with us in a safe and confidential environment. The outcome of the meeting therefore, was not to progress a formal whistleblowing, and the understanding was that you were not making a formal complaint o[f] whistle-blowing at that time. You were raising this to highlight your experience and so that this could feed into our future practice and plans and so that we can improve and learn from poor experience. If this is not the case, please confirm and I will of course arrange to progress this matter under the whistleblowing/formal process. Please be assured I have not spoken about this with any colleagues and have maintained confidentiality.

You do not have to provide or input into feedback for the recruitment exercise and suggest that you, [or] if you would prefer, I can advise Lisa of this. Let me know which you would prefer.

I note from your email you have resigned, do you have support in place as it sounds from your email that it is a difficult time – I can facilitate this directly between you and our employee health and wellbeing team – let me know if you are content and would like me to connect you with the team.

154. The claimant responded in the following terms on the same day: [324]

The discussion between the three of us in that meeting was around what would be the right thing to do. The decision to keep this in confidence was because no BAME staff had raised any grievances. I felt then that opening this up as a formal process would only be right if any of the BAME staff who were being interviewed were to raise a grievance otherwise we could be making the issue worse, I believe this was a shared view. …

If it would be best in terms of fairness, transparency and equality to move this to a formal process, I would be happy to do so. I would also prefer if you would advise Lisa as you suggest. …

I have always been supportive of both your and Kersten's efforts to bring racial equality to the Council and I had felt that so much had been achieved. Having said that I cannot ignore my experiences and the collective view of the BAME staff I have spoken with and it has become evident to me that there is still a long way to go. Too many BAME staff have experiences of inequality and many have said that they see the Council as institutionally racist. We need to reflect on that, it is a really difficult thing to hear and I don't say it without thinking about how it might make you both feel. I too feel

sad to have arrived at this point and if there is more I can do to support your efforts please do let me know. Certainly, something needs to be done now and from the depths of my heart I pray that you as a collective team of leaders are able to make the change that is needed.

155. The Tribunal accepts that receipt of Ms Brett's email prompted the claimant to commence Acas Early Conciliation.

Grievance

156. On 25 May 2021, the claimant sent a formal grievance to Ms England. The 10-page grievance was attached to his ET1 and later became the basis of the claimant's further and better particulars of claim, which in turn is reflected in the Agreed List of Issues.

157. Ms England asked in an emailed reply if a colleague from HR would contact the claimant to explain who would undertake the review. Ms Lloyd subsequently emailed the claimant to say that Julie Cowell, HRBP, would liaise with him and the service to progress his grievance.

158. On 28 May 2021 the claimant spoke again to his GP surgery. The note records:

Patient spoke to employment lawyer.
Race discrimination case.
Employment tribunal case.
Parents better, wife has been ill.
New job lined up.
Will be back in touch if needs further support.

159. On 1 June 2021 the Claimant said to Ms Lloyd in an email:

Please be aware that there are 4 days of annual leave that I believe I was wrongly advised to take off. I have raised this in a grievance with Anne Lloyd and I object to these being used in any calculation of the number of annual leave days I have taken this year. These are 19, 20, 22 and 23 April.

160. Ms Lloyd replied:

The leavers process will move everything forward as it stands. The leave will be picked up as part of your grievance, investigated and decided upon, and at that stage if the decision is to pay the leave, the payment will then be made.

161. On 4 June 2021 the claimant emailed Ms Hopton. He told her:

I have really enjoyed working with you over the time I've been here and I want to thank you for all the opportunities that you have opened for me. We have had some really great times and there have been many achievements and I pray that you continue to see those after today and in the coming future.

I cannot find the words t[o] express the gratitude I have. I wish you all the best moving forward and thank you for all your support.

162. The claimant emailed Mark Douglas, Ms Lloyd and Ms England with a copy to Mr Hussain, for an update on his grievance on 4 June 2021:

I have had no update around my grievance since I have raised it and I have not had any exit interview with anyone. I hope these will happen and that we are all able to put closure to what has happened.

163. Mr Douglas responded, saying that he would see to it that an exit interview was arranged. An exit interview was not subsequently arranged however. An exit interview is normally arranged within the service. Ms Lloyd would not normally be involved in arranging that.

164. The claimant's employment with the Council ended on 4 June 2021.

Forwarding of emails etc to home address

165. On 11 June 2021, Ms Hopton discovered that after the claimant had left his employment with the Council, he had forwarded 383 emails to his personal email address containing children's names, dates of birth, sensitive Council information, minutes of meetings, training materials and other matter owned by the Council. The Tribunal notes that this is a potential issue for remedy in due course, if any of the claimant's claims succeed, in relation to the termination of his employment. This is because the respondent seeks to argue that the sending of these emails to the claimant's home address would have triggered disciplinary proceedings for gross misconduct. No other fact findings are necessary at this stage.

166. On 15 July 2021, the claimant wrote to Mr Douglas, Ms England and Ms Lloyd, asking for an update on his grievance. He reiterated that he had resigned due to the way he alleged he had been treated, which was related to both whistle-blowing and racial discrimination.

167. On 19 July 2021, Anne Lloyd emailed the claimant in reply:

Marium Haque, Deputy Director Education and Learning has been appointed and is acting as the commissioning manager for your grievance, and has progressed and commissioned the management investigation. An independent Investigating Officer has been identified.

Marium along with HRBP, Julie Cowell met with the Investigating Officer early last week to agree the Terms of Reference for the investigation. The Investigating Officer (Liz Vere) is commencing the investigation this week and will be in touch with you in due course.

Please be assured that your grievance has not been ignored. The matters you raised with Kersten and I are included in your grievance and will be investigated and addressed as part of this process and as you confirmed during our email exchanges on 25 May 2021 you were raising formally under the grievance process.

168. Ms Lloyd relied in her reply on what she had been told by Ms Cowell. Ms Lloyd now understands that Ms Cowell had not agreed the Terms of Reference with the Investigating Officer for Mr Juneja's grievance but rather the Terms of Reference had been agreed for the linked grievance brought by another employee. The claimant has never heard from Ms Cowell and nor has he received any response to the grievance.

169. On 7 October 2021, an email was sent by Liz Vere, the independent investigator who had been provisionally appointed to look into the claimant's grievance, to Marium Haque. She said:

> *I do have some spare capacity over the next couple of weeks and was wondering if this could be used to commence the investigation of the other grievance (AJ?) which we discussed originally, assuming that is still to go ahead.*
>
> *If this is something of interest, please let me know, and in that case a completed ToR template (attached) would be needed.*

170. Ms Haque replied on 7 October 2021:

> *Yes I think that would be ok assuming that our colleagues in Legal are ok with this as I'm mindful that there is an ET progressing on this. Julie, can you advise pls?*
>
> *If so then the ToR will be the ones that Linda B has put together I think.*

171. In about October 2022, Ms Lloyd became aware that the claimant's grievance had not been progressed. She took the view that given that the Employment Tribunal hearing was due to take place shortly, the legal process was too far along for it to be practical to try and progress the grievance at such a late stage.

172. The Tribunal accepts Ms Lloyd's evidence that Ms Cowell failed to provide the necessary information to enable the grievance investigation to continue. Further, there was at the time no monitoring of grievances by the Council, to ensure that they were concluded in line with the grievance policy. The Tribunal finds that the failure to progress the claimant's grievance has been addressed with Ms Cowell; and that the Council is updating its systems and processes to ensure that all grievances are monitored and managed properly in future.

Relevant law

173. Both counsel made extensive submissions in relation to the law, which the Tribunal has accepted and applied in the circumstances of this case. Counsel's respective submissions are set out in Annex B. The Tribunal has carefully considered those submissions, prior to coming to the conclusions on the issues before us, bearing in mind the above findings of fact.

Conclusions

174. In arriving at the following conclusions on the issues before the Tribunal, the law has been applied to the facts found above. The Tribunal will not repeat every single fact, in order to keep these reasons to a manageable length. The issues are dealt with in turn.

175. In reaching our conclusions, we have considered the burden of proof under the Equality Act 2010. In all cases, the respondents' explanation is so connected with the incident itself that we have considered it at stage one when deciding whether the burden of proof shifts. Even if we had decided that the burden of proof had shifted, we would have been satisfied that the respondent had provided a non-discriminatory explanation.

176. Ms Banton urged us to consider that the burden of proof had shifted. For example, because of the failure to provide detailed statistics. That is something

that would often be asked as part of the Acas Questionnaire procedure. We understand that procedure was not pursued in this case. The failure to provide statistics, in the absence of a clear request as to which statistics were required, is not in this Tribunal's view, in the context of this case, something from which an inference could properly be drawn.

177. Ms Banton also took exception to an answer given by Ms Griffin during cross examination. The exchange was as follows:

> *[The interview process] was discriminatory and unfair, and you did recruit to type[i.e. by recruiting a white woman]? I have recruited a number of staff who are not white, am I not supposed to recruit someone who is a white female?*

Given the assertion that was being put to Ms Griffin, the Tribunal did not consider that rhetorical question in reply to be inappropriate or facetious, or something from which inferences could or should be drawn.

178. Neither did the Tribunal considered that the failure to call Ms Remington is something that the Tribunal should draw an inference from. We consider that not calling Ms Remington was a reasonable approach, given that Ms Griffin was available to give evidence about the YOT Manager interview process. The Council took the risk that if we preferred the claimant's evidence over Ms Griffin's, his claims were likely to succeed in relation to those matters with which Ms Griffin was involved. It was a matter for the respondent as to whether or not consider calling her in those circumstances; not calling her appears to the Tribunal to be a proportionate approach to the issues in the case.

179. We have considered each alleged incident of discrimination separately and we have also considered them collectively. Considering the allegations in the round only served to reinforce the conclusions arrived at individually, rather than the other way around. The sub-headings below refer to each of the issues in turn.

180. Ms Banton also argued that the Grounds of Resistance contain a lie, because it is stated in them that the terms of reference of the claimant's grievance had been agreed. The terms of reference that had been agreed were for another grievance. The Tribunal does not consider that was a lie; rather, it was based on a misunderstanding.

181. The Council's failure to adequately deal with the claimant's grievance is a matter of some concern to the Tribunal. A former employee is no less entitled to have their grievance properly considered, in line with Council processes, than a current employee. We have accepted Ms Lloyd's explanation as to why the grievance was not properly considered and progressed. Even so, if we had upheld any of the claimant's claims, we would almost certainly have uplifted the claimant's compensation by 25%, because of the seriousness of the breach. Further, the failure to deal with the claimant's grievance only reinforced his view that he was being treated in a discriminatory and unlawful fashion. That was in the circumstances, entirely understandable. This is something the Council may wish to bear in mind, when it is implementing procedures to ensure that all grievances are properly monitored and managed in future.

