



EMPLOYMENT TRIBUNALS

Claimant

Respondent

B

v

Dudley M.B.C.

Heard at: **Birmingham**

On: **16,17,20,21,22,23,24,27,28,29**

& 30 November 2023

& 1,2,4,5 December 2023

In chambers 6, 7 and 8 December 2023

Before:

Employment Judge Wedderspoon

Members

Mr. R. Virdee

Mr. M. Cronin (by CVP)

Representation:

Claimant:

In Person

Respondents:

Mr. Frew, Counsel

JUDGMENT

1. The claimant's claim of direct sexual orientation discrimination on 31 August 2018 : "Ian Grosvenor made false at comments regarding the claimant's performance", is dismissed upon withdrawal.
2. All of the claims of direct sexual orientation discrimination are not well founded and are dismissed.
3. All of the claims of harassment related to sexual orientation (save for those set out below) are not well founded and are dismissed.
4. The claims of harassment related to sexual orientation dated 2018 are out of time and it is not just and equitable to extend time.
5. All of the claims of victimisation are not well founded and are dismissed.

REASONS

1. By claim forms dated 16 April 2021, 3 June 2022, 15 September 2022, 31 May 2023 and 29 May 2023 the claimant brought complaints of direct sexual orientation discrimination, harassment related to sexual orientation and victimisation. The claimant identifies as bi-sexual.
2. The claimant alleged that there was a deliberate policy not to afford him opportunities to manage or to be promoted in the organisation by reason of his protected characteristic of sexual orientation namely bi-sexuality. He alleges he was subject to harassment by reason of his bi-sexuality and victimised when he raised grievances about his treatment in the workplace.

3. The respondent disputed this and contended that the claimant failed to obtain promotion because he did not perform as well at interviews as comparators. Further the respondent contends that the claimant made allegations of discrimination on each occasion he had to be line managed by reason of his performance and in effect had used the grievance process in an attempt to get his own way.
4. The case has been subject to a number of different case management discussions on 12 January 2022, 10 February 2022, 7 November 2022, 18 April 2023 and 19 September 2023.
5. The parties agreed a list of issues. Counsel for the respondent produced a draft reading list and chronology. The claimant added to these documents and the Tribunal conducted its reading over days 1 to 3.

List of issues

Direct sexual orientation discrimination Equality Act 2010 section 13

6. Did the respondent do the following things:-
 - 6.1 In February 2015 Amarjit Uppal put in place a deliberate policy to deny the claimant management experience which disadvantage the claimant before and during the interview for the post of principal accountant;
 - 6.2 in July 2015 Rachel Cooper put in place a deliberate policy to deny the claimant management experience and responsibility which disadvantaged the claimant before and during the interview for the post of principal accountant;
 - 6.3 in July 2016 Rachel Cooper put in place a deliberate policy to deny the claimant management experience and a responsibility which disadvantaged the claimant before and during the interview for the post of principal accountant;
 - 6.4 from June 2016 Catherine Ludwig set management level meetings at the grade above the claimant to exclude the claimant;
 - 6.5 in August 2016 Ian Grosvenor failed to submit the claimant's performance review statement to centrally to cover up management responsibility in experience requests;
 - 6.6 in August 2017 Ian Grosvenor failed the claimant's performance review statement centrally to cover up management responsibility and experience requests;
 - 6.7 in November 2018 Rachel Cooper falsely stated in 2016 in 2017 not one employee who works in the place finance team had their performance review statements submitted centrally in order to cover up the treatment she was subjecting the claimant to;
 - 6.8 in September 2017 Rachel Cooper put in place a deliberate policy to deny the claim that management experience and responsibility which had the effect of disadvantaging the claimant before the interview process for the post of senior principal accountant;
 - 6.9 on 31 August 2018 Ian Grosvenor made false comments regarding the claimant's performance
 - 6.10 in May 2019 Rachel Cooper put in place they deliberate policy to deny the claimant management experience and responsibility which had the effect of disadvantaging the claimant before the interview process for the post of senior principal accountant;

- 6.11 in September 2019 the claimant discovered Rachel Cooper had deliberately not informed the claimant about promotion opportunities made available in June 2019 by advertising the position the exact moment the claimant was out of the office and therefore would be unaware promotion opportunities until September 2019;
- 6.12 in November 2019 Rachel Cooper put in place a deliberate policy to deny the claimant management experience and responsibility which put the claimant at a disadvantage before and during the interview for the post of senior principal accountant
- 6.13 in December 2019 Rachel Cooper/Catherine Ludwig allowed the claimant to be a manager of an accountancy assistant who had been known for performance and behavioural issues and the appointment did not match the organisational structure
- 6.14 in December 2019 disadvantaged the claimant by allowing all other full time senior accountants (without protected characteristics) by advertising roles in their current work teams/areas and giving them favourable interview questions;
- 6.15 In May 2020/ November 2020 Rachel Cooper and Catherine Ludwig were reviewing each and every word of emails the claimant sent to Gurnec Bachera in order to find issues with performance and to justify discrimination;
- 6.16 on 18 November 2020 the claimant discovered Rachel Cooper had not informed the claimant about a senior principal accountant promotion opportunity in the claimant's current team
- 6.17 on 18 November 2020 the claimant's experience and skills were reassessed before the application process for the post of senior principal accountant. Rachel Cooper also set the job for grade 11 candidates and above to prevent the claimant from learning about the position and applying for the position
- 6.18 on 18 November 2020 Rachel Cooper unjustly suspended the claimants management experience
- 6.19 on 4 February 2021 Rachel Cooper and Ian Newman unjustly suspended the claimant's management experience
- 6.20 on 5 November 2021 the claimant was treated less favourably because of his sexual orientation because Mr. Uppal told the claimant that despite a decent interview for the senior principal accountant post grade 12 the main reason for not obtaining the promotion was because the claimant does not display the correct soft skills to work successfully with colleagues and influence them to meet objectives
- 6.21 on 15 March 2022 the claimant was unsuccessful in obtaining one of the three senior principal accountant posts
- 6.22 on 13 March 2022 Rachel Cooper put in place a deliberate continued with a deliberate policy to deny the claimant management experience and responsibility which puts the claimant at a disadvantage before and during the interview for the post of senior principal accountant
- 6.23 on 15 March 2022 Ian Grosvenor and Catherine Ludwig harshly scored the claimants presentation interview answers and made false and dishonest statements regarding the claimant's interview performance because of the claimant sexual orientation

- 6.24 on 15 March 2022 Ian Newman continued with its threats when he made it clear as a threat if the claimant made any external complaint regarding discrimination harassment and victimisation it would damage his relationship with the organisation
- 6.25 on 15 June 2022 the claimant was unsuccessful in obtaining one of two principal accountancy posts
- 6.26 15 June 2022 Rachel Cooper put in place a deliberate/continued with a deliberate policy to deny the claimant management experience and responsibility which put the claimant at a disadvantage before and during the interview for the post of principal accountant
- 6.27 on 15 June 2022 Ian Newman continued with his threats when he made it clear as a threat if the claimant made any external complaint regarding discrimination harassment and victimisation it would damage his relationship with the employer
- 6.28 on 15 June 2023 in Grosvenor and Catherine Ludwig harshly scored interview answers and made false and dishonest statements regarding the claimant's interview performance because of the claimant's sexual orientation
- 6.29 the claimant was unsuccessful in obtaining one of the six principal accountant positions at grade 11
- 6.30 on 15 February 2023 Rachel Cooper put in place a deliberate continued with a deliberate policy to deny the claimant management experience and responsibility which put the claimant at a disadvantage before and during the interview for the post of principal accountant
- 6.31 on 15 February 2023 Ian Grosvenor and Catherine Ludwig harshly scored the claimants interview answers and made false and dishonest statements regarding the claimant's interview process because of the claimant's sexual orientation
- 6.32 on 15 February 2023 Ian Newman continued with his threats when he made it clear as a threat that little climate made any external complaint regarding discrimination harassment and victimisation the claimant is allegedly subject to the claimant would damage his relationship with the employer January 2021.

Harassment related to sexual orientation Equality Act 2010 section 26

7. Did the respondent do the following things :-
- 7.1 Did Tracey Mosley and Jane Hickman discuss whether the claimant was gay or straight and did Tracy make a comment that there is no such thing as bisexual; you are one thing or the other and did both Jane and Tracy ask the claimant if he give it or takes it to change the task if the client wanted to bum another member of staff?
- 7.2 On 19 July 2018 and 2nd August 2018 was Ian Grosvenor present and did he encourage and laugh at Jane Hickman and Tracy Moseley 's conversation
- 7.3 Since April 2015 did Ian Grosvenor Jane Hickman and Tracy Moseley create a toxic hostile uncomfortable and homophobic working environment for the claimant with their unwanted inappropriate behaviour sexual innuendo and homophobic comments
- 7.4 From the grievance outcome in November 2018 was the claimant blanked in the office by Tracey Mosley and Jane Hickman other staff. The claimant was ignored and only spoken to as necessary in order to create a toxic environment and to further harass the claimant

- 7.5 On 27 August 2020 did Gurnec Bachera raise a malicious grievance against the claimant
- 7.6 On 26 September 2020 and 18 November 2020 did Rachel Cooper say to the claimant that comments that he had reported in 2018 as harassment were just banter and inappropriate jokes and that the claimant should just get over them
- 7.7 On 11 November 2020 did Gurnec Bachera speak to the claimant in a rude unprofessional and aggressive manner in a telephone conversation telling the claimant how much he annoyed and agitated him unlocked claimant as he wasn't promoted in previous interviews and or mocks the claimant was denied management experience and said there was a reason for it implying it was because of the claimant sexuality.

Victimisation

- 8. Did the respondent do the following things
 - 8.1 In September October 2018 Ian attempted to micromanage the claimant to an unprecedented level because he was going to document the homophobic harassment inappropriate behaviour and sexual innuendos he was subject to an witnessed on the performance review paperwork
 - 8.2 In May/ June 2020 the claimant was set up to fail as a manager by Rachel Cooper Katherine Ludwig and Gurnec Bachera. Insignificant issues of this management practises were highlighted but aggression swearing insubordination and or inappropriate behaviours from Gurnec Bachera were ignored deemed insignificant and not investigated properly;
 - 8.3 On 3rd August 2020 the claimant was blocked from contacting Gurnec Bachera directly by e-mail by Rachel Cooper and Catherine Ludwig; all emails sent by the claimant to Gurnec Bachera had to be pre-checked by Catherine Ludwig and sent back to the claimant and resent to Gurnec
 - 8.4 Between May 2020 in November 2020 did Rachel Cooper and Catherine Ludwig scrutinise each every word of the claimant 's emails to the accountancy assistant
 - 8.5 On 12 November 2020 and 18th November 2020 Rachel Cooper blocked the claimant from setting up a preliminary meeting with the accountancy assistant for alleged insubordination and the claimant alleges that she threatened the claimant with retaliatory disciplinary action if the claimant wished to proceed with the meeting
 - 8.6 On 18 November 2020 Rachel Cooper unjustly removed management responsibility suspended the claimant for managing staff and refused to put the management suspension in writing;
 - 8.7 On 4 February 2021 was the claimant suspended as a manager by Rachel Cooper and or Ian Newman to retaliate for raising a directors coronation grievance and previous protected act documents did the claimant get any written documentation for February and did the claimant have a chance to provide evidence to defend himself
 - 8.8 On 4 March 2021 was a claimant unjustly suspended as a manager by Ian Newman in grievance outcome meeting to cover up the discrimination and retaliate for raising a grievance
 - 8.9 On 4 March 2021 Ian Newman accused the claimant of artificially constructing a case based upon a protected characteristic
 - 8.10 On 5th November 2021 Armajit Uppal told the claimant that despite the decent interview for the senior principal accountant post

grade 12 the main reason for not obtaining the promotion was because the claimant doesn't display the correct soft skills to work successfully with colleagues and influence them to meet objectives clearly implying this was because the claimant had made complaints regarding discrimination non compliance with Dudley MBC's equality policy and non compliance with the equality and diversity Act 2010 and the claimant cannot work with colleagues

- 8.11 On 15 March 2022 the claimant was unsuccessful one of the three senior principal accountant positions
- 8.12 On 15 March 2022 Rachel Cooper put in place a deliberate continued with a deliberate policy management experience and responsibility which put the claimant at a disadvantage before and during the interview for the post of senior principal accountant;
- 8.13 On 15 March 2022 Ian Newman continued with his threat when he made clear threat that the claimant made any external complaint regarding the discrimination harassment and victimisation claim it alleges he subjected to the claimant would damage his relationship with the employer;
- 8.14 On 15 March 2022 Ian Grosvenor harshly scored the claimants presentation and interview answers to give artificially loud schools on certain questions. He made false and dishonest statements regarding their claimed interview process performance because the claimant made complaints under the Equality Act regarding the direct discrimination in Grosvenor is alleging subjecting him to
- 8.15 On 15 March 2022 Catherine Ludwig deliberately scored the claimant presentation interview harshly
- 8.16 On 15 June 2022 the claimant was unsuccessful for one of the two principal accountant positions
- 8.17 On 15th of June 2022 Rachel Cooper put in place a deliberate/ continued with a deliberate policy to deny the claimant management experience and responsibility which put the claimant at a disadvantage before and during the interview post senior principal accountant
- 8.18 On 15 June 2022 in Newman continued his threat when he made clear if the claimant made any external complaint regarding discrimination and victimisation it would damage his relationship with the employer
- 8.19 On 15 June 2022 Ian Grosvenor harshly scored the claimants presentation interview answers to give artificially low scores many questions he made dishonest statements regarding claimant interview performance because the claimant made complaints under the Equality Act regarding the direct discrimination in Grosvenor subjecting him to
- 8.20 On 15 June 2022 Catherine Ludwig delivery scored his presentation in interview harshly because the claimant had made complaints through the Equality Act 2010 regarding the discrimination he was subject to
- 8.21 The claimant was unsuccessful for one of the six principal accountant position grade 11
- 8.22 On 15 February 2023 Rachel Cooper put in place a deliberate/ continued with a deliberate policy to deny the claimant management experience and responsibility which put the claim into decisions vantage before and during the interview for the post of principal accountant

8.23 On 15 February 2023 Ian Newman continued with his threat when he made it clear the threat that if the claimant made any external complaint regarding the discrimination harassment and victimisation the claimant would damage his relationship with the employer January 2021

8.24 On 15 February 2023 Ian Grosvenor harshly scored the claimants interview answers to give artificially low scores on certain questions he made false and dishonest statements regarding the claimant interview performance because the claimant made complaints under the Equality Act regarding the direct discrimination ingrown is allegedly subjecting him to

8.25 On 15 February 2023 Catherine Ludwig deliberately scored the claimants interview harshly because the claimant made complaints the Equality about Act 2010 regarding the discrimination he is subject to.

Hearing

9. At the commencement of the hearing, Mr. Virdee, Tribunal member raised that he had been previously employed by the respondent but left in 1994. The parties were given the opportunity to make any representations but did not raise any objections to Mr. Virdee hearing the case.
10. The Employment Judge explained to the claimant the procedure to be adopted in the Tribunal. The claimant raised no concerns about this.
11. The Tribunal asked whether any reasonable adjustments were required by the parties to which none were initially identified.
12. Following reading time, the Tribunal identified the following issues
 - (a) the claimant was awaiting an appointment to be assessed for autism;
 - (b) the claimant had sought prior to the preliminary hearing in September 2023 a privacy order.
13. The Tribunal wrote to the parties prior to resuming the hearing on day 3 to be ready to deal with a privacy order application and to consider any adjustments that may be required and requested the parties to consider the case of **Habib v Dave Whelan (2023) EAT 13**.
14. On day 3 the claimant explained that his GP had referred him for an assessment for autism spectrum disorder but he is unlikely to be seen until January 2024. His assessment was delayed by reason of COVID. He requested that the hearing be remote by reason of the fact that he has some problems with eye contact; feels nervous in person; noise can distract him and in team's meetings eye contact is not so bad.
15. The respondent objected to a remote hearing and wished the hearing to be in person. The respondent submitted that the Tribunal would have to rely on the claimant's word as to his disability as there was no independent evidence. The respondent submitted that the claimant works at a senior level in the hierarchy and speaks to clients regularly. Furthermore, the claimant ran a case of conspiracy involving a number of different individuals in the organisation; credibility was key and needed to be tested and that was best dealt with at an in-person hearing.

16. The claimant applied for a rule 50 order namely a restricted reporting order and an anonymity order of any written judgement. The claimant made this application on 26 of March 2023. The Tribunal had invited the respondent's comments, but none were noted on the file. The claimant said that the respondent solicitor had not objected at a preliminary hearing to such an order although this is not noted in any of the case management orders. The claimant stated that the basis of his application is that he had not informed his family about his sexual orientation, and he stated that he was at risk of physical attacks which was a risk to his health.
17. The respondent objected to the rule 50 application relying upon the case of Ameyaw v Price Waterhouse Coopers Services Limited UKEAT/0244/18 which repeated the principles set out in Fallows v Newsgroup that the burden of establishing a derogation from the principle of open justice was on the claimant and must be based on clear and cogent evidence. There should be full reporting of the proceedings and that there should be full and transparent adjudication on allegations. The respondent suggested a halfway house might be to name the claimant but remove the protected characteristic of sexual orientation in the judgment. The respondent also relied upon the case of A and Burke and Hare which it established there was no authority for the proposition that a risk of stigma or reputational harm can justify granting anonymity. Further the respondent relied upon was the case of Clifford v Millicom Services UK Limited (2023) EWCA Civ 50 where the Court of Appeal held the Tribunal should conduct a proper balancing exercise and consider the interests of justice. The respondent submitted the real reason that the claimant was making this application was that this was a vexatious and spurious claim and he did not want his name to be included in a public judgement.

Remote Hearing

18. The Tribunal determined that the hearing would be a hybrid one whereby the claimant would be permitted to participate remotely. Practically the respondent and its team would have to be in the Tribunal room with the Tribunal due to a lack of space at the Tribunal building but the claimant raised no objection to this.
19. The Tribunal reached its determination by taking into account the Equal Treatment Bench Book April 2023 edition, the Presidential Guidance on Remote Hearings, the Presidential Guidance on Vulnerable Parties and Witnesses (2020) and the submissions of the parties.
20. In the case of Rackham v NHS Professionals Limited UK EAT/ 0110/15 the Tribunal was encouraged to take a proactive approach in considering reasonable adjustments tailored to the individual so that they may fully participate in the hearing. In the case of Galo v Bombardier Aerospace (2016) NICA 25 it was stated that the courts must take all steps possible to ensure that people can actively participate in decisions affecting their lives. In Anderson and Turning Point Espero (2019) EWCA Civ 815 it was held that the Tribunal retains the ultimate responsibility for seeing that a disabled party receives a fair hearing. In the case of Habib and Dave Whelan Sports

Limited 2023 EAT 113 vulnerability includes the status of a litigant in person; an employment tribunal to comply with its duties to ensure a fair hearing must make an adjustment which would allow effective participation and the Tribunal has a duty to ensure the hearing affords a disabled person effective access to justice.