182. Finally, this is not one of those rare cases where the members of the Tribunal consider that the evidence of any particular witness was so palpably unreliable

or not credible, that all of that witness' evidence could be discounted. The Tribunal has been able to decide the key facts in dispute, by considering the evidence in relation to each of those facts in turn.

SECTION 13: DIRECT RACE DISCRIMINATION (other than dismissal)

183. The Claimant defines his race as being of British Asian (Indian) ethnicity.

184. The Claimant refers to the following alleged acts of less favourable treatment. Where convenient, in cases where the Tribunal has upheld the allegations in whole or in part on the facts, the Tribunal has gone on to consider the reason for that.

(Issue 2.2.1) In September 2019, Danielle Wilson, Strategic Manager, verbally (and through body language e.g. avoiding eye contact and shaking her head) expressed dissatisfaction when the Claimant asked her questions around some of the complaint cases he had

185. The Tribunal refers to the findings of fact above. To the extent to which the body language of Ms Wilson suggested any dis-satisfaction with the claimant, the Tribunal concludes that was not because of any animosity towards him. Rather, Ms Wilson was an extremely busy and dedicated manager, with a huge amount of responsibility, who did not have the time to discuss individual complaints with the claimant. The Tribunal is satisfied that Ms Wilson would have and did treat all members of the team the same in that regard. None of this was because of or related to the claimant's race.

(Issue 2.2.2) On 8 September 2019 (as alleged in the Further and Better Particulars of Claim) or 27 September 2019 (as alleged in the grievance), Ms Wilson brushed off the Claimant's question about advice that she had given him regarding safeguarding children outside of school and when it would be necessary to speak to the Local Authority Designated Officer (the "LADO");

186. The Tribunal has found that there was a discussion about the LADO on 27 September 2019. Ms Wilson gave her professional opinion to the claimant. Ms Wilson did subsequently discuss that with Ms Hopton, as a potential area for development. That was not meant as a criticism of the claimant. On the basis of her and Ms Hopton's understanding of the claimant's experience of the LADO at that time, it was reasonable of them to conclude that the claimant required further development in that area. Further, there was an issue about LADO referrals as a whole, as a result of which procedures have since been changed. Those changes were made across the whole team; they were not directed towards the claimant in particular. None of this, in any event, was because of or related to the claimant's race.

(Issue 2.2.3) On or around 4 October 2019, and to the Claimant's line manager Kate Hopton, Ms Wilson accused the Claimant of undermining Ms Hopton's authority

187. The Tribunal has found that Ms Wilson did not accuse the claimant of undermining Ms Hopton; it was Ms Hopton who was concerned that the claimant was going to Ms Wilson for a second opinion, when she had already given advice to him. Ms Hopton made clear to the claimant that even when she was out of the office, she was contactable by telephone, and was happy for the claimant to contact her. None of this was because of race. The claim in any event fails on the facts.

(Issue 2.2.4) On or around 4 October 2019, and to the Claimant's line manager Ms Hopton, Ms Wilson accused the Claimant of not being competent enough to give safeguarding advice and alleged that he did not have sufficient knowledge of how the LADO worked

188. We refer to our findings of fact above. There was a discussion between Ms Wilson and Ms Hopton about the LADO, but that was based on a reasonable perception by Ms Wilson that this was an area for potential development. It was not raised as a complaint, or as a capability/performance issue. None of this was connected to the claimant's race.

(Issue 2.2.5) On or around 11 October 2019, and to the Claimant's line manager Ms Hopton, Ms Wilson wrongly accused the Claimant of having led a Safeguarding Investigation visit and made this allegation without speaking to people who had actually been on the visit or arranging for anyone else to speak to them

189. This issue fails on the facts. The Tribunal has found that there is no such thing as a lead officer on a safeguarding investigation visit. Ms Wilson did not wrongly accuse the claimant of having led this safeguarding investigation visit.

(Issue 2.2.6) On or around 11 October 2019, Ms Wilson instructed Ms Hopton that the Claimant was to stay off doing any complaints visits

190. As above, this issue fails on the facts. Ms Wilson did not instruct Ms Hopton that the claimant was to stay off safeguarding visits and nor did Ms Hopton tell the claimant that.

(Issue 2.2.7) On or around 9 December 2019, Ms Wilson instructed Ms Hopton to question the Claimant to "make sure that [he] would not be promoting any SRE views other than those in line with the council"

191. We refer to our findings of fact above. As pleaded, this claim fails on the facts, since Ms Wilson was not aware that the claimant was planning to attend the event and therefore did not give Ms Hopton any such instruction. In fairness to the claimant and because of the importance of this issue, the Tribunal has considered the reason as to why Ms Hopton had a discussion with the claimant. We have concluded that it is because Jenny Fox had informed Ms Hopton that the claimant had forwarded to her a poster about the event and may be considering attending. The Tribunal has not heard from Ms Fox as to why she notified Ms Hopton about that, at that time.

192. It is clear from our findings of fact, that this was and remains a highly sensitive issue for the Council, and that it remains a matter of concern for people of different religious faiths; as well as, amongst others, LGBTQ+ individuals and groups. Council leaders are determined to ensure that its officers give a clear and consistent line on the issue, which is that schools within the District have to deliver a national curriculum, including teaching about RSE issues. The Tribunal is satisfied that in the circumstances, the matter having been notified to her by Ms Fox, that Ms Hopton would have had a similar conversation with, for example, a white evangelical Christian preacher, with a similar standing to the claimant in the community. (The claimant is an Imam).

193. The Tribunal thinks that there <u>may</u> have been a connection between the conversation and the claimant's religious belief; but concludes that it was not because of his race. The Tribunal does not reach any firm conclusion as to

whether or not the conversation could be said to be because of, or related to, religious belief, since that is not how the case has been pleaded before us, and not how it has been argued. In those circumstances it would not be appropriate to reach any conclusions in that respect.

(Issue 2.2.8) On or around 16 September 2020:

(Issue 2.2.8.1) In an interview for the vacancy of Attendance Officer that failed to adhere to the Respondent's policies for diversity on interview panels, Ms Wilson asked the final safeguarding question in a way that was so unclear that the Claimant could not understand what he was being asked to comment upon

194. The Tribunal accepts that the diversity of the panel at this time was not in line with best practice, although there were mitigating circumstances at that point particularly, due to the issues caused by that the pandemic, as well as the interview taking place in September, a particularly busy month for that department and team. In relation however to the crux of this issue, which is that Ms Wilson asked the question in a way that the claimant could not understand, that fails on the facts. Ms Wilson tried to put the question another way in order to assist the claimant, when she could see that he was struggling to answer it. In any event, given the importance of this role to the Council, and the fact that it had already been put out to advert and the council had not been able to appoint anybody, we find it inherently improbable that Ms Wilson would have deliberately changed the wording of the question in order to ensure the claimant was not appointed. Further, the Tribunal accepts Ms Wilson's evidence that she very much respected the work that the claimant carried out, and believes it has and will continue to have a lasting and positive impact on pupils within the respondent Council District.

(Issue 2.2.8.2 Ms Wilson and Ms Hopton failed to appoint the Claimant to the role of Attendance Officer

195. The Tribunal concludes that the claimant interviewed poorly on the day. We can all have bad days; unfortunately for the claimant, the answers he gave at interview were not at a level where he could reasonably have been appointed. Both Ms Wilson and Ms Hopton gave the claimant similarly low scores for the answers he gave. The claimant appeared to accept at the time that he did not interview well. That is the reason he was not appointed; it had nothing to do with his race.

(Issue 2.2.8.3) Ms Wilson marked the Claimant down for not answering the final question and deliberately took some of the Claimant's comments out of context in relating to GRT families

196. In relation to the answer that the claimant gave relating to GRT families, the Tribunal concludes that comment was not taken out of context. The response to it is a matter of judgment; the Tribunal concludes that Ms Hopton and Ms Wilson reasonably decided, on the basis of what was said, that the claimant was suggesting that the Council should exclude these communities from attendance figures, implying that the Council should have lower aspirations for them. The Tribunal is satisfied that Ms Wilson and Ms Hopton would have had similar concerns, if a white interviewee had made them. Indeed, the Tribunal refers to the findings of fact above, where discriminatory remarks were made about a member of the Roma community by a white member of staff. That was considered to be of concern, and led to the development of a training package

around that issue. As for the final question, the Tribunal has found as a fact, and also concludes, that the question was properly put, and that unfortunately, in line with the rest of the interview, the answer that the claimant gave at the interview, on the day, was not considered to be a satisfactory answer.

(Issue 2.2.9) In September 2020, Ms Wilson failed to arrange a feedback meeting with the Claimant, having promised to do so

197. This claim fails on the facts. The claimant misunderstood the position and did not subsequently try to arrange a more formal feedback meting

(Issue 2.2.10) From 15 January 2021, Ms Hopton and Ms Wilson placed (or attempted to place) barriers in the way of the Claimant finalising and/or successfully delivering risk assessment training through the following acts:

(Issue 2.2.10.1) On 29 January 2021, Ms Hopton (influenced and/or instructed by Ms Wilson) asked the Claimant to ensure that the risk assessment training was also available in Excel format

198. We conclude that the reason to produce an Excel version, as well as a Word version of the document, was because some schools prefer that format, and find it easier to use. This had nothing to do with the claimant's race. Further, we have found as a fact that Ms Wilson had nothing to do with this decision. (Although she did agree with Ms Hopton that it would be helpful to have the document in Excel format as well as a Word version).

(Issue 2.2.10.2) On 1 March 2021, Ms Hopton (influenced and/or instructed by Ms Wilson) asked the Claimant by email to send the slides of his training across for her to check when he had already sent them to her on 20 January 2021

199. Again, this had nothing to do with Ms Wilson. Ms Hopton asked for a copy of the slides on 1 March, because she had previously sent the slides back with comments, which she considered to be a useful start, but which was nowhere near complete. It was just over two weeks before the course was due to be delivered, and it was perfectly reasonable for Ms Hopton to want to see the slides, to ensure that the material was of a sufficiently high standard.