21. The claimant has not received a formal diagnosis for autism but has been referred for an adult assessment by his General Practitioner. This has been delayed by reason of COVID but the assessment of the claimant is likely to take place in January 2024. The claimant has described difficulties with eye contact and noise in an in person setting which is reduced when working remotely. The Tribunal deemed that the claimant is a vulnerable individual taking into account the Equal Treatment Bench book (see the Litigant in person section paragraphs 10 and 11) and the Presidential Guidance. Credibility is an issue in this case but is an issue in many cases before the Tribunal. The respondent has the benefit of experienced and employment law specialist counsel, Mr Frew, who will have the opportunity to put the respondent's case to the claimant.
22. The Tribunal determined pursuant to the overriding objective this case should be a hybrid hearing so that the barriers to justice the claimant identified namely eye contact and noise can be reduced; the claimant was in the best position to judge any barriers to his access to justice.
23. Following announcing the determination of the Tribunal the respondent informed the Tribunal that it had determined to work remotely from the case from its offices on Wednesday. The claimant had no objections, and the Tribunal was satisfied that this was in the interests of justice. Ultimately the respondent remained in the Tribunal room by its own volition.

Rule 50 orders

24. In respect of the rule 50 application the Tribunal took into account the parties' submissions and the case law referred to. The Tribunal noted that the principle of open justice as been described by Baroness Hale in R v Secretary of State for Justice (2016) 1 WLR 444 was "*one of the most precious in law*". Lord Reed in the case of A v B (2015) AC 588 stated there was a principle of constitutional law that justice is administered by courts in public and is therefore open to scrutiny. Open justice includes the right of freedom of expression which includes the right to be heard and the right to listen.
25. The claimant has the burden of establishing any derogation from the fundamental principle of open justice or full reporting see the case of Fallows v News Group Newspapers Limited (2016) ICR 801. There is a need for clear and cogent evidence that harm will be done by reporting. The Tribunal must expressly balance the rights at play of open justice and the right of expression along with an assessment of the degree of interference with the competing rights. The Tribunal should also consider making any order which is proportionate in the circumstances.

26. The claimant has not disclosed his sexual orientation to his family. His concern is that he will be outed against his wishes which could lead to homophobic attacks and/or a risk to his health. The respondent contends this is mere assertion; that the principle of open justice therefore should not be trumped in circumstances where there is no cogent evidence in support.
27. The Tribunal determined that open justice for a public hearing is fundamental. It further found that article 8 namely a right to a private life is engaged in circumstances where the claimant's sexual orientation has not been disclosed to his family and any reporting of it would interfere with his right to a private life; there was a risk of homophobic attacks which could impact his health. The Equal Treatment Bench book (page 289 paragraph 7) refers to the amount of bullying and hate crime against LGBT people.
28. The Tribunal determined that open justice in these circumstances had a significant interference with the claimant's Article 8 private life rights if his name was reported or he was to be named in the judgement with reference to the protected characteristic of sexual orientation. Balancing the competing rights the Tribunal concluded there was a need to make a privacy order.
29. The Tribunal further considered the order which would be proportionate in the circumstances. The Tribunal determined it would be proportionate not to report the name of the claimant during proceedings pursuant to a restricted reporting order. Furthermore, it determined it would be proportionate to anonymise the name of the claimant in the judgement. The Tribunal determined it would not be sufficient to name the claimant but exclude the protected characteristic of sexual orientation in any judgment. The Tribunal noted that the claimant is a public officer working for a public authority and the protected characteristic relied upon by the claimant may be identifiable from simply releasing the claimant's name publicly.
30. In the course of evidence, the Tribunal was informed of other individuals employed by the council who were openly gay or perceived to be gay. The Tribunal had not heard witness evidence directly from these individuals and in the circumstances was not clear whether their sexual orientation was known to others outside of the workplace. The individuals were peripheral to the findings of fact by the Tribunal so that the Tribunal determined by its own volition to anonymise them from the judgment; see the case of **TYU v ILA Spa Limited EA-2019-000983-VP**.

Additional disclosure

31. The claimant confirmed his agreement for the respondent to add a disciplinary warning letter to Mr Grosvenor to the bundle. The claimant objected to the respondent's inclusion of handwritten notes of meetings between himself and Mr Grosvenor alleged to have been prepared by Mr Grosvenor contemporaneously. The respondent wanted the documents included but did not propose to cross examine the claimant on the same having taken the claimant to typed versions of the notes. The Tribunal

decided to include the handwritten notes because they were potentially relevant to matters discussed between Mr Grosvenor and the claimant was not prejudiced by their inclusion because he could cross examine Mr Grosvenor about the accuracy and authenticity of the notes.

32. At the beginning of the third day of cross examination of the claimant (day 6), the Tribunal made a further reasonable adjustment noting that cross examination can be extremely tiring for witnesses. The parties agreed that there should be a break every 45 minutes for 15 minutes. The claimant stated that this was helpful.
33. The parties agreed the Tribunal should add the respondent's interview feedback for the claimant's January/February 2023 interview, the notes from the interview panel for the said interview, the respondent's ET3 for the fourth claim and the claimant's covering email dated 16 June. The claimant requested a further document from the respondent dated June 2017 but the respondent was unable to locate it.
34. On day 11, the Tribunal did not have sufficient time to ask its questions of Ms. Ludwig prior to her time to leave the Tribunal. In the circumstances she was required to attend first thing in the morning on day 12 and the Tribunal interposed the evidence of Ms. Cooper.
35. The Tribunal heard evidence from the claimant. The respondent called the following witnesses Rachel Cooper, Head of financial services; Iain Newman Director of Finance and Legal services, Ian Grosvenor, Finance Manager; Gurnec Bachera, accountancy assistant; Catherine Ludwig, Housing Finance Manager; Jane Hickman, assistant accountant; Tracey Moseley, assistant accountant and Michael Jones, Principal Accountant.
36. The claimant as a Litigant in Person was well prepared in terms of his cross examination of witnesses and written submissions. Although he contended in final submissions that Mr. Frew counsel for the respondent had confused him and he did not understand the questions, this was not raised with the Tribunal during the hearing. The Tribunal noted the claimant to be an intelligent and articulate professional who participated well during the hearing.
37. At the end of the hearing the claimant confirmed he felt he had been given a fair hearing before the Tribunal.

Facts

38. The claimant commenced employment with the respondent on 7 February 2005 as a graduate trainee accountant. The claimant was required to complete his professional training. The claimant's contract of employment with the respondent guaranteed him a position of senior accountant upon passing his examinations. The claimant passed his examinations on the 6th attempt and was promoted to the post of Senior Accountant in or about November 2009 (see page 312). The claimant informed the Tribunal that it

was usual for accountants to pass on the 3rd or 4th attempts so that it was not unusual to have taken six attempts to pass. The Tribunal preferred the evidence of Ms. Ludwig, as a senior and experienced accountant, that an individual should be expected to pass the accountancy examinations on the second or third attempt and that the sixth attempt was unusual. The claimant was line managed by Amarjit Uppal in corporate finance from November 2009.

39. From April 2015 the claimant was one of the two senior accountants at grade 10 in the finance team which was headed by Ian Grosvenor Finance Manager. The other senior accountant was Tony Hale. At present the claimant's immediate line manager is Rebecca Millard.

Policies

40. The Tribunal noted that the respondent had in place the following policies :-
(a) Managing Employees at risk of redundancy; page 600
(b) Equality, Diversity & Inclusion Policy statement December 2022 page 610;
(c) Equality Policy statement page 617;
(d) Dudley Council Equality Review December 2021 page 618a
41. The Tribunal accepted the respondent's evidence that it trains its employees on equality and diversity issues by way of regular online courses. All of the witnesses before the Tribunal had received this training.

Culture in the finance department

42. The claimant contended in his evidence that the department was hostile to gay people and there was a homophobic attitude. The claimant asserted that colleagues did not want to work with gay people. He said that his role was manipulated to ensure other colleagues were successful in progression and he was treated less favourably than others because of his sexual orientation. The alleged culture was disputed by the respondent's witnesses. A number of witnesses referred to a former senior manager in the department, A, an openly gay man, whose ability as an accountant was well respected and was described in very favourable terms. Other than the comments made in 2018 by two junior employees (which the Tribunal deals with below), the Tribunal rejected the assertion that there was any evidence of a homophobic culture or anti-bi culture in the finance department.

Grievance 16 April 2010

43. On 16 April 2010 the claimant raised his first grievance (page 630). The claimant complained that Amarjit Uppal acted unprofessionally and his behaviour crossed a line of decency in the workplace. The claimant alleged his actions were calculated to cause offence and were of a bullying nature. The claimant did not allege in his grievance that his treatment was by way of his sexual orientation or that Mr. Uppal was aware of the claimant's sexual orientation.
44. In his grievance, page 630, the claimant alleged that he was called to a meeting to discuss his work performance. The claimant disputed that the documents shown to him what examples of poor performance but instead were incomplete pieces of work. The respondent's case was as a result of

Mr. Uppal challenging the claimant's performance, the claimant retaliated by raising the grievance. Mr. Uppal was unhappy that the claimant was unable to interpret the CIPFA guidance.

45. In his e-mail dated 8 April 2010 at page 632 the claimant advised he had taken legal advice and Mr. Uppal was not permitted to invite him into a meeting on a one to one basis. The claimant further stated *"I will be submitting a formal grievance which yourself that's Amarjit Uppal and Iain Newman will receive shortly. I would like to state that I feel that I am being victimised by a pack of bullying mentality which existed by some within the finance department which I now have evidence of. Also I have serious concerns about the lack of training I have received for the job. I have reviewed my work areas and I will submit formal requests for training in the near future. Finally for the record I would like to state that I refuse to be bullied by anyone in the workplace and I have no choice but to undertake this course of action"*.
46. Paul Bengé, Finance Manager of Social Services heard the stage one grievance at page 634 to 637. Mr. Bengé determined that at the meeting with the claimant on the 1 of April 2010 that Amarjit Uppal acted unprofessionally by using the phrase of being "hacked off" when describing how he felt. Mr. Uppal admitted to using a four letter word to describe claimant's work ("shit") and admitted to making comments about the claimant's previous managers with regards to PRD meetings. Armajit admitted to Mr. Bengé he was frustrated and exasperated with the claimant in the meeting. The claimant's allegations about Armajit's behaviour on 1 April 2010 crossed the line of decency in the workplace was rejected; on the basis that there was no evidence that the matter had been discussed with other council officers and there was no evidence presented that either party had lost control at the meeting. In respect of the allegation that Armajit's actions were calculated to cause offence and were of a bullying nature it was concluded that some of the language used in the meeting could have caused offence. However, there was no evidence to suggest that the meeting was conducted in a way calculated to cause offence although some of the comments made did cause offence. Mr. Bengé accepted that was trying to alert the claimant to the fact his performance was not at an acceptable level and give the claimant an opportunity to improve without the need to invoke formal management proceedings. Mr Bengé concluded on the balance probabilities that the meeting was not conducted in a way calculated to cause offence although some of the comments made did cause offence taking into account the council's definition of bullying in the grievance procedure namely behaviour which may be characterised as offensive, intimidating, malicious, so insulting or an abuse of power. It was concluded that the meeting was not conducted in a bullying nature. Both parties concurred that the meeting was conducted in a calm manner. Mr. Bengé did feel however that it was an error of judgement on Armajit's behalf to conduct a meeting while feeling frustrated about the claimant's work performance. He made recommendations for Armajit to apologise; holding a meeting whilst frustrated led to the use of inappropriate language. He concluded that there was no evidence to support the view that Mr. Uppal's behaviour was victimisation of the claimant. He further stated that managers have the right to manage the performance and effectiveness of their staff. There may be occasions when robust intervention is required. In

respect of the contention that the claimant had not received proper training on fraud tasks, it was found that the claimant had received in depth formal training when gaining his CIPFA qualifications and that the council had supported the claimant over a number of years which included time off to attend lectures and the funding of the course. It was recognised that some tasks carried out the council may not have been covered by part of the generic training. It was found that there had been on job training since the claimant joined the corporate finance department in November 2009 and there was an assumption that the claimant would be at a level when he was able to pick up certain work without specific training for example the IFRS work. It was suggested close performance management was required; that Amarjit meet the claimant to discuss the claimant's role, using the job description and person specification and required tasks for the post to identify any training requirements; when the claimant was to be given a task a deadline for completion review date should be established so that the claimant was clear what was expected of him. Mr. Benge further said if the further interventions failed to resolve issues then he would recommend the formal performance management of the claimant using the council's managing performance at work policy and procedure. The claimant did not see the outcome of this letter as it was sent to Mr Ian Newman see page 634.

Knowledge of the claimant's sexual orientation

47. The claimant informed the Tribunal that he liked to keep his private life private. The claimant stated in evidence that he sought to change on PMIS (the council's on line HR system) his sexual orientation on 13 June 2017 and he updated his sexual orientation to that of bisexual. By e-mail dated 13 June 2017 (page 688 to 689) the claimant stated to Mr. Grosvenor following the PIMS update phone call *"I can say that I didn't update the disability part of PIMS so technically answered your question correctly. I also actually had three people standing around my desk when you called so very difficult to speak. However, I can confirm I did update the sexual orientation sensitive information card on PIMS and it is correct. I'm expecting this information to be treated as private and confidential I don't want to discuss this matter any further"*. Mr Grosvenor responded on 14 June 2017 at page 688 stating *it was very difficult in an open plan office and I appreciate you would not want to discuss any details over the phone. He stated he had received a prompt to say there had been an update to the claimant's disability record it did not include any details. The reason for him calling the claimant was to determine whether there was anything the respondent needed to discuss that may affect his needs at work not to go into any detail over the phone but to determine whether we needed to arrange a private chat to put measures in place to support you. In terms of sexual orientation updates this may be what has triggered the automated e-mail. I can assure you that any information is treated as private and confidential. The key message for me is as your manager I am here to support you in doing your job as always if there is anything you need to discuss then please speak to me.* The claimant 's recollection in evidence on day 4 of the hearing was that he was phoned up by Mr Grosvenor who insisted that the claimant change back his sexual orientation record on the HR system. This was a serious allegation which the claimant had not included in his list of issues to be determined by

the Tribunal. There was a significant dispute as to whether the claimant informed Mr. Grosvenor about his sexual orientation and/or whether the respondent had any knowledge about the claimant's sexual orientation of bi-sexuality. The claimant believed an email had been sent by Mr. Grosvenor to Ms. Cooper about this which was dated June 2017. The claimant requested disclosure of this document on day 10. The respondent was unable to locate this alleged email. The Tribunal determined that Mr Grosvenor was trying to be helpful and had contacted the claimant because to his knowledge the claimant's disability status record had been updated not his sexual orientation record. Furthermore, there is no evidence that Mr Grosvenor sought to clarify with the claimant what his sexual orientation was. The Tribunal rejected that Mr. Grosvenor phoned the claimant to change his sexual orientation; it was not recorded in the paperwork and if it had occurred it is likely the claimant would have formally complained; he did not. The claimant also did not complain in his grievance dated 6 September 2018 that Mr Grosvenor had asked him to change back his sexual orientation. On the balance of probabilities, the Tribunal preferred the Mr. Grosvenor's version of events. Furthermore, Ms. Cooper stated she was unaware of the claimant's sexual orientation until the Tribunal proceedings. Although she considered his grievance in 2018; she had not asked the claimant about his sexual orientation nor deemed it relevant. The Tribunal did not accept the claimant's evidence that he had informed the respondent's witnesses that he was a bi-sexual man.

Deliberate policy to impede the claimant's development

48. The claimant's case is that from February 2015 Mr. Uppal and from July 2015 Rachel Cooper put in place a deliberate policy to deny the claimant management experience and responsibility which disadvantaged his career progression. The claimant maintained that this policy continued to be applied by Rachel Cooper throughout his employment. The claimant drew to the Tribunal's attention a job description for a senior accountant grade 10 page 684. In respect of specific accountabilities it states under the management section to manage a sub team of staff within the people services accountancy team. This job description was taken from the area of adult social care. The respondent's case was that more generic job descriptions provided are not all job descriptions have included within it a management responsibility of a senior accountant. From the documentation provided to the Tribunal it did appear that some senior accountants did not have the specific job of managing others whilst others did.
49. Under cross examination, the claimant stated he did not really know or work with Ms. Cooper. He was asked why he had not raised with her at the grievance meeting on 26 of September 2018 (at page 740) when Ms Cooper was investigating his grievance of discrimination he was being denied by her and Mr. Uppal management experience. The claimant answered that he was unaware of the discrimination by Rachel Cooper until a much later date when he considered what was happening and all the evidence. He was unable to explain if she was a discriminator why she had found in his favour in the grievance in 2018.
50. From the evidence and written material presented to the Tribunal it did not find that Mr. Uppal or Ms. Cooper had deliberately imposed a policy of denying the claimant the opportunity of managing employees. The Tribunal

discusses the opportunities to manage in the claimant's team and progress his career below.

Performance of the claimant from 2015

51. From 2015 to 2018 the claimant was line managed by Ian Grosvenor.
52. The claimant had a very high opinion of his abilities as an accountant. He informed the Tribunal that he was a better accountant than Mr. Uppal, his previous manager. The claimant put into place different and individual work processes and documents which were different and non-compliant with the standard processes and documents used by the Council; he considered his work processes and documents superior to the standard documents. The claimant did not take feedback from unsuccessful interviews or performance reviews well; perceiving these to be criticisms and untrue. The claimant felt that there were no performance concerns about him because the formal performance processes had never been instigated against him.
53. The claimant's perception of his accounting abilities was not shared by the respondent's witnesses. Mr. Grosvenor's view about the abilities of Mr. Uppal was that he was a well-respected and superior accountant to the claimant. Mr. Grosvenor described his management experience of the claimant as "frustrating" as the claimant always appeared to know best and it tended to be his way or no way and the claimant was unwilling to take on board any guidance for improvement. Rachel Cooper and Ms. Ludwig had requested that the claimant use the standard documents whilst he managed Mr. Bachera; the claimant chose not to do so. Ms. Cooper had not directly worked with the claimant but the information provided to her by other managers was that the claimant was functioning at a mid-level grade 10 but was simply not good enough to reach the heights of grade 11 and 12. In hindsight the respondent considered that performance management should have been implemented but because the claimant had a tendency to complain and use the grievance process it was determined not to instigate any formal processes.
54. At a performance review discussion with the claimant on 11 August 2016 (page 663) Mr Grosvenor observed that the claimant would benefit from having more regular interface and dialogue with budget holders in order to build on progress to date. The claimant raised that he had been moved to environmental services which only has four members of staff. He had repeatedly mentioned in past performance review developments that as a senior accountant he should be managing staff and he felt it had been denied from him. He stated he felt he moved to a small team so resulting in less line management experience compared to someone who works in a larger team with more staff. Mr. Grosvenor described there was no formal line management but there were opportunities for the claimant to develop to embrace experience of managing situations such as dispute resolutions, helping colleagues and problem solving. He suggested to the claimant to keep a journal of experience so to draw up an interview. The claimant stated in order to progress he needed to have more of an opportunity to develop his management skills. Mr Grosvenor said he would speak to Ms. Ludwig and Rebecca to see if there was an opportunity to delegate some of transactional work to Gurnec Bachera (see page 666) to give the claimant more capacity to concentrate on the value added work.