(Issue 2.2.10.3) On 4 March 2021, Ms Hopton emailed the Claimant to say that she and Ms Wilson did not want the training to go ahead

200. Ms Hopton and Ms Wilson did have a discussion on 4 March 2021. They were both at a training event together, and discussed the proposed course during the break. Ms Hopton had by this stage received a course title from the claimant, namely 'Psychology on working effectively with children with disrupted attachment'. Ms Wilson and Ms Hopton agree that this was not something which the ESO team could or should deliver; and that it would be for another team to deliver, if at all.

201. Course material delivered to schools must be very high quality, as the Council's reputation as a service rests on this. What was proposed by the claimant was not what Ms Hopton knew schools wanted around risk assessment. The claimant's draft of a four hour course with four co-trainers is not something which Ms Hopton could support. She did not believe that the draft could be rectified in the timeframe and therefore advised the claimant that the training should not go ahead at this time. None of this had anything to do

with the claimant's race. It was a reasonable management decision in the circumstances.

(Issue 2.2.10.4) On 4 March 2021, Ms Hopton (influenced and/or instructed by Ms Wilson) claimed that she had been unaware that the risk assessment was being put together with trauma informed approaches when she had been aware of that from the start

202. The email sent by Ms Hopton to the claimant at 17.11 on 4 March 2021, incorrectly referred to trauma, rather than disrupted attachment. This error was rectified in the follow-up email sent six minutes later, at 1717. This claim fails on the facts. In any event, this error in terminology by Ms Hopton had nothing to do with the claimant's race.

(Issue 2.2.10.5) On 4 March 2021, Ms Hopton (influenced and/or instructed by Ms Wilson) told the Claimant that the training course would need quality assuring, despite being aware that this was the purpose of a meeting set for 16 March

203. The issue for Ms Hopton was that schools were due to attend the training on 16 March, prior to the course material being quality assured by the team. Again, this had nothing to do with the claimant's race.

(Issue 2.2.10.6) On 8 March 2021, Ms Hopton (influenced and/or instructed by Ms Wilson) sent an email to Karen Roper cancelling the quality assurance meeting on 16 March 2021

204. Again, the issue for Ms Hopton was that six people from two schools had been invited to that training. Further, that the course appear to Ms Hopton to be two courses, rather than one, one of which he was not for her team to deliver. Further, following further discussions with the claimant, it was agreed that the training would go ahead on 16 March, without the representatives of the schools present. The Tribunal is satisfied that these were reasonable operational decisions, which had nothing to do with the claimant's race.

(Issue 2.2.10.7) Between 8 and 10 March 2021, after it had been agreed that there should still be a quality assurance meeting on 16 March 2021, Ms Hopton informed the Claimant that Ms Wilson would not attend and that she would only give feedback on the part of the risk assessment that Education Safeguarding would develop

205. The Tribunal concludes that Ms Wilson's decision not to attend the training event had nothing to do with the claimant's race. It was because she had an extremely demanding job; attending that training event was not seen as the best use of her time at that point.

(Issue 2.2.10.8) Between 8 and 10 March 2021, Ms Hopton told the Claimant and Ms Wilson repeated in an email, that the other parts of training focused on trauma informed strategies should be led by another team, despite it being something the Claimant had been involved in putting together

206. The Tribunal concludes that this decision was a matter of professional judgement, which Ms Hopton and Ms Wilson were entitled to come to, and which had nothing to do with the claimant's race. Further, strictly speaking, the concerns were not that the risk assessment training should be informed by trauma -related approaches; the issue was about the training being based around disrupted attachment.

(Issue 2.2.10.9) On 10 March 2021, Ms Hopton (influenced and/or instructed by Ms Wilson informed the Claimant that she would not attend the meeting on 16 March and instructed Maryam Shaheen, Safeguarding Officer, not to attend.

207. The Tribunal accepts Ms Hopton's evidence (WS#36) that the Education Safeguarding Team lacked capacity and she did not believe Ms Shaheen's attendance at the training would be a good use of her time as the Team was extremely busy. This was an operational decision she was entitled to come to and had nothing to do with the claimant's race.

(Issue 2.2.11) At a Youth Offending Team ("YOT") meeting on 25 February 2021, Ms Wilson implied that the Claimant was to blame for issues in the YOT regarding education provision

208. The Tribunal was particularly struck by Ms Wilson's evidence in relation to this issue. It was clear from what Ms Wilson told us, that she was deeply frustrated that despite the outstanding work that the claimant had carried out in this area, there was still a negative perception from staff within the YOT team in respect of education representation and that staff were still failing to follow the pathways of support which the claimant had worked so hard to establish. The comment made to the claimant by Ms Wilson in the meeting was intended to be an entirely supportive comment. The Tribunal is sorry that the claimant's subsequent interpretation of events has led him to perceive this comment as anything other than supportive.

(Issue 2.2.12) In February 2021, Ms Hopton and/or Ms Wilson placed barriers in the way of the Claimant applying for a Senior Education Safeguarding Officer vacancy by:

(Issue 2.2.12.1) Ms Hopton informing him that he would not be eligible for the role unless he went full time and left the work he was doing at "My Foster Family CIC"

209. The Tribunal rejects this claim on the facts. Again, Ms Wilson had nothing to do with what Ms Hopton said to the claimant. What was Hopton told the claimant was that the role was full-time; and that as far as a job share was concerned, the Council could only look at that possibility once an application had been made. The claimant did not apply for the role so the job share issue was not explored further.

(Issue 2.2.12.2) In February/March 2021, Ms Wilson and/or Ms Hopton advertising the role and informing the Claimant and all other staff on the Education Safeguarding Team (none of whom were White British) that they should not apply for it

210. This claim fails on the facts. The claimant was told about this role after his successful interview for the permanent role of ESO. Like all members of the team, he was encouraged to apply for it. Ms Hopton's email to Amanda Clegg in HR, asking her to temporarily remove the role from the list of internal vacancies, was because Ms Hopton did not want members of the team to go to the effort of putting in a formal application, when the redeployment process had to be gone through first. Ms Hopton and Ms Wilson had no influence whatsoever over the redeployment policy, which required that redeployees are entitled to apply for vacancies first. Both Ms Hopton and Ms Wilson were of

the view that the best candidates to apply for that position were the ESOs, given their experience of that role.

(Issue 2.2.13) From February 2021, the Claimant's name was removed from the list of attendees for YOT meetings by an employee of the Respondent

211. The Tribunal accepts Ms Hopton's evidence, that she interpreted the claimant's email as a 'little nudge', suggesting he had too many meetings to go to. The removal of his name from the circulation list was not due to anything said or down by Ms Hopton, but was probably the result of him saying that Ms Hopton would attend in future as Operational Lead. Ms Hopton should have been on the YOT circulation list originally. Ms Hopton was always the Operational Lead. None of this had anything to do with the claimant's race.

(Issue 2.2.14) On 9 March 2021, Ms Hopton questioned the Claimant as to whether old advice that he had given to a school in the past was correct, when it had not been questioned at the time

212. Ms Hopton did question the claimant in relation to a piece of advice he had given which she was not sure was correct. This had nothing to do with the claimant's race. The claimant looked into the advice, and told Ms Hopton it had been dealt with. Ms Hopton accepted what the claimant told her. None of this was because of or related to the claimant's race.

(Issue 2.2.15) On 12 April 2021, Ms Hopton (instructed and/or influenced by Ms Wilson) refused the Claimant's request to work from London for some time

213. We refer to our findings of fact above. Ms Hopton did refuse the request, because it was her understanding that the claimant was asking for permission to work from London in the longer term. This was a reasonable operational decision, given the expectation that school visits would commence again shortly, and had nothing to do with the claimant's race. Ms Wilson had nothing to do with this matter.

(Issue 2.2.16) On 12 April 2021, Ms Hopton (instructed and/or influenced by Ms Wilson) wrongly told the Claimant that he would have to take annual leave if he wanted to visit his parents who were unwell

214. This was an operational decision of Ms Hopton, based on her understanding of the annual leave and compassionate leave policies, which had nothing to do with the claimant's race. Ms Wilson had nothing to do with this matter.

(Issue 2.2.17) On or around 19 March 2021, an employee of the Respondent removed the Claimant's access to notes on Evolve

215. The Tribunal has found as a fact that there was a glitch with the Evolve system. The problem was not caused by any employee of the council. The glitch has since been resolved. Employees of the Council could not delete information. This claim therefore fails on the facts.

(Issue 2.2.18) In or around March 2021, when the Claimant had been asked to set up an education attendance clinic for the YOT, Ms Wilson informed the Attendance Team that the Claimant was "simply running away with an idea";

216. This claim fails on the facts.

(Issue 2.3) Did the above act(s) occur?

217. The Tribunal has concluded that the following matters did occur, in whole or in part:

    217.1. Issue 2.2.1 - Ms Wilson's body language may have suggested to the claimant that she did not want to discuss individual complaints with him;

    217.2. 2.2.2 - there was a discussion about the LADO between Ms Wilson and the claimant;

    217.3. similarly - 2.2.4 - there was a discussion about that between Ms Hopton and Ms Wilson;

    217.4. 2.2.7 - Ms Hopton did discuss the claimant's possible attendance at a community event about RSE;

    217.5. 2.2.8.2 - the claimant was not appointed to the role of Attendance Officer;

    217.6. 2.2.8.3 - the comment by the claimant about GRT families was taken into account by Ms Hopton and Ms Wilson (although it was not taken out of context);

    217.7. 2.2.10.1 - the claimant was asked by Ms Hopton to prepare the risk assessment tool in Excel format as well as in Word;

    217.8. 2.2.10.2 - Ms Hopton did ask the claimant to send to her the slides of the training;

    217.9. 2.2.10.3 - Ms Wilson and Ms Hopton did agree that the training should not go ahead;

    217.10. 2.2.10.5 - Ms Hopton did tell the claimant that the course needed quality assuring;

    217.11. 2.2.10.6 - Ms Hopton did cancel the training, in an email to Karen Roper;

    217.12. 2.2.10.7 - Ms Wilson did decide not to attend the risk assessment training;

    217.13. 2.2.10.8 - Ms Hopton and Ms Wilson did agree that parts of the training on should be led by another team (that part relating to disrupted attachment);

    217.14. 2.2.10.9 - Ms Hopton did tell Ms Shaheen not to attend the risk assessment training;

    217.15. 2.2.11 - the alleged comment was made by Ms Wilson at the YOT meeting;

    217.16. 2.2.14 - Ms Hopton did question the claimant about a piece of advice given by him;

    217.17. 2.2.15 - Ms Hopton did refuse the claimant's request to work from London;

    217.18. 2.2.16 - Ms Hopton did advise the claimant to use annual leave in April 2021, so that he could look after his parents.