55. Despite being advised by his line manager to keep a journal of experience the claimant admitted to the Tribunal that he had not followed the advice and did not keep a journal; he said he had the ability to track his work through emails. The claimant stated he felt that Mr. Grosvenor had deliberately prevented him from managing staff. The claimant rejected the suggestion in cross examination that Mr. Grosvenor was trying to assist the claim by providing this guidance and permitting him to delegate work to Gurnec. The Tribunal determined that Mr. Grosvenor was trying to be helpful to the claimant by offering such guidance and advice. The claimant chose not to take his line manager's advice determining that he knew best.
56. In a follow up e-mail Mr Grosvenor dated 10 November 2016 (pages 675-676) he invited the claimant to delegate purchase cards transport and monthly recharges already in the correct format to Gurnec.
- Performance Reviews 2018
57. The claimant's case is that he had been raising constantly with his line manager inappropriate comments towards himself and others whilst Mr. Grosvenor line managed him. The Tribunal having heard all the evidence did not accept this and determined on the balance of probabilities that the claimant raised concerns about comments in the meeting with Mr. Grosvenor on 31 August 2018.
58. On 15 August 2018 (page 713; the Tribunal was also provided with handwritten notes of the meeting) Mr. Grosvenor during a 1:1 with the claimant suggested that the claimant was good at the "bread and butter work" (budget monitoring, estimates and closedown) but required development. Mr Grosvenor compared the claimant's reasonable standard to an assistant's output level but wanted to see the claimant develop the value added element of the job which was crucial to the role development. He suggested to the claimant to have less focus on task related jobs and more on challenging performance, thinking about wider implications, getting to the core of the problem (identifying issues and suggesting ways in which they could be overcome). Mr Grosvenor said there was a lot of focus on detail but there was lack of distilled understanding of what does this mean including more concise variance analysis and position statements. He informed the claimant that he needed to develop his management accounting and summarised reporting techniques to reflect what is required at senior accountant level and asked the claimant to think about what he actually did over and above what the assistants do in the team in terms of work outputs. He suggested specifically relevant in areas where there is ongoing rapid change such as green care and new areas that the claimant is seeking to develop like corporate estates. He further stated that the claimant should ensure he divided his time evenly to ensure all areas are being covered adequately and shout up if he had any concerns so that he was aware of any bottlenecks.
59. The claimant told Mr. Grosvenor that he was a better management accountant and financial accountant than most others in the council. Mr. Grosvenor felt that the meeting may have been turning sour so he suggested to the claimant that they should find ways to move forward and improve. Mr Grosvenor admitted by reason of work pressures he had not been able to work on the claimant's development as much as he would have liked but needed him to be more proactive in terms of identifying opportunities and implementing changes.

60. During the Tribunal hearing, the claimant challenged the accuracy of the notes produced for this meeting. The claimant did not have notes himself of this meeting. In his witness statement at paragraph 49 the claimant stated that Ian set up a document to lie about the events. He believed that Mr. Grosvenor had manufactured the document after the events (see page 713). In particular, the claimant disputed that development had been mentioned. The claimant's evidence is that he was developed and he was a more competent accountant than Mr. Grosvenor, his line manager on the system; although Mr. Grosvenor was more competent on spreadsheets. In his evidence the claimant stated he had higher qualifications than his manager and more experience. He also disputed that he said at the meeting that others had stolen his working papers or that Mr. Grosvenor accepted that he had not spent enough time with the claimant or that he informed his line manager that his friend was murdered.
61. The Tribunal were shown the accompanying email which indicated notes of the meeting were sent to the claimant on 31 August 2021. There was no evidence that the claimant had objected to the accuracy of the notes at the time. Some of the content of the notes was agreed by the claimant and other parts were not which appeared to go against him. The Tribunal determined on the balance of probabilities that the notes of the meeting on 15 August 2018 were accurate and the claimant was unhappy that his manager who he perceived was less able than him had compared his work to a lower grade of assistant accountant.
62. At a later meeting on 31 August 2018 tabled by the claimant (see notes page 714) the claimant described a bad atmosphere in the office noticed by others including Louise and Abi (who had left the team three years before) and that personal remarks had offended him. The remarks took place 12 months ago and then he revised this to 3 or 4 months before. The claimant stated that remarks had been made about his sexual orientation including "you must be gay". Mr. Grosvenor commented that he would raise with the individuals concerned but suspected it was intended not to offend but was office banter that perhaps went too far. He said he would investigate and repeat feedback to the claimant. The claimant stated he wanted to keep his private life completely separate to work life. Mr Grosvenor said he hadn't witnessed any behaviour to suggest the claimant was being treated any differently to anybody else. He told the claimant to build relationships with colleagues to make the most of the resource available as there was a risk that relationships could be squashed and goodwill lost. The claimant told Mr. Grosvenor that his team members got away with things because they made him drinks. The claimant took exception to the fact that he needed to develop in his role. The claimant thought that Mr. Grosvenor meant he would be vulnerable to be selected in a redundancy process. He felt that the recruitment process had been a closed shop in recent years, stifling his progress and cited a lack of formal line management experience for not being successful in interviews.
63. Mr. Grosvenor suggested an opportunity to delegate some of the transactional work of the claimant to Gurnec to give the claimant more capacity to concentrate on the value added work. A number of objectives were set for the claimant including target dates.
64. In respect of Mr. Grosvenor's note of the meeting on 31 August 2018 page 714 the claimant also alleged that the document was a lie. The claimant

alleged that he had raised numerous incidents when comments had been made about his sexual orientation with Mr. Grosvenor who failed to record them and recorded only part of his complaint on 31 August. The claimant disputed the comments in the notes that he said he had lost respect for Mr. Grosvenor as other members of the team had got away with this. He accepted at page 715 that he felt the recruitment process was a closed shop page 715. Mr. Grosvenor also raised the potential of a shadowing role with Helen. Mr. Grosvenor told the claimant he needed to accept constructive criticism. The claimant accepted that some elements of the notes were correct. In cross examination and in his evidence to the tribunal the claimant contended that notes by made by Mr Grosvenor at page 713 could have been made-up at any time and were not logged on an official MAR system. Ms. Cooper accepted in cross examination that Mr Grosvenor did not log MAR comments in a timely fashion. However, she believed that the comments about the claimant's performance were genuine. The respondent was able to inform the Tribunal by tracking the data of the document that the notes of Mr. Grosvenor page 713 were created on 3 September 2018 which ties in with a performance review of the claimant in August of 2018. The Tribunal expressly rejected that Mr. Grosvenor had fabricated the notes of the meeting with the claimant in August 2018. Mr. Grosvenor's assessment of the claimant was that he was acting in accordance with a grade 8 to 9 role; he was conducting tasks at an adequate level for a PA assistant rather than a SA and the expectation for the claimant's role at grade 10 was to act more strategically. The Tribunal determined that the notes were an accurate record.

65. The Tribunal concluded that the claimant did not like his performance being questioned by Mr. Grosvenor or that it was suggested he was working at an assistant's level and by reason of that determined to raise a formal grievance about matters which arose 12 months before. The claimant had enjoyed a relationship with Jane and Tracey on a friendly basis discussing with them his dispute with noisy neighbours; a visit to see a Star Wars film and his girlfriend. The Tribunal determined on the balance of probabilities that the claimant first mentioned the behaviour of colleagues/inappropriate comments in the meeting of 31 August 2018. The claimant had not mentioned these issues in the previous one to one meetings and he did so in order to deflect from the performance concerns which had been raised by Mr Grosvenor. The claimant was unhappy to have his conduct compared to an accounting assistant and was concerned he might be selected for redundancy.
66. Following this a further 1: 1 took place between Mr. Grosvenor and the claimant on 7 September agreeing initial tasks and objectives (page 716). A further 1 : 1 took place on 24 September 2018 following the claimants returned from holiday when Mr Grosvenor informed the claimant that he had spoken to Tracy and Jane and they acknowledged that there was banter in the office but it was not intended to offend anyone or to be malicious. Mr Grosvenor suggested it might be a good idea of the claimant to attend some of the head of service management team meetings to provide a better understanding of what is required from a reporting and challenge point of view. The claimant stated he would welcome this about declined the invitation to attend a Street and Greencare meeting on 25 September. In

respect of this record the claimant said it contained half truths but was mainly a lie. The Tribunal rejected this assertion.

Grievance 6 September 2018

67. On 6 September 2018 the claimant lodged a second grievance (see page 727-732). He made complaints about Tracey Moseley, Principal Accounting Assistant, Jane Hickman, Principal Accounting Assistant, It was amended at page 747-749. The claimant alleged *“he felt a strange situation has developed in the team where two principal accountancy assistants Jane Hickman and Tracy Moseley were constantly telling the senior principal accountant Ian Grosvenor how good he is; making him cups of tea and making sexual jokes between themselves”*. He suggested hugely inappropriate comments had been made to him and other team members and he was unhappy with those comments particularly about jokes made about the claimant’s love life and sexual orientation. He said the comments crossed the line of what is acceptable to say in the workplace. He relayed a comment *“I like to keep my work life and private life separate it was stated by Jane Hickman in response he is gay I think you are gay and you want to bum D... which people laughed at including Tracy Moseley and Ian Grosvenor”*. The claimant alleged the comment had been made more than once. Further he said there were other inappropriate comments mocking his personal life and sexuality such as *“I think you are gay do you like it like to receive or take it there is no such thing as bisexual you are either one thing or the other I hope you are not gay please tell me you are not gay”* (comments made by Tracey Mosley). The claimant described the comments as outrageous and upsetting. He said the comments went far too far for what you can say in the workplace. People have just laughed *“come on (the claimant) you can take it” then the comment “do you take it then” more laughing*. The claimant stated the comments received made him feel humiliated, uncomfortable, harassed, and stressed in the workplace. He also stated he had witnessed comments about other people including *she looks like a Butch lesbian how she could be the butch one in a lesbian relationship*. A female accountant was particularly upset. He said that he thought Dudley Council was supposed to promote equality and diversity which was not the case in his team. He stated he raised the issue at his annual review meeting with Ian Grosvenor and he denied there had ever been any inappropriate comments and did not want to change the dynamics of the team or change staff behaviour; he pointed out it wasn't just he that had felt had been affected by comments on sexual orientation. The claimant alleged Ian Grosvenor then admitted he had said some comments which had gone too far Mr. Grosvenor said he'd have a word. The claimant alleged that Ian Grosvenor told him if the claimant submitted his annual review document which noted his concerns and some of the sexual orientation comments, Ian Grosvenor and the claimant could not work together implying that the claimant would be moved out of the team or worse he urged the claimant to completely rewrite it taking out all the concerns and comments. The claimant felt he shouldn't have to rewrite it; he didn't wish to be disruptive but to raise his concerns. Furthermore, the claimant also raised he felt manoeuvred into a position where he could not advance. He said