218. All other issues fail on the facts.

(Issue 2.4) If so, was the Claimant treated less favourably than the Respondent did treat or would have treated a hypothetical comparator? The Claimant relies upon a hypothetical white comparator.

219. The Tribunal concludes that where it has found that the allegation is made out wholly or in part on the facts, that the claimant was not treated less favourably than any named comparator, or any hypothetical comparator. The circumstances of the named comparators were materially different from the claimant. In any event, the named comparators are only really comparators for the purposes of issue 2.2.1.

(Issue 2.5) If so, has the Claimant shown facts from which the Tribunal could conclude that the alleged act(s) were because of race?

220. For the reasons set out above, in relation to each of the issues found to have ben established, in whole or in part, the Tribunal has concluded that the claimant has not shown facts from which the Tribunal could conclude that the alleged acts were because of race.

(Issue 2.6) If so, has the Respondent shown that race was not part of the reason for any of the above act(s) (if established)?

221. See above. In any event, where the Tribunal has found that the matters alleged did occur, in whole or in part, the Tribunal has in every instance concluded, for the reasons given, that the treatment had nothing to do with the claimant's race.

(Issue 3) SECTION 26: HARASSMENT (other than dismissal)

(Issue 3.1) Did the Respondent conduct itself as alleged by the Claimant? The Tribunal will need to decide:

(Issue 3.1.1) Did the Respondent do the acts set out at paragraphs 2.2.1 to 2.2.18 above?

222. See the conclusion in relation to issue 2.3, above.

(Issue 3.1.2) On 2 December 2020, during an interview process for the YOT Manager post, did the other interviewers Sarah Griffin, Social Worker, and Eve Remington, Practice Lead make unwanted negative comments about BAME candidates (Jagdev and Nahida Shah) including that Ms Shah had lied about something in her application?

223. This claim fails on the facts. We have found that the alleged negative comments were not made. Further, the claimant argues that his appointment was 'tokenistic', to rubber stamp a decision already made. The Tribunal rejects that contention on the evidence. On the contrary the Tribunal considers that the claimant's appointment was a genuine and successful attempt to establish a diverse panel, in line with the Council's September 2020 Recruitment Policy.

(Issue 3.2) If the above acts were committed, was the conduct unwanted?

224. Yes the conduct was unwanted, in so far as the Tribunal has concluded that it happened (see Issue 3.1.1 above).

(Issue 3.3) Was the conduct related to race?

225. The tribunal concludes that the conduct was not related to race, for the same reasons set out above in relation to direct race discrimination. The Tribunal

appreciates that the question as to whether something is related to race, as opposed to being because of race, involves a broader enquiry. Nevertheless, on the facts of this case, that broader enquiry does not lead the Tribunal to the conclusion that the conduct complained of was related to race either.

(Issue 3.4) Did the alleged conduct have the purpose of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

226. In the light of the conclusions above, it is not necessary to come to any conclusions on this issue.

(Issue 3.5) If it did not have that purpose, did it have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? The Tribunal will take into account the Claimant's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have had that effect.

227. In the light of the conclusions above, it is not necessary to come to any conclusions on this issue either.

(Issue 4) SECTION 27: VICTIMISATION (other than dismissal)

(Issue 4.1) Did the Claimant carry out a protected act within the meaning of section 27(2) of the Equality Act 2010? The protected acts relied upon by the Claimant are:

(Issue 4.1.1) The Claimant's verbal report to Kersten England, Chief Executive and Anne Lloyd, Director of Human Resources on 15 December 2020 stating that the interview and appointment process for the role of YOT Manager had been carried out in a discriminatory way and in breach of the Equality Act 2010.

(Issue 4.1.2) The Claimant's email to Marium Haque, Deputy Director Education and Learning dated 9 March 2021 at 12:20 and his verbal report to Ms Haque in a meeting on the same day in relation to the practice adopted in relation to the recruitment of the Senior Education Safeguarding Officer role and the practice of not having racially diverse panels.

(Issue 4.1.3) The Claimant raising in a verbal report to Ms Haque on 9 March 2021 that BAME staff considered that White British staff were given favourable treatment.

228. The respondent concedes that the above are protected acts.

(Issue 4.2) Was the Claimant subjected to the alleged detriments by the Respondent which are set out at paragraphs 2.2.10 –2.2.18 above?

229. See the conclusion in relation to issue 2.3 above.

(Issue 4.3) If so, was this conduct because the Claimant had done the protected act(s)?

230. The Tribunal concludes that the treatment complained of was not because of the protected acts. Ms Wilson and Ms Hopton were not aware of the 15 December meeting until after the detriments complained of occurred. Ms Hopton was not aware of the claimant's email or meeting with mishap. Ms Wilson was aware of the contents of the email and replied to it. Nevertheless, the tribunal is satisfied that that knowledge did not in any way adversely influenced Ms Wilson in relation to any of the incidents that occurred on or after

10 March 2021. The matters in which Ms Wilson was involved were for the reasons set out above, and had nothing to do with the protected disclosure.

Issue 5 - DISCRIMINATORY CONSTRUCTIVE UNFAIR DISMISSAL

(Issue 5.1) The Claimant does not have sufficient service to bring an 'ordinary' unfair constructive dismissal claim, but he brings a claim under the Equality Act 2010 that the Respondent constructively dismissed him and that this amounted to direct race discrimination, harassment related to race or victimisation. The Claimant relies upon the conduct set out at paragraphs 2.2.1 to 2.2.18, 3.1 and /or 4.2 above and the Tribunal will have to decide:

(Issue 5.1.1) Whether the Respondent directly discriminated against, harassed, or victimised the Claimant in contravention of the Equality Act 2010 (Issues 2 to 4, above).

231. The tribunal has concluded that the alleged discriminatory treatment did not occur.

(Issue 5.1.2) If so, in so doing:

232. Due to our conclusion in relation to Issue 5.1.1, it is not necessary to come to any conclusions on this issue.

(Issue 5.1.2.1) Did the Respondent behave in a way calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence?

233. See 5.1.2.

(Issue 5.1.2.2) Did it have reasonable and proper cause for doing so?

234. See 5.1.2.

(Issue 5.1.3) Did the Claimant resign in response? The Tribunal will need to decide whether the breach was a reason for the Claimant's resignation.

235. Bearing in mind the findings of fact above, the Tribunal concludes that the claimant resigned when he did because he was concerned about his parents, and had decided it would be better if he could spend more time with them, in order to help to look after them, until their health had recovered. The contents of the emails to Ms Hopton informing her of his decision to resign, were complimentary towards Ms Hopton, and did not in any way suggest that the claimant was unhappy. Further, they are consistent with what the claimant is recorded as having said to his GP at that time.

236. It appears that shortly after his decision to resign, the claimant did begin to conclude that he had been the subject of discriminatory treatment. The Tribunal concludes that that was after the decision was made however.

237. The Tribunal also notes that the claimant believes that Ms Hopton was coerced into discriminatory behaviour by the actions of Ms Wilson. To the extent to which the contents of the emails from the claimant to Ms Hopton can be explained by that belief, the Tribunal has in any event concluded that the claimant's belief was not soundly based. Further, the Tribunal has noted the argument by the claimant that the contents of his emails to Ms Hopton can be explained by the fact that he wanted a reference from her. However, given the inconsistency with the GP notes around that time, the Tribunal does not consider that that to be a sufficient explanation.

(Issue 5.1.4) Did the Claimant affirm the contract?

238. It is not necessary to come to any conclusions on this issue, in the light of the conclusions above.

(ISSUE 6) SECTION 48 ERA: DETRIMENT FOR MAKING A PROTECTED DISCLOSURE

(Issues 6.1 and 6.2) The protected disclosures relied upon by the Claimant are:

The Claimant's verbal disclosure to Ms England and Ms Lloyd on 15 December 2020;

The Claimant's written disclosure to Ms Haque on 9 March 2021 and his verbal disclosure to Ms Haque during a meeting that same day;

The Claimant raising in his verbal disclosure to Ms England and Ms Lloyd the information contained at paragraphs 15.1 – 15.5 of the Further and Better Particulars of Claim; and

The Claimant raising in his verbal disclosure to Ms Haque the information contained at paragraphs 16.1 – 16.5 of the Further and Better Particulars of Claim.

239. The Respondent concedes that all of the above disclosures were made and that they amount to protected disclosures. The Tribunal considers the concession to be properly made and does not need to arrive at any further conclusions regarding these issues.

(Issue 6.3) Was the Claimant subjected to the alleged acts set out at paragraphs 2.2.10 – 2.2.18?

240. See the conclusions in relation to Issue 2.3 above.

(Issue 6.4) If yes, was the alleged act(s) a detriment?

241. Yes.

(Issue 6.5) If yes, was the Claimant subjected to that detriment on the ground that he made a protected disclosure?

242. The Tribunal concludes that any treatment which we have found did occurred, was not because he made a protected disclosure. This is for the same reasons set out above in relation to the victimisation claim.

(ISSUE 7) AUTOMATICALLY UNFAIR CONSTRUCTIVE DISMISSAL ON GROUNDS OF A PROTECTED DISCLOSURE – S.103A ERA

(Issue 7.1) Was the Claimant constructively dismissed?

(Issue 7.1.1) Did the Respondent, without reasonable and proper cause, conduct itself in a manner calculated, or likely, to destroy or seriously damage the relationship of mutual trust and confidence? The Claimant relies upon the same conduct set out at paragraphs 2.2.1 to 2.2.18, and the Tribunal will have to decide:

243. No – see the conclusion in relation to Issue 5.1.1 above.

(Issue 7.1.1.1) Did the Respondent behave in a way calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence?

244. Due to our conclusion in relation to Issue 7.1.1, it is not necessary to come to any conclusions on this issue.

(Issue 7.1.1.2) Did it have reasonable and proper cause for doing so?

245. Due to our conclusion in relation to Issue 7.1.1, it is not necessary to come to any conclusions on this issue.

(Issue 7.1.2) Did the Claimant resign in response? The Tribunal will need to decide whether the breach was a reason for the Claimant's resignation.

246. No, for the same reasons set out in relation to Issue 5.1.3 above.

(Issue 7.1.3) Did the Claimant affirm the contract?

247. Due to our conclusion in relation to Issue 7.1.1, it is not necessary to come to any conclusions on this issue.

(Issue 7.1.4) If so, did the Claimant resign in response?