he'd been denied the opportunity to be classed as a formal line manager. Other senior accountants had management experience of staff and had been promoted. He was concerned his previous PRDs had not been submitted. He was aware that in 2016 to 2017 his PRD was submitted 12 months after completion and he alleged that no finance manager or head of finance could have read his concerns. The 2017 to 2018 PRD was never submitted; he typed up notes and was awaiting managers comments which was over 12 months ago. He questioned the purpose of the PRDs and annual reviews when anything documented was submitted late or not even submitted at all. He stated over several years he had asked for management experience and he wondered if there was any link between his sexuality or perceived sexuality.

68. On day 4 of the hearing under cross examination the claimant alleged that on his return from annual leave on 24 of September Mr Grosvenor was threatening and invited the claimant into a private office. He wanted the claimant to remove the comments in the PD document because it could be used as evidence and it was documenting how Mr Grosvenor was managing the team. The respondent disputed this. The Tribunal preferred the evidence of Mr Grosvenor who stated he met with the claimant on 24 of September to feedback from his meetings with Jane and Tracey who said they could not remember making such comments but they were upset if they had offended the claimant. This was corroborated by the evidence of Jane and Tracey to the Tribunal who appeared very embarrassed by their comments and upset they may have upset the claimant.
69. The claimant was interviewed on 26 of September 2018 (page 740) in the presence of his Unison representative, Mr Underhill by Rachel Cooper grievance investigator and head of financial services. The claimant mentioned comments of inappropriate behaviour at the meeting including Jane Hickman and Tracy Moseley stroking the hands of Ian Grosvenor and then offering to stroke other parts of Mr Grosvenor's body. Jane and Tracey said to Ian Grosvenor "*bet you have a great cock*". The claimant's trade union representative stated that the grievance was against Jane and Tracy for making the comments and Mr Grosvenor for not addressing and dealing with the concerns raised including at a PRD the claimant was seeking a written apology. Under cross examination Jane Hickman and Tracy Mosley denied that they had made any homophobic comments. They stated that they believed they had a good relationship with the claimant prior to the complaint; they had laughed along with the claimant; they had discussed with him his girlfriend; they were aware from the claimant he was in dispute with noisy neighbours and they did not perceive him to be gay or bisexual. Mr. Grosvenor informed the Tribunal but his son had a small holding with hens and was seeking to buy a cockerel. This had generated a great deal of amusement in the office.
70. In the course of her investigation of the second grievance Ms. Cooper took statements from various witnesses namely Cath Ludwig (p.744-9); Michael Jones (p.750-1); Abigale Perry (page 752-3); Louise Birch (p.754-755); Tracey Moseley (page 766-7); Ian Grosevnor (page 766-7); Jane Hickman and Michael Jones (page 868). Michael Jones confirmed he has heard comments about did he want his cock stroked but that it did not offend him but was not acceptable behaviour. Mr. Jones also relayed a derogatory conversation held between Jane and Tracy in relation to single parenting in

the presence of a single parent. Mr Grosvenor spoke to Jane and Tracy. The situation was dealt with. Abigail Perry stated that there were smutty conversations held between Jane and Tracy; it made her feel uncomfortable and the level of smut increased when Mr Grosvenor and was present in the office. She had considered making an official complaint but questioned her own sensitivities and felt that it would have been a daunting task given the characters involved. She took the opportunity to move. The inappropriate behaviour escalates in the company of their line manager Mr Grosvenor who just laughed. Another witness described the behaviour of Mr Grosvenor along with Jane and Tracy as cringey and some homophobic comments were made directly to her. She described that Tracy's comments were not malicious but in the claimant's case it was more like bullying. The banter does seem to have escalated. The claimant felt left out and an outcast. The claimant was often questioned by Mr Grosvenor about his work in front of the team. Cath Ludwig had not heard any comments but stated that the claimant was not disadvantaged in the absence of management experience because there was only one question the whole process that referred to the management of people. The successful candidate in fact had limited management experience and the candidate who came second also had no management experience she described Michael Jones as being successful and being promoted to the role from senior principal accountant and at that point he had no line management responsibility.

Outcome of 2018 grievance

71. Rachel Cooper fed back her investigation findings to the claimant and his trade union representative on 16 October 2018. The individuals thought this was banter and not malicious Ms Cooper confirmed she thought that the behaviour was inappropriate and went too far on occasions due to power and dynamics that had taken over and the situation needed to change. Ms Cooper confirmed that Mr Grosvenor had not completed performance reviews in a timely manner but the Mr Grosvenor had raised the issue of line management opportunities for the claimant with Cath Ludwig who managed him in 1:1s which had also been raised by Cath Ludwig to Rachel Cooper. She further stated that a number of questions are asked at interview and a question is asked in relation to management experience which would have just been one of the interview scores. Cath Ludwig clarified that there was a flatter team structure required to meet savings cost savings others had progressed in the absence of my line management experience namely Mr. Jones. The place has a flatter structure, different to some of the other accountancy teams. Rachel Cooper advised there would now be a disciplinary process for Mr Grosvenor, Jane Hickman and Tracy Moseley and she would be reviewing the overall culture of the team. The claimant confirmed at the meeting that all inappropriate conversations had definitely ceased and only work related conversations were being held. He described he was now being blanked by a number of other team members. The claimant cross examined Ms. Hickman and Ms. Moseley who disputed that they blanked the claimant. They thought that they had a good relationship with the claimant and were very surprised he had made a complaint. Following the investigation and the warning they stated they kept their conversations with the claimant about work and on a professional level. The Tribunal accepted this evidence and did not find that the claimant was blanked by Tracey or Jane.

72. The outcome letter dated 17 October 2018 page 795-797 provided by Rachel Cooper upheld the grievance stating *“there is enough evidence to uphold the following that inappropriate comments about the claimant’s personal life and sexual orientation had been made and these were not dealt with in a timely or appropriate manner; your line manager Mr Grosvenor has not completed the PRD/annual review in a timely manner and initially did not adequately address the concerns raised. She concluded there was no link between the claimant’s working relationship Mr. Grosvenor and his lack of progression to a principal accountant. Individuals who occupied the role before yourself did not have any formal line management responsibilities and they were internally promoted to principal accountants. Posts within accountancy have been graded as job groups so an individual may not do all of the tasks within a person specification. Place management team have been exploring supervisory and other development opportunities for you but are constrained by the overall general flutter structure of the team as discussed during the meeting.”* She confirmed that during the grievance process the claimant did not provide her with any detail with regards to what he was hoping to achieve but she proposed to take the following action *namely the three individuals involved will be subject to the council’s disciplinary procedure she will meet with the place management team finance manager senior principle accountant and principle accountants to address the team’s overall culture* and she will ensure that every effort continues to be made to provide the claimant with supervisory experience but working within the constraints of the existing team numbers grades and roles. Going forward she expected all members of the team to act professionally and if any inappropriate behaviour takes place she requested the claimant to raise this with Catherine Ludwig or herself as soon as possible so that it could be investigated. The claimant was informed there was a right to appeal, that the complaints were likely to be outside the three month employment tribunal limit. Ms Cooper found inappropriate words probably had been said and the general tone of office conversations was unprofessional.
73. As a result, disciplinary action was taken against Tracey Moseley and Jane Hickman. An informal warning that stayed on their file for six months. Mr Grosvenor was also referred to disciplinary and received an informal warning which stayed on his file for six months. The informal warning dated 20 December 2018 was provided to the tribunal and added to the bundle at page 2516 it stated *that the reason for the informal action is to improve your awareness with regards your employees behaviour in the workplace more especially having non working conversations in the workplace that could cause offence to others at the meeting we agree that your conduct is expected to improve as follows to ensure you and your employees speak to colleagues in a professional and dignified manner and to ensure that you and your employees are aware of colleagues feelings if stroke when discussing personal issues. At the next review meeting we will review your conduct with a view to closing matter after six months however failed to meet these targets may lead to formal disciplinary action.*
74. The claimant alleged that the warning did not deal with his allegation that Mr. Grosvenor joined in (see paragraph 24 of his complaint). Ms. Cooper’s understanding is that Mr. Grosvenor had failed to close down inappropriate conversations. The Tribunal found on the balance of probabilities on the

basis of the investigation that Mr. Grosvenor did engage in smutty conversations with his team members and failed to keep appropriate boundaries with his staff. The Tribunal did not find he made comments about sexual orientation.