248. This is the same issue as set out at 7.1.2 above.

(Issue 7.2) If the Claimant was dismissed, was the reason, or principal reason for the Respondent's fundamental breach that the Claimant had made a protected disclosure?

249. Due to our conclusion in relation to Issue 7.1.1, it is not necessary to come to any conclusions on this issue.

Time-limits

250. The ET1 was presented on 9 September 2021. ACAS early conciliation commenced on 27 May 2021, meaning that anything that occurred prior to 28 February 2021 is potentially out of time. The last of the acts complained of was the dismissal, which came into effect on 4 June 2021. Limitation in relation to that ran out on 3 September 2021, which, with the addition of the 19 days over which Acas early conciliation took place, means that the deadline was 22 September 2021. The ET1 was submitted in time, in relation to the alleged constructive dismissal.

251. However, the Tribunal has concluded that none of the alleged acts of discrimination/victimisation have succeeded. The one issue which caused the Tribunal most pause for thought, was the incident on 9 December 2019 about the event at Keighley mosque. Even if the Tribunal had concluded that was an act of direct discrimination and/or harassment, then in the absence of any other act of discrimination/victimisation being upheld, the Tribunal would have concluded that it is not just and equitable to extend time.

252. There was no continuing course of conduct, on our findings. Acas early conciliation was not commenced until over 17 months after the 9 December 2019 incident, over 14 months longer than the usual three month time limit. The claimant is clearly an intelligent man, who either should have known about, or could easily have found out about time limits, had he considered that this amounted to an act of discrimination at that time. The extension of time limits is the exception, rather than the rule, and in the circumstances of this case, the Tribunal concludes that it would not have been just and equitable to extend time. In such circumstances, the fact that an error was made in the submission of the ET1, resulting in the claim form being submitted 13 days after the extension of one month after ACAS early conciliation had concluded

an by which time was extended for any earlier incidents), is not something the Tribunal needs to consider.

Employment Judge A James

Dated 18 January 2023

ANNEX A – LIST OF ISSUES

1. **JURISDICTION - TIME LIMITS**

The Claimant notified ACAS for the purposes of early conciliation on 27 May 2021, and an early conciliation certificate was issued on 15 June 2021. The ET1 was presented on 27 August 2021.

1.1. Were the claims for direct race discrimination, harassment related to race, and victimisation made within the time limit in Section 123 (1) of the Equality Act 2010? The Tribunal will decide:

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

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

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

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

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

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

1.2. Were the claims for detriment on grounds of making a protected disclosure presented within the time limit in S.48 of the Employment Rights Act 1996? The Tribunal will decide:

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

1.2.2. If not, were acts or failures prior to that date part of a series of similar acts or failures?

1.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the last in the series of similar acts or failures?

1.2.4. If not:

1.2.4.1. Was it reasonably practicable for the Claimant to have presented his complaint within time?

1.2.4.2. If not, did he present the claim within such further period as the Tribunal considers reasonable?

2. **SECTION 13: DIRECT RACE DISCRIMINATION (other than dismissal)**

2.1. The Claimant defines his race as being of British Asian (Indian) ethnicity.

2.2. The Claimant refers to the following alleged acts of less favourable treatment:

2.2.1. In September 2019, Danielle Wilson, Strategic Manager, verbally (and through body language e.g. avoiding eye contact and shaking her head) expressed dissatisfaction when the Claimant asked her questions around some of the complaint cases he had;

2.2.2. On 8 September 2019 (as alleged in the Further and Better Particulars of Claim) or 27 September 2019 (as alleged in the grievance), Ms Wilson brushed off the Claimant's question about advice that she had given him regarding safeguarding children outside of school and when it would be necessary to speak to the Local Authority Designated Officer (the "LADO");

2.2.3. On or around 4 October 2019, and to the Claimant's line manager Kate Hopton, Ms Wilson accused the Claimant of undermining Ms Hopton's authority;

2.2.4. On or around 4 October 2019, and to the Claimant's line manager Ms Hopton, Ms Wilson accused the Claimant of not being competent enough to give safeguarding advice and alleged that he did not have sufficient knowledge of how the LADO worked;

2.2.5. On or around 11 October 2019, and to the Claimant's line manager Ms Hopton, Ms Wilson wrongly accused the Claimant of having led a Safeguarding Investigation visit and made this allegation without speaking to people who had actually been on the visit or arranging for anyone else to speak to them;

2.2.6. On or around 11 October 2019, Ms Wilson instructed Ms Hopton that the Claimant was to stay off doing any complaints visits;

2.2.7. On or around 9 December 2019, Ms Wilson instructed Ms Hopton to question the Claimant to "make sure that [he] would not be promoting any SRE views other than those in line with the council";

2.2.8. On or around 16 September 2020:

2.2.8.1. In an interview for the vacancy of Attendance Officer that failed to adhere to the Respondent's policies for diversity on interview panels, Ms Wilson asked the final safeguarding question in a way that was so unclear that the Claimant could not understand what he was being asked to comment upon;

2.2.8.2. Ms Wilson and Ms Hopton failed to appoint the Claimant to the role of Attendance Officer;

2.2.8.3. Ms Wilson marked the Claimant down for not answering the final question and deliberately took some of the Claimant's comments out of context in relating to GRT families;

2.2.9. In September 2020, Ms Wilson failed to arrange a feedback meeting with the Claimant, having promised to do so.

2.2.10. From 15 January 2021, Ms Hopton and Ms Wilson placed (or attempted to place) barriers in the way of the Claimant finalising and/or successfully delivering risk assessment training through the following acts:

2.2.10.1. On 29 January 2021, Ms Hopton (influenced and/or instructed by Ms Wilson) asked the Claimant to ensure that the risk assessment training was also available in Excel format;

2.2.10.2. On 1 March 2021, Ms Hopton (influenced and/or instructed by Ms Wilson) asked the Claimant by email to send the slides of his training across for her to check when he had already sent them to her on 20 January 2021;

2.2.10.3. On 4 March 2021, Ms Hopton emailed the Claimant to say that she and Ms Wilson did not want the training to go ahead;

2.2.10.4. On 4 March 2021, Ms Hopton (influenced and/or instructed by Ms Wilson) claimed that she had been unaware that the risk assessment was being put together with trauma informed approaches when she had been aware of that from the start;

2.2.10.5. On 4 March 2021, Ms Hopton (influenced and/or instructed by Ms Wilson) told the Claimant that the training course would need quality assuring, despite being aware that this was the purpose of a meeting set for 16 March;

2.2.10.6. On 8 March 2021, Ms Hopton (influenced and/or instructed by Ms Wilson) sent an email to Karen Roper cancelling the quality assurance meeting on 16 March 2021;

2.2.10.7. Between 8 and 10 March 2021, after it had been agreed that there should still be a quality assurance meeting on 16 March 2021, Ms Hopton informed the Claimant that Ms Wilson would not attend and that she would only give feedback on the part of the risk assessment that Education Safeguarding would develop;

2.2.10.8. Between 8 and 10 March 2021, Ms Hopton told the Claimant and Ms Wilson repeated in an email, that the other parts of training focused on trauma informed strategies should be led by another team, despite it being something the Claimant had been involved in putting together;

2.2.10.9. On 10 March 2021, Ms Hopton (influenced and/or instructed by Ms Wilson informed the Claimant that she

would not attend the meeting on 16 March and instructed Maryam Shaheen, Safeguarding Officer, not to attend.

2.2.11. At a Youth Offending Team ("YOT") meeting on 25 February 2021, Ms Wilson implied that the Claimant was to blame for issues in the YOT regarding education provision;

2.2.12. In February 2021, Ms Hopton and/or Ms Wilson placed barriers in the way of the Claimant applying for a Senior Education Safeguarding Officer vacancy by:

2.2.12.1. Ms Hopton informing him that he would not be eligible for the role unless he went full time and left the work he was doing at "My Foster Family CIC";

2.2.12.2. In February/March 2021, Ms Wilson and/or Ms Hopton advertising the role and informing the Claimant and all other staff on the Education Safeguarding Team (none of whom were White British) that they should not apply for it;

2.2.13. From February 2021, the Claimant's name was removed from the list of attendees for YOT meetings by an employee of the Respondent;

2.2.14. On 9 March 2021, Ms Hopton questioned the Claimant as to whether old advice that he had given to a school in the past was correct, when it had not been questioned at the time;

2.2.15. On 12 March 2021, Ms Hopton (instructed and/or influenced by Ms Wilson) refused the Claimant's request to work from London for some time;

2.2.16. On 12 March 2021, Ms Hopton (instructed and/or influenced by Ms Wilson) wrongly told the Claimant that he would have to take annual leave if he wanted to visit his parents who were unwell;

2.2.17. On or around 19 March 2021, an employee of the Respondent removed the Claimant's access to notes on Evolve;

2.2.18. In or around March 2021, when the Claimant had been asked to set up an education attendance clinic for the YOT, Ms Wilson informed the Attendance Team that the Claimant was "simply running away with an idea";

2.3. Did the above act(s) occur?

2.4. If so, was the Claimant treated less favourably than the Respondent did treat or would have treated a hypothetical comparator? The Claimant relies upon a hypothetical white comparator.

2.5. If so, has the Claimant shown facts from which the Tribunal could conclude that the alleged act(s) were because of race?

2.6. If so, has the Respondent shown that race was not part of the reason for any of the above act(s) (if established)?

3. **SECTION 26: HARASSMENT (other than dismissal)**

3.1. Did the Respondent conduct itself as alleged by the Claimant? The Tribunal will need to decide:

3.1.1. Did the Respondent do the acts set out at paragraphs 2.2.1 to 2.2.18 above?

3.1.2. On 2 December 2020, during an interview process for the YOT Manager post, did the other interviewers Sarah Griffin, Social Worker, and Eve Remington, Practice Lead make unwanted negative comments about BAME candidates (Jagdev Ghataure and Nahida Shah) including that Ms Shah had lied about something in her application?

3.2. If the above acts were committed, was the conduct unwanted?

3.3. Was the conduct related to race?

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

3.5. If it did not have that purpose, did it have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? The Tribunal will take into account the Claimant's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have had that effect.

4. **SECTION 27: VICTIMISATION (other than dismissal)**

4.1. Did the Claimant carry out a protected act within the meaning of section 27(2) of the Equality Act 2010? The protected acts relied upon by the Claimant are:

4.1.1. The Claimant's verbal report to Kersten England, Chief Executive and Anne Lloyd, Director of Human Resources on 15 December 2020 stating that the interview and appointment process for the role of YOT Manager had been carried out in a discriminatory way and in breach of the Equality Act 2010. The Respondent admits that this amounts to a protected act;

4.1.2. The Claimant's email to Marium Haque, Deputy Director Education and Learning dated 9 March 2021 at 12:20 and his verbal report to Ms Haque in a meeting on the same day in relation to the practice adopted in relation to the recruitment of the Senior Education Safeguarding Officer role and the practice of not having racially diverse panels. The Respondent admits that this amounts to a protected act;

4.1.3. The Claimant raising in a verbal report to Ms Haque on 9 March 2021 that BAME staff considered that White British staff were given favourable treatment. The Respondent admitted at the hearing that this amounts to a protected act.

4.2. Was the Claimant subjected to the alleged detriments by the Respondent which are set out at paragraphs 2.2.10 –2.2.18 above?

4.3. If so, was this conduct because the Claimant had done the protected act(s)?

5. **DISCRIMINATORY CONSTRUCTIVE UNFAIR DISMISSAL**

5.1. The Claimant does not have sufficient service to bring an 'ordinary' unfair constructive dismissal claim, but he brings a claim under the Equality Act

2010 that the Respondent constructively dismissed him and that this amounted to direct race discrimination, harassment related to race or victimisation. The Claimant relies upon the conduct set out at paragraphs 2.2.1 to 2.2.18, 3.1 and /or 4.2 above and the Tribunal will have to decide:

5.1.1. Whether the Respondent directly discriminated against, harassed, or victimised the Claimant in contravention of the Equality Act 2010 (Issues 2 to 4, above).

5.1.2. If so, in so doing:

5.1.2.1. Did the Respondent behave in a way calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence?

5.1.2.2. Did it have reasonable and proper cause for doing so?

5.1.3. Did the Claimant resign in response? The Tribunal will need to decide whether the breach was a reason for the Claimant's resignation.

5.1.4. Did the Claimant affirm the contract?

6. **SECTION 48 ERA: DETRIMENT FOR MAKING A PROTECTED DISCLOSURE**

6.1. The disclosures relied upon by the Claimant are:

6.1.1. The Claimant's verbal disclosure to Ms England and Ms Lloyd on 15 December 2020;

6.1.2. The Claimant's written disclosure to Ms Haque on 9 March 2021 and his verbal disclosure to Ms Haque during a meeting that same day;

6.1.3. The Claimant raising in his verbal disclosure to Ms England and Ms Lloyd the information contained at paragraphs 15.1 – 15.5 of the Further and Better Particulars of Claim; and

6.1.4. The Claimant raising in his verbal disclosure to Ms Haque the information contained at paragraphs 16.1 – 16.5 of the Further and Better Particulars of Claim.

6.2. The Respondent admits that the disclosures set out above amount to protected disclosures, and therefore issues 6.2.1 to 6.2.3 no longer need to be considered.

6.3. Was the Claimant subjected to the alleged acts set out at paragraphs 2.2.10 – 2.2.18?

6.4. If yes, was the alleged act(s) a detriment?

6.5. If yes, was the Claimant subjected to that detriment on the ground that he made a protected disclosure?

7. **AUTOMATICALLY UNFAIR CONSTRUCTIVE DISMISSAL ON GROUNDS OF A PROTECTED DISCLOSURE – S.103A ERA**

7.1. Was the Claimant constructively dismissed?

7.1.1. Did the Respondent, without reasonable and proper cause, conduct itself in a manner calculated, or likely, to destroy or seriously damage the relationship of mutual trust and confidence? The Claimant relies upon the same conduct set out at paragraphs 2.2.1 to 2.2.18, and the Tribunal will have to decide:

7.1.1.1. Did the Respondent behave in a way calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence?

7.1.1.2. Did it have reasonable and proper cause for doing so?

7.1.2. Did the Claimant resign in response? The Tribunal will need to decide whether the breach was a reason for the Claimant's resignation.

7.1.3. Did the Claimant affirm the contract?

7.1.4. If so, did the Claimant resign in response?

7.2. If the Claimant was dismissed, was the reason, or principal reason for the Respondent's fundamental breach that the Claimant had made a protected disclosure?

8. **REMEDY**

8.1. If all or any of the Claimant's claims succeed to what remedy is he entitled?

8.2. Automatic unfair dismissal claim only - Is the Claimant entitled to a basic award, and if so, how much?

8.3. What financial loss has the Claimant suffered?

8.3.1. Has the Claimant mitigated his loss and if not, should compensation be limited accordingly?

8.3.2. If the Claimant had not resigned, would he have been fairly dismissed in any event, and if so when? The Respondent will seek to argue that he would have been dismissed for committing a data protection breach and fundamental breach of contract by sending a large volume of emails/documents containing confidential information from his work email address to his personal email address prior to his employment ending.

8.3.3. If the answer to 8.3.2 is yes, should any reduction be made to any compensation due on the grounds that it is just and equitable to award such a reduction?

8.3.4. Whistleblowing detriment and automatic unfair dismissal claims only - Were the protected disclosures made in good faith, and if not, is it just and equitable to reduce the award made and if so by how much (up to 25%)?

8.4. Is the Claimant entitled to compensation for injury to feelings? If so, how much?

ANNEX B – AGREED LAW

1. The claimant's submissions on the law are as follows.

    1. It is well established that unconscious bias may lead to discrimination see, *Rihal v LB of Ealing* [2004] IRLR 642 CA, *Nagarajan v London Regional Transport* [1999] IRLR 572 UKHL and *Shamoon v CC of the RUC* [2003] IRLR 285 UKHL at §143:

        Discrimination is rarely open and may not even be conscious. It will usually be proved only as a matter of inference: Nagarajan v London Regional Transport [1999] IRLR 572, 575-576, per Lord Nicholls of Birkenhead. The important point is that there are no restrictions on the types of evidence on which a tribunal can be asked to find the facts from which to draw the necessary inference. In Chief Constable of West Yorkshire v Vento [2001] IRLR 124 the Employment Appeal Tribunal discussed some of the kinds of evidence that are used and how they should be approached. In particular, Lindsay J pointed out, at p.125, paragraph 7, that one permissible way of judging how an employer would have treated a male employee in comparable circumstances is to see how the employer treated male employees in cases which, while not identical, were also not wholly dissimilar. Despite the differences, the tribunal may be able to use that evidence as a sound basis for inferring how the employer would have treated a male employee in the same circumstances as the applicant. Of course, a tribunal cannot draw inferences from thin air, but it can draw them by using its good sense to evaluate the evidence, including the comparisons offered: [2001] IRLR 124, 126, paragraph 12.

    2. Direct discrimination is defined in section 13 of the Equality Act 2010 which provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. The reversal of the burden of proof applies. Of course it must be borne in mind that little direct discrimination today is overt or even deliberate. Decisions may be tainted by conscious or subconscious racial bias, *Rihal v London Borough of Ealing [2004] IRLR 642.*

    3. Guidance from the case law directs tribunals to look for indicators from a time before or after the particular decision which may demonstrate that an *ostensibly fair-minded* decision was, or equally was not, affected by racial bias, *Anya v University of Oxford* 2001 IRLR 377 CA.

    4. Employment tribunals *must* be alive to the possibility of subconscious or unconscious discrimination, *Geller v Yeshurun Hebrew Congregation [2016] ICR 1028, EAT*, a case involving a husband and wife who worked for a joint salary and were made redundant. Mrs Geller brought claims including direct sex discrimination. The factual matrix was far from gender neutral; however, an employment tribunal found that Mrs Geller had not been treated less favourably because of her sex. The EAT considered that there had been an inadequate application of the burden of proof and overturned the decision because despite facts from which discrimination could be inferred, the tribunal failed to consider subconscious or unconscious discrimination. Only if discrimination is inherent in the act complained of is the tribunal released from the obligation to enquire into the mental processes of the alleged discriminator.

5. Additionally, stereotypes, may also be evidence of direct discrimination see *Base Childrenswear Ltd v Otshudi* [2020] IRLR 118 CA and *European Roma Rights Centre v Immigration Officer at Prague Airport (United Nations High Commissioner for Refugees intervening* [2005] 2 AC 1 at para 81-82, per Lady Hale. In that case, there was held to be direct race discrimination where the immigration authorities proceeded on the assumption that Roma passengers were more likely to claim asylum and therefore subjected them to longer and more intrusive questioning when they sought leave to enter the UK as visitors. Whilst the Court of Appeal held (by a majority) that this was not direct race discrimination, Laws LJ, and subsequently the Supreme Court, emphatically held that it was, because the reason for the more intensive questioning of a given passenger who was Roma occurred because he was Roma and was therefore assumed to be more likely to be lying about his reasons for wanting to come to the UK. As Laws LJ[1] eruditely put it in relation to a given immigration officer

> *'why did he treat the Roma less favourably? It may be said that there are two possible answers: (1) because he is Roma; (2) because he is more likely to be advancing a false application for leave to enter as a visitor. But it seems to me inescapable that the reality is that the officer treated the Roma less favourably because Roma are (for very well understood reasons) more likely to wish to seek asylum and thus, more likely to put forward a false claim to enter as a visitor. The officer has applied a stereotype; though one which may very likely be true. That is not permissible.'*

6. At [82], Lady Hale JSC stated that this passage was correct as a matter of law, explaining:

> *'The Roma were being treated more sceptically than the non-Roma. There was a good reason for this. How did the immigration officers know to treat them more sceptically? Because they were Roma. That is acting on racial grounds. If a person acts on racial grounds, the reason why he does so is irrelevant…"*

7. The Equality and Human Rights Commission ('EHRC') Employment: Statutory Code of Practice on Employment[2] states, at 3.15:

> *'Direct discrimination also includes less favourable treatment of a person based on a stereotype relating to a protected characteristic, whether or not the stereotype is accurate.*
>
> *Example: An employer believes that someone's memory deteriorates with age. He assumes – wrongly – that a 60-year-old manager in his team can no longer be relied on to undertake her role competently. An opportunity for promotion arises, which he does not mention to the manager. The employer's conduct is influenced by a stereotype view of the competence of 60 year olds. This is likely to amount to less favourable treatment because of age.'* (emphasis added).

[1] At [109], [2003] EWCA Civ 666 applying Lord Steyn's test extrapolated from *Nagarajan* [2000] 1 AC 501.

[2] The Code is required to be taken into account by virtue of section 15(4) Equality Act 2006.