75. In the claimant's schedule of loss prepared for the purposes of the hearing, the claimant also alleged that Mr Grosvenor had simulated masturbation in the office for the entertainment of Tracy and Jane. This was not a matter listed in his written grievance or in fact noted at the grievance meeting on the 26 of September 2018. The claimant included it in his schedule of loss for the Tribunal proceedings. The claimant stated that all his comments had not been noted at the document page 740 at the record of the grievance meeting and that he had mentioned it at the material time he disputed that he was lying about this. He was asked as to whether he could present the notes from the trade union representative who accompanied him to the grievance hearing on 26 September 2018. The claimant stated he would investigate. The claimant informed the Tribunal that the trade union representative notes were locked in a cabinet at the trade union's premises and the key had been lost and the person would return from holiday the following week and could provide the notes. The notes were not provided to the Tribunal. The Tribunal determined that the claimant had not raised this very serious allegation at the time about Mr Grosvenor and he had embellished his evidence for the purposes of the Tribunal proceedings.
76. The evidence of Ms Cooper was that she believed the claimant strategically raised this grievance at this time complaining about some historical issues of inappropriate behaviour in a context where his performance was held to account. The Tribunal determined on the basis of the evidence discovered in the course of the investigation which corroborated in part the claimant's evidence to the Tribunal the claimant was subject to discriminatory comments related to the protected characteristic of sexual orientation. There were questions posed by junior colleagues as to whether the claimant was gay. Neither Tracey or Jane knew or perceived the claimant as gay or bi-sexual but the junior team members made casual reference to sexual orientation; the comments were ill-judged and immature. Ms. Birch supported that the claimant was bullied. Mr. Grosvenor did engage in some of the banter in particular his amusement about "cock" and he failed to keep appropriate boundaries with junior members of staff and set the appropriate tone of a professional department. He also did question the claimant about his work in front of the team but the Tribunal found that this was Mr. Grosvenor's practice with team members.
77. By e-mail dated 7 of November 2018 the claimant (page 779) wrote to Ms Cooper stating *I'm not aware of anyone else who has to explain why they have done on a weekly basis then fill in a spreadsheet again.* The claimant alleged it undermined his position as a senior accountant within the team. Further he said the meetings are held around my desk and other people in the team have picked up on the fact that I'm being treated differently including Karen O'Keefe who stated it seemed like you are on a School Report. He believed he was the only senior accountant to fill in a weekly progress report; Toni Hale the other senior accountant in the team.
78. By e-mail dated 13 November 2018 at page 777 the claimant stated that meeting set up by Mr Grosvenor was set up to retaliate for his complaint in the MAR. The claimant stated that once Mr. Grosvenor learned about my

complaint and with the spreadsheet already set up and weekly meetings in my calendar, he then sought to try and backtrack and try to show the meetings in a positive light often stating how useful they are. The claimant said he was saying this because he was concerned about the claimant complaining about them. The claimant alleged that Mr. Grosvenor wanted him to manage the process of upgrading the system and set up meetings and have some one to take the minutes for meetings to show that the claimant can manage a process in corporate finance. The claimant stated he had already told Ian that having these meetings is overkill and he suggested moving the meetings to every two weeks.

79. Mr. Grosvenor's evidence to the Tribunal was that he did set up regular 1:1s to ones to gain momentum in the value added areas that he wished the claimant to develop and build a close working relationship with the claimant; these were about operational work areas and took place in the office. The respondent has an open plan office and discussions did take place there. The Tribunal determined that in the context that Mr. Grosvenor had raised the need for development in the value added areas on 15 August 2018 with the claimant he was seeking to manage the claimant more closely. As conceded by Mr. Grosvenor in that meeting he should have been providing this line management development and support to the claimant earlier.

Line management of claimant from 2018

80. Between November 2018 to approximately May/June 2021 the claimant was line managed by Ms. Cath Ludwig, Finance Manager. The claimant still had contact with Mr Grosvenor who assisted the claimant in his budget monitoring but any development was discussed and agreed with Ms Ludwig first and all 1:1s including sickness absence and holiday leave were dealt with by Ms Ludwig. Under cross examination the claimant stated he believed that this was a permanent arrangement. On 14 November 2018 (page 834) the claimant emailed Rachel Cooper to state that the human resource manager suggested that Mr. Grosvenor could "*have line management responsibilities removed while they worked on the investigation this was something I agreed to so yes please formalise the arrangement through I report directly to Cath*". The Tribunal determined that this email indicated the claimant's understanding that line management of the claimant was removed by Mr Grosvenor whilst the investigation was underway only and it was a temporary rather than permanent management arrangement.

81. Ms. Ludwig described her management experience of the claimant as the claimant not using standard procedures or spreadsheets. The claimant tended to use his own documents considering they were superior to the respondent's agreed standard ones.

Appeal of grievance 2018

82. On 1 November 2018 the claimant appealed the grievance outcome page 785. The claimant alleged that *the process has failed to adequately address concerns regarding equality of opportunity for advancement and has failed to address adequately the impact the comments and behaviours of individual has affected me*. The claimant stated that *there has been a*

*systematic exclusion from advancement over a significant period of time and I feel this is due to discrimination. The claimant alleged the purpose of the comments were designed to humiliate him in front of others and weaken his position within the team it seems to me that one of the purposes was to make me an outcast so Mr Grosvenor could make out that I don't fit in the team when raising the issues of inappropriate behaviour in the past I am not happy with Mr Grosvenor in saying you need to manage relationships and earn the respect of staff members before you can manage and quote you need to fit in and if you mention anything you upset Tracy's she's very sensitive he stated page 786 therefore I will be seeking legal advice on this matter I am still within the time frame for submitting this matter to an employment tribunal. The claimant stated that in the course of his interview for promotion he was told but you haven't formally line managed anyone here and you are not a formal line manager on PSE. He further stated that in the outcome grievance letter there was no mention of the fact that he had raised the issue of inappropriate sexual orientation comments in his annual review meeting and Mr Grosvenor had told him they would never be able to work together again; implying that the claimant would be removed from the team or lose his job. The claimant stated *I'm fairly certain there will be further clever retaliation in the future.**

83. The appeal was heard by Helen Martin, Chief Officer. Ms Martin met with the claimant on 6 December 2018 and his trade union representative Mr Robert Underhill. The claimant states that Mr. Grosvenor had been very threatening and said if the claimant submitted his annual review document he could not see how they could continue working together implying the claimant would be removed from the team or even lose his job. He described returning from annual leave in September to find that Mr. Grosvenor had set up weekly meetings to micromanage him. *"I believe that this was in retaliation to events."* The trade union representative Mr Underhill at page 820 stated that he and the claimant had no issues with how Rachel Cooper had dealt with the grievance process. Under cross examination the claimant was asked if he didn't accept this comment why he hadn't challenged Mr Underhill at the time. The claimant stated that he no longer used Mr Underhill as his trade union representative (although he did accompany the claimant to a meeting on 28 January 2021). The claimant described that he had not had the opportunity to line manage.
84. Ms Martin undertook a number of interviews in the course of the grievance appeal investigation including interviewing Rachel Cooper (page 855). Rachel Cooper confirmed two other senior accountants had been promoted without line management experience and they were both male and female senior accountants within the teams. Ms. Cooper also said there was no current opportunity for line management responsibility in the claimant's section unless the reporting lines were changed so that Mr. Grosvenor line managed the claimant and the claimant line managed Jane and Tracy. Consideration was being given to changing line management arrangements for Mr. Bachera and Deb Smith which could result in Mr Bachera being line managed by the claimant.
- Grievance appeal outcome 2018
85. On 11 December 2018 the grievance appeal outcome (page 858 to 860) was provided. Ms. Martin noted that according to the claimant the comments within the office had ceased and that he had given no further indications of

any other desired outcome. She concluded that she was satisfied this part of the grievance had been dealt with appropriately. In terms of the claimant's concerns about a lack of opportunity for advancement, Ms. Martin concluded there was no evidence to support the claimant's claim that he'd been discriminated against because not all senior accountants line managed other employees. There were examples of other senior accountants being promoted without such experience. The interview panels for the posts the claimant had applied for, each involved three panel members one of which was always from another team to provide transparency. She concluded in terms of the claimant's PRD record not being submitted that none of the other team members had had their PRDs submitted for the relevant period either. Louise Baugh from HR on 14 November 2018 page 814 was investigating PRD paperwork for the team and noted that PRD paperwork had not been uploaded to the HR system for 2017 or 2018 for all team members. In 2016 paperwork was available in a folder for all team members. There was nothing in existence in 2015 for the claimant and for Jane and Tracy there was pre HR paperwork available in a folder.

Job Vacancies 2019

86. In June 2019 there were two vacancies. Ms Cooper sent an e-mail to managers on 3 June 2019 advising that this would be advertised and asked managers to disseminate information. Ms Ludwig discussed the vacancy with her team and the vacancy was openly discussed within the office. The claimant was informed that the vacancies would be advertised and it was up to him along with other staff to keep an eye out for the advertisement.
87. The job vacancy went live on 21 June to 5 July 2019. The claimant was due to take annual leave on 24 June 2019. However, the claimant exercised some flexi leave so he was actually out of the office when the job was advertised. The claimant's case is that the respondent deliberately advertised the job whilst he was away from the office. This allegation featured in the claimant's grievance in 2021 heard by Mr. Newman. The respondent denied this.
88. The Tribunal took into account the evidence that Ms. Cooper had alerted managers and Ms. Ludwig's discussion with the team about the vacancy. By email dated 2 February 2021 (page 1471) Ms. Cooper recalled the claimant mentioning in his 2018 grievance that the respondent advertised posts when he is away on holiday and that since then she and Ms. Ludwig have tried to ensure everyone knew about recruitment well in advance.
89. The Tribunal concluded on the balance of probabilities that the overlap between the claimant's flexi/annual leave and the advertisement of the vacancy was coincidental and was not chosen on purpose to exclude the claimant. Further the claimant was not prevented from applying for the job; it was also advertised externally and internally by a talent link. The claimant could have completed the application whilst on leave had he wished to do so. In addition, the claimant made no request for an extension of time to complete the application.
90. David McNaney was promoted to the role of senior principal accountant as a result of a mini restructure within the Place team whereby one principal accountant post was deleted and a new senior principal accountant role was created. In line with HR advice the new post was ring fenced to existing

principal accountants. The claimant was a senior accountant at grade 10 and was not eligible to apply for this reason. This restriction applied to all other grade 10 employees including Toni Hale who was the claimant's comparator as she was also a senior accountant in the team. The claimant's ineligibility to apply for this role had nothing to do with his sexual orientation.