8. The Clamant relies on hypothetical comparators and/or actual comparators for his claims. He did not rush to a belief of discrimination at play, but rather over a period of time the pattern of less favourable treatment to himself and other Asian, black and ethnic minority employees, compared to their white counterparts provided further compelling evidence of this.

Harassment Related to Race

9. The Claimant relies on Harassment, s 26 Equality Act 2010

(EA 2010). 26 Harassment

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

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

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

(i)violating B's dignity, or

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

(2) A also harasses B if—

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

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

(3) A also harasses B if—

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

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

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

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

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

10. The conduct must have the purpose *or* effect. A mixed objective and subjective test is applied here. If the conduct has that purpose there is no requirement to go further and look at the effect. This is clear and is the result of reading s26(1) and (4) together.

11. When considering race harassment as in other forms of discrimination or victimisation it is important to consider the overall picture. In *Driskel v Peninsular Business Services Ltd* [2000] IRLR 151 the EAT emphasised at §11:

(a) The tribunal hears the evidence and finds the facts. As has already been pointed out, it is desirable not to include in this exercise judgments as to the discriminatory significance, if any, of individual incidents – judgment thus far should be limited to the finding of all facts that are prima facie relevant. If ad hoc assessments 'discrimination or no' are made the result is a fragmented and discursive judgment; more importantly, there is the potential noted in Reed and Bull [1999] IRLR 299 for ignoring the impact of totality of successive incidents, individually trivial.

12. Then at §14:

(b) We turn to the crucial incident of 11 July 1996. In our judgment, had the tribunal correctly directed itself as to the law, it would first, have sought to put the incident in context, that is, as the latest in a line of incidents with 'its predecessors'. Second, it would readily have found that that which was complained of amounted prima facie to discrimination of a high order.

13. In *Bakkali v Greater Manchester Buses (South) Ltd EAT/0176/17* the EAT (Slade J) said that where the same facts were relied upon for a claim of direct discrimination on grounds of race and a claim of harassment for conduct related to the same protected characteristic, an Employment Tribunal does not err in determining the harassment claim if they rely on their findings of fact on the direct discrimination claim provided they apply the correct "related to" test required by section 26 Equality Act 2010. This principle applies to the Claimant's claims.

14. Conduct may be *related* to a relevant characteristic even if it is not *because* of that characteristic. It requires a broader enquiry. If it relates, as was the Claimant's case in *Bakkali,* to words spoken, it requires a more intense focus on the context of the words spoken. The mental processes of the alleged harasser will be relevant as to whether the conduct was related to the protected characteristic. The Claimant was subjected to a harassing regime throughout his employment.

15. In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] *UKHL* the House of Lords held that a "detriment", within the meaning of article 8(2)(b) of the Sex Discrimination (Northern Ireland) Order 1976, existed if a reasonable worker would or might take the view that the treatment accorded to her had in all the circumstances been to her detriment; that it was not necessary to demonstrate some physical or economic consequence; and that the applicant was entitled to a finding that she had been subjected to a detriment.

Victimisation

16. Unlawful victimisation arises under s27 EA 2010 where a person is treated less favourably because he:

(1)(a) B does a protected act, or

A believes 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) gives 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.

17. Respondent accepts that protected acts were made by the Claimant[3]. In order to succeed in a claim of victimisation the Claimant must show that one of the acts in (a) to (d) above done by the Claimant has influenced the alleged victimiser in his unfavourable treatment of him (*Aziz v Trinity Taxis Ltd* [1988] ICR 534). The House of Lords by a majority (Lord Browne – Wilkinson dissenting) has made it clear that the alleged victimiser need not be 'consciously motivated' (*Nagarajan v London).*

18. The Claimant further relies on the accumulative approach of the EAT when assessing victimisation espoused in the case of, *Qureshi v Victoria University of Manchester and Another* [2001] ICR 863. The *totality* of the case must be considered as stated in *Driskel*, above. The Equality and Human Rights Commission (EHRC) Code of Practice on Employment deals with victimisation at Chapter 9.

PIDA Detriment/Dismissal

Protected Disclosures

19. The Claimant must first show that he made a protected disclosure. This must comply with section 43B(1) of the 1996 Act, so far as material, provides: [Note, the section of Ms Banton's closing submissions which relate to the question as to whether or not a claimant has made a protected disclosure are not included, since the respondent accepts that the claimant made protected disclosures as alleged.]

Constructive Unfair Dismissal

20. Discriminatory conduct and PIDA detriments are relied on regarding the Claimant's accumulative breach, constructive dismissal claims. In *London Borough of Waltham Forest v Fomu Omilaju* [2004] EWCA (Civ) 1493 (11/11/04), the Court of Appeal found, Dyson LJ emphasising, and quoting from the judgment of Glidewell LJ in *Lewis v Motorworld Garages* [1986] ICR 157 at 169) that, 'the last action of the employer which leads to the employee leaving need not itself be a breach of contract'. These matters were particularly important in *Omilaju* because the ET's judgment had included this, '[Mr Omilaju] has to show that there was serious breach of his contract; or a breach that was the last in a series of breaches …. The difficulty for [Mr Omilaju] is that looked at objectively the straw that broke the camel's back was perfectly reasonable and justifiable conduct of his employer acting fully in accordance with the terms of [Mr Omilaju's] contract' and the EAT judgment included the following: 'in all "last straw" situations, matters turn to some extent on the perception of the employee

[3] All protected acts are accepted as disclosures for the purposes of PIDA/Whistleblowing and Victimisation claims. The Claimant relies on the same detriments for his PIDA as his victimisation claims.

at the time he feels he has been treated unreasonably or unfairly by his employer.'

21. The nub of the Court of Appeal's decision was concerned with the narrow question of whether or not the act allegedly constituting the 'last straw' had to have any particular attributes, e.g. had to be unreasonable in some way, in order for there to be a constructive dismissal. The test an ET has to apply is simple: did the employee resign as a result of an act that by itself amounts to, or a series of acts that cumulatively amount to, a breach of the implied term of trust and confidence.

22. An example of case where an act of discrimination, here disability discrimination, a failure to make reasonable adjustments, entitled the employee to resign and claim constructive dismissal, is *Greenhof v Barnsley Metropolitan Borough Council* [2006] IRLR 98.

> *"It seems to us in this case that the Employment Tribunal found unequivocally that there had been a serious breach of the obligation on the part of the Respondent over a period of time to make reasonable adjustments as it was obliged to do under the Disability Discrimination Act.*
>
> *It follows, in our opinion, that that was almost bound to be a breach of the implied term of trust and confidence which Mr Greenhof would be entitled to treat as being a repudiatory breach of contract, as he purported to do. Now, it may be that there are circumstances in which there can be a breach of the obligation to make reasonable adjustments which might not be regarded as repudiatory, but we do not see how, having made the finding it did in the present case, there was any way in which the Respondent's conduct could be regarded as anything other than repudiatory" (Para 10, EAT Judgment, Greenhof).*

Time Limits – s123 EqA and Just and Equitable Extension

23. Conduct continuing over a period is treated as done at the end of period. When there are a number of incidents occurring over a period of time they may in appropriate circumstances be considered as being part of a continuing act in the sense of a continuing state of affairs pursuant to which discriminatory acts occurred from time to time; *Hendricks v Commissioner of Police of the Metropolis* [2003] ICR 530. Given that the Claimant's chronology is relatively short, this is not a particularly time sensitive case and time will not be a significant factor here.

24. In considering whether it is just and equitable to extend time the Tribunal should have regard to the fact that the time limits are relatively short. Extension of time should be the exception, although the Tribunal has a broad discretion to extend time when there is a good reason for so doing: Robertson v Bexley Community Centre (t/a Leisure Link) [2003] IRLR 434. The fact that an employee is pursuing an internal grievance or other procedures is a factor that may be taken into account in determining whether time should be extended: *Apelogun-Gabriels v Lambeth London BC* [2002] ICR 713. The Claimant was clearly pursuing internal complaints and was seeking to resolve matters internally.

25. Discrimination claims must be brought within three months of the act complained of; time limits at tribunal are relatively strict and the employee's failure to submit a claim in time may result in it being struck out. At tribunal, an employer will usually argue that the earlier acts are out of time, but the tribunal has discretion and may take account of:
    - the reason for and extent of the delay;
    - whether the claimant had legal advice;
    - whether the individual was awaiting the outcome of a grievance or appeal; or
    - whether the delay prejudices a fair hearing and to what extent.
26. The Equality Act purposefully deals with an "ongoing situation or a continuing state of affairs" by placing conduct that extends over a period of time as if it were done at the end of this time. The tribunal is aware that a vulnerable employee may put up with less favourable treatment before making a grievance or a tribunal claim. Behind the incidents of discrimination is a common connecting factor, and the acts need to be part of a series similar to one another. The tribunal may ask:
    - Is it the same individual or different individuals involved in the acts?
    - Were the acts committed by fellow employees and was there a connection between these employees?
    - Why did the fellow employees do what they did?
27. In *Hendricks v The Commissioner of Police for the Metropolis* (2003), Miss Hendricks, a police officer, claimed race and sex discrimination over 11 years. She described about 100 incidents, involving 50 or more officers, but only a few acts were within time. It was clear that Hendricks experienced a regime or prevailing way of life in which females and those of ethnic minority backgrounds were treated less favourably. This was viewed as a policy, regime or practice, and therefore a continuing act.
28. The Claimant relies on a just and equitable extension regarding any time limit issues in his claims. It is plain from the language used ('such other period as the employment tribunal thinks just and equitable') that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike s 33 of the Limitation Act 1980, s 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list.
29. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in s 33(3) of the Limitation Act 1980 (see *British Coal Corporation v Keeble* [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see *Southwark London Borough Council v Afolabi* [2003] IRLR 220, para [33].
30. Significantly, when balancing any disadvantage it is important to note that the Respondent is able to avail itself of its considerable resources in comparison to the Claimant. The Respondent has been able to continuously

robustly defend these claims and cannot be said to have been disadvantaged by any delay in putting forward their case as cogently as they could. it is strongly submitted that in all the circumstances it just and equitable to extend time in this matter. In *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] IRLR 1050 at §19:

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That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).

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The second point to note is that, because of the width of the discretion given to the employment tribunal to proceed in accordance with what it thinks just and equitable, there is very limited scope for challenging the tribunal's exercise of its discretion on an appeal. It is axiomatic that an appellate court or tribunal should not substitute its own view of what is just and equitable for that of the tribunal charged with the decision. It should only disturb the tribunal's decision if the tribunal has erred in principle – for example, by failing to have regard to a factor which is plainly relevant and significant or by giving significant weight to a factor which is plainly irrelevant – or if the tribunal's conclusion is outside the very wide ambit within which different views may reasonably be taken about what is just and equitable: see Robertson v Bexley Community Centre t/a Leisure Link *[2003] EWCA Civ 576, [2003] IRLR 434, para [24].*

25

I cannot accept that argument. As discussed above, the discretion given by s 123(1) of the Equality Act to the employment tribunal to decide what it 'thinks just and equitable' is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard. Nor do I consider that the original decision of the EAT went any further than that. The error identified by Langstaff J, as I read his judgment, was that the tribunal had failed to give any consideration at all to the reason for the delay in bringing the claim and had therefore failed to have regard to a relevant factor. I agree, however, with HHJ Shanks in his judgment given on the second EAT appeal that Langstaff J was not 'intending to suggest that if a claimant gives no direct evidence about why she did not bring her claims sooner a tribunal is obliged *to infer that there was no acceptable reason for the delay, or even that if there was no acceptable reason that would inevitably mean that time should not be extended.'*

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It is plain that in its second judgment the employment tribunal did give consideration to the reasons why the claimant had not commenced proceedings until March 2012. The identification of those reasons and the weight to be given to them were matters for the tribunal. There was no requirement that it had to be satisfied that there was a good reason for the delay before it could conclude that it was just and equitable to extend time in the claimant's favour.

31. It is respectfully submitted that the ET should have regard to disadvantage and to principles of access to justice and overriding objective that this is indeed an additional factor to be taken into account which counts in the Claimant's favour for extending time in his continuing claims, should it be relevant, in all the circumstances.

The Respondent's submissions on the law

2. The respondents' submissions on the law are as follows:

Section 13 EqA 2010 race discrimination claim

1. There is a substantial amount of authority on the matter of direct race discrimination. The following is a summary only:

    a. The burden is on the Claimant to prove, with evidence, facts from which (absent a reasonable explanation) the tribunal could conclude that discrimination has occurred.

    The House of Lords in SCA Packaging Ltd v Boyle [2009] UKHL 37 confirms that in considering whether something is "likely", it must be asked whether "it could well happen;"

    b. Moreover, it must be based on facts and circumstances existing at the alleged time *All Answers Ltd. v. W* [2021] EWCA Civ 606. Anything that happens between the date of discrimination and the date of the hearing must be disregarded as irrelevant (see *Richmond Adult Community College v McDougall* [2008] IRLR 227, [2008] ICR 431, CA);

    c. Where multiple allegations are raised as evidence of discrimination, the correct approach is for the tribunal to find the primary facts about the incidents in question and then to look at the totality of those facts (including the employer's explanation) to determine whether the acts complained of were on racial grounds (*Rihal v Ealing LBC* [2004] IRLR 642).

    d. In looking at the overall picture, it is also necessary to consider the inherent probabilities of what a witness is saying how well it fits with "objective" facts (those things which are undisputed or indisputable). In deciding where the truth lies the tribunal should make some overall assessment of the witnesses which incudes taking account of things such as any demonstrable lies or exaggeration. Reference to the burden of proof is a matter of last resort to be avoided if possible (*Talbot v Costain Oil Ltd* (UKEAT/0283/16 (14/03/2017).

    e. A failure to, for example, answer a discrimination questionnaire or a failure to otherwise provide information or documents, does not

automatically raise a presumption of discrimination. Failure of that kind are matters from which inferences can be drawn but only in appropriate cases, and the drawing of inferences from such failures is not a "tick box" exercise. Such failures are only relevant to the extent that they potentially shed light on the actual discrimination complained of and thus, necessarily on the "mental processes" of the decision-maker (*D'Silva v NATFHE* [2008] IRLR 412).

f. To establish direct discrimination, R must treat C less favourably than it treats, or would treat another (the comparator) who is in the same or not materially different circumstances. (s23 EqA).

g. It is for C to show that the hypothetical comparator would have been treated more favourably. C can use "evidential" comparators to construct a hypothetical comparator but the closer the circumstances of those individuals are to those of C, the weightier will be the significance of their treatment.

h. The treatment must be "because" of a protected characteristic. Less favourable treatment than that afforded to a comparator is not sufficient to establish direct discrimination unless there is "something more" from which the tribunal can conclude the difference was because of C's protected characteristic (*Madarassy v Nomura International plc*, EWCA, [2007] ICR 867).

i. It is necessary to establish if there are conscious or subconscious mental processes which led the discriminator to take a particular course of action in respect of C. Did the protected characteristic play a significant part in the treatment of C (*IPC Media Ltd v Millar* [2013] IRLR 707)? The reason need not be the sole or principal reason so long as it had "a significant influence on the outcome" (*Nagarajan v London Regional Transport*, HL, [1999] ICR 877). However, the crucial question in every case is "why did C receive the less favourable treatment?".

Section 26 Harassment related to race

2. In short;

   a. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect of either:

      1. Violating B's dignity, or
      2. Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

   (*Section 26(1)*.)

   b. In deciding whether conduct shall be regarded as having the **effect** referred to above, the following must be taken into account:

      1. The perception of B.
      2. The other circumstances of the case.
      3. Whether it is reasonable for the conduct to have that effect.

(*Section 26(4)*).

c. In *Richmond Pharmacology v Dhaliwal* [2009] ICR 724, the legislation is specifically defined so as to focus on three elements:

1. unwanted conduct;

2. having the purpose **or** effect of either:

a) violating the claimant's dignity; or

b) creating an adverse environment for him

3. related to prohibited grounds.

d. In *Pemberton v Inwood* [2018] IRLR 542, EWCA Underhill LJ revisited *Dhaliwal* and held that in respect of section 26(1)(a) when deciding whether any such conduct falling within that sub-para has either of the proscribed effects under sub-para 1(b), a tribunal must consider both (by reason of sub -section 4(a)) whether the victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b)).

Section 27 Victimisation

3. In summary:

a. Re detriment, the *Shamoon* test applies: there is an actionable detriment if a reasonable employee would or might take the view that they have been disadvantaged in the circumstances in which they have to work.

b. As to causation, whether the detriment is "because" of a protected act, the question is the reason why the employer acted as they did and whether that was because C did the protected act.

c. Obviously, the putative victimiser must have knowledge of the protected act.

d. There need not be conscious motivation (*Nagarajan v LRT and others* [1999] ICR 877). Where there are mixed motives for doing the act, the discriminatory reason must be of sufficient weight in causing the act complained of (*O'Donoghue v Redcar & Cleveland BC* EWCA, [2001] IRLR 615).

Discriminatory constructive unfair dismissal

4. To summarise:

a. The time limit runs from the date of the employee's acceptance of the employer's repudiatory act as terminating the contract *(De Lacey v Wechseln Ltd* **[2021] IRLR 547***, EAT* at [72].

b. For a 'last straw' constructive dismissal case, the constructive dismissal may still be discriminatory even if the last straw incident itself was not: this depends on if the earlier discriminatory conduct 'sufficiently influenced' the overall repudiatory breach |(*De Lacey v Wechseln Ltd* **[2021] IRLR 547***, EAT where* Cavanagh J held it was a matter of fact and degree and that whilst in some cases the answer

to that question would be clear, in other cases the facts would be such that the matter is borderline. C alleges that there was unlawfully discriminatory treatment of him which amounted to repudiatory breaches of his employment contract. The tribunal must reach a concluded view on whether the earlier incidents were race discrimination for the purposes of this head of claim. If so, whether that meant that the constructive dismissal was itself unlawful race discrimination, that is did the discriminatory matters (if they are found to be so) sufficiently influence the overall alleged repudiatory breach so as to render the constructive dismissal discriminatory.

5. Section 48 ERA – detriment for making a protected disclosure

6. In summary:

   a. A detriment must be on the ground that the employee/worker has made a protected disclosure and that involves an analysis of the mental processes of the employer. It is for the claimant to show that they made a protected disclosure and that there was detrimental treatment. It is then for the Respondent to prove the reason for the treatment. If the reason is not proven to be for an admissible reason, the Tribunal is entitled, but not obliged, to infer that the detriment was on the ground that that the claimant made a protected disclosure (*Ibekwe v Sussex Partnership NHS Foundation Trust* UKEAT/0072/14).

   b. The employer must show that the protected disclosure did not "materially influence" (that is, more than a minor or trivial influence) the detrimental treatment. (*NHS Manchester v Fecitt* [2012] IRLR 64).

Section 103A – automatically unfair dismissal on grounds of protected disclosure

1. In summary:

   a. It is for the employer to show that a protected disclosure which has been established by the employee was not the reason or principal reason for the dismissal.

Time Limits

1. Applicable legal principles in PID cases:

   a. In detriment claims, it is the date of the act giving rise to the detriment, not the consequences of it which determine the point at which time begins to run (*Unilever v Hickinson* UKEAT/0192/09). In *Ikejiaku v British Institute of Technology* UKEAT/0243/19 the EAT held that where a detrimental act was the introduction of a new contract removing the employee's employment status, time ran from the date the new contract was imposed and not when the claimant was dismissed the following year. The introduction of the new contract was a one-off event with continuing consequences and not an act which extended over a period (section 48(4)(a) ERA).

   b. Extension of time is on the basis that it was not reasonably practicable for the claim to be presented in time.

2. In respect of time under the EqA, s123(1)(b):

a. Burden of proof is on the claimant (*Robertson v Bexley Community Centre* [2003] IRLR 434, CA).

b. Although the factors set out in s33 Limitation Act 1980 may be useful, it should not be used as a check list: *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 27, [2021] 1 WLR 2061.

c. Pursuit of internal appeal before commencing a claim is not in itself a good reason to extend time, but may be a factor in the decision and must be looked at in its overall context.

d. Although normally the ET will consider the delay between the relevant events and the presentation of the ET1, it may also need to look at any delay *after* that presentation before the case comes on (especially where it is substantial) and the effects of that on the ability of the respondent to defend the claim. Whether the delay was anyone's fault is not relevant: *Secretary of State for Justice v Johnson* EA-2020-000385 (28 September 2021, unreported).

e. Whether the allegations relate to conduct extending over a period under s123(3)(a) a claimant may not run together discriminatory acts with others which are not discriminatory: *South Western Ambulance Service NHS Foundation Trust v King* [2020] IRLR 168, EAT.

f. Where a question arises as to whether there has been a series of acts extending over a period, this is to be dealt with by the ET hearing evidence and making findings of fact.