91. Historically, in April 2015 the claimant had moved across to the post of senior accountant to a vacant senior accountant role which previously did not have any line management responsibility; it was a like for like replacement. This was consistent with the other senior accountant, Toni Hale, in the Place accountancy team namely she had no line management responsibility. Michael Jones moved out of the role leaving the senior accountant position vacant which the claimant moved into and carried out similar responsibilities as Mr. Jones had.

Line Management Opportunity for the claimant

92. At a meeting on 29 January 2019 (page 884) between Rebecca Millard and Gurnec Bachera, an accountancy assistant, Mr. Bachera was asked whether he would be willing or able to take on some budget monitoring from the claimant. Mr. Bachera agreed to this as long as it was clear that Rebecca Millard was still his line manager. If there were any problems with the workloads or clashing deadlines, Mr. Bachera was invited to raise these with Rebecca.
93. The claimant's professional development review document dated 27 August 2019 at page 902 stated that although the claimant has not yet had full line management responsibility for an accountancy assistant he has had access to an accountancy assistant's time to undertake transactional tasks for him. He has therefore had responsibility for supervision and managing workload. This will progress in the new year to full line management responsibility for this member of staff. The claimant stated he did not want to work with Mr Grosvenor again as he had a number of work issues with him before he made his complaint. In his evidence to the Tribunal, the claimant stated that his department's structure was not that flat. This was inconsistent with the claimant's document when he accepted that his current team of Place accountancy (at page 909 dated 29 August 2019) had a flatter structure which limited his opportunity to gain line management experience.
94. The performance review of Mr. Bachera on 29 September 2019 by Rebecca Miller was favourable. She stated that Gurnec embraced the implementation planner and was more than able to run the budget monitoring reports until use of the system was suspended. Throughout the last year she noted that Mr. Bachera had improved the accuracy on the in-house team assets and developments team budget monitoring and as a manager she was able to let him complete these tasks with little or no supervision as he had gained confidence and knowledge so that he holds some budget monitoring meetings on his own.
95. From November 2019, Ms. Ludwig agreed to offer the claimant some line management responsibility by asking him to manage Gurnec Bachera, the accountancy assistant along with Mr. Jones and Ms. Millard. Mr. Bachera was chosen as he had previously undertaken transactional tasks for the claimant and his work better aligned with the claimant's own workload.
96. There was a dispute as to whether the line management arrangement made any sense in terms of the organisational structure. The claimant alleged he

was line managing an individual who did not fit neatly into the organisational structure. Ms. Cooper explained to the Tribunal that there was a shortage of people in the organisation so that sometimes cross department management was possible where tasks aligned. Here the claimant's tasks and Mr. Bachera's tasks did align. The structure in the claimant's team was flatter than other teams (as conceded by the claimant at page 909). The Tribunal accepted the explanation of Ms. Cooper.

97. The claimant also alleged he was set up to fail by being required to manage a problem employee. Prior of the claimant taking over the line management of Mr Bachera, the claimant had allocated some tasks to Mr. Bachera and their relationship was good. The claimant relied upon a schedule of behaviours of Mr. Bachera see pages 694-5. The Tribunal was informed by the respondent that this log was created by reason of a difficulty between Mr. Bachera and a colleague, Delia in 2017. These matters were historical and low level. The claimant accepted under cross examination he did not raise any concerns when the opportunity to line manage Mr. Bachera was offered. The Tribunal did not find on the balance of probabilities that the claimant was set up to fail. The Tribunal found that the respondent was seeking to provide the claimant with the management opportunities he sought within the restrictions of a limited team with a flatter structure.
98. In answer to the Judge's questions as to who the claimant believed he should manage, the claimant said he should manage Tracey Moseley or Jane Hickman. He was asked whether he wanted to manage two individuals he accused of discriminatory treatment towards him. The claimant did not see this as a problem. The Tribunal found this incredible and inconsistent with the assertions the claimant had made as to how distressing he found their treatment which included being blanked by them and inconsistent with the claimant's stance that he should not be managed by Mr. Grosvenor who he identified as a discriminator.
99. Ms. Cath Ludwig (page 925) noted that regular workshops between the claimant and Mr Bachera had been scheduled in calendars every Wednesdays and Friday afternoons but she could not see any 1:1 meetings taking place only work discussions on 27 November 2019 (page 925). It was reported that Gurnec was currently setting up salary spreadsheets for Green Care Transport stores and planning and the claimant will undertake final check on the setup but Gurnec will be able to run these from next month. Formal line management for Gurnec will transfer to the claimant who was fine with this and did not indicate any initial concerns. Ms. Ludwig recommended that refresher training for line management be undertaken and the claimant should look at what is on offer from corporate training and development. She suggested that both Mike and Rebecca would be available for support as Rebecca was Gurnec's previous manager. The claimant did not undertake any refresher line management training. He stated that very little was available at the time of lockdown. The claimant did take some sick leave in the early part of 2020.
100. On 2nd December 2019 (page 934) the claimant indicated he would like to dual run the salary/budget monitoring this month to sort out any inconsistencies. He inquired whether Mr Bachera had been told about the changes in line management. At page 933c, Ms. Ludwig responded to the claimant that she had met with Mr. Bachera and it was fine in relation to dual running line management. She suggested that the claimant should have a

handover meeting with Rebecca and look to start 1:1s as Gurnec is not having significant changes to his work although the intention is that he will do more on the public realm transactional work. He will still be working on housing areas for Rebecca and Mike so you will need to liaise with them about time scales with pressures.

101. On 2nd January 2020 Ms Ludwig confirmed following a review of the management arrangements in the team the claimant will now have formal line management responsibility for an accountancy assistant (Mr. Bachera). Ms. Ludwig noted that there are a number of other factors to take into account before implementation namely line management training or similar has been recommended and the previous line manager of the accountancy assistant will also provide support during the handover.

The claimant and Mr. Bachera

102. Mr Bachera started to complete a log about his line management experience of the claimant from 26 March 2020 to 6 August 2020(see pages 939 to 947). The Tribunal asked Mr Bachera why he decided to do this and he informed the Tribunal that he thought by 26 March 2020 that there may be problems with the claimant's line management of himself so he decided to keep a record.

103. On 14 April 2020, Gurnec was working in the office. There were no negative comments on his performance. Gurnec apologised to the claimant about issues when he took online management; he confirmed he has no issues with him and both were starting with a clean slate. The claimant was to arrange a 1:1.

104. By 5 June 2020 the claimant had undertaken a 1:1 with Gurnec in respect of the Greencare work. This was a one off to help future budget monitoring. Gurnec was setting up transport budgets and salary monitoring and the claimant was still doing the forecasts on 3rd July 2020. Ms Ludwig noted that as from July 2020 the claimant had agreed to transfer more of the budget monitoring work to Gurnec including forecasting so more of a whole task. However, by November 2020 this still had not been transferred to Gurnec. The claimant stated that Gurnec did not want to do the whole task and/or was not competent and that his is why the work was not transferred. The Tribunal noted by the summer of 2020 the relationship between Mr. Bachera and the claimant was starting to break down.

105. On 13 May 2020 page 957 the claimant emailed Mr. Bachera with a task; Green care update budget monitoring. His instructions were to update the project out turn columns on the salary monitoring worksheets and then link the project out turn formulas on the budget monitoring main worksheet.

106. On 14 May 2020 page 956 the claimant informed Mr Bachera but he *"didn't need him to add the salary monitoring to the spreadsheet; this spreadsheet will be used throughout the year separately by myself. I want it set up first before you set up her spreadsheet with your salary monitoring worksheets. Follow the task instructions as I said in the previous e-mail. Update the projections on the salary monitoring spreadsheet then link the salary monitoring forecast formulas to the main budget monitoring spreadsheet"*. Mr Bachera forwarded this e-mail to Mr. Jones seeking some guidance as to how to proceed.

107. On 14 May 2020 page 955 Mr. Jones emailed Ian Grosvenor copying in Mr. Bachera. Mr. Jones stated that Mr. Bachera contacted him earlier as he was unsure of what the sheets were that the claimant had created. Mr Jones

said the respondent had agreed a corporate style to the reports in systems development. He stated *"for some reason the claimant has decided to waste no doubt hours changing the format and colours."* The claimant now wanted Mr. Bachera to update the old salary monitoring which we have agreed he will not use but seems intent on doing so even though it takes much longer to update I would suggest that he may have enough time to fulfil his task if he stops wasting it on making tasks more difficult.

108. By e-mail dated 15 June 2020 page 1013 Ms. Ludwig e-mailed the claimant referring to a 1:1 with the claimant noting that one 1 :1 with Mr. Bachera and the claimant had taken place and they were so far waiting for completion of latest budget monitoring tasks before doing the next one. Also noted was the detailed Greencare work; this is a one off for help future budget monitoring now discussed and explained.
109. On 16 June 2020 (page 973) Mr. Jones informed Ms Ludwig that Mr Bachera was not willing to attend any training but asked whether it would be worth seeing if the claimant *is willing to do any on relationship management whenever the training starts again because the emails would wind me up if I was receiving them I certainly would not recommend the HR mediation process.*
110. By e-mail dated 16 June 2020 page 1015 from Ms Ludwig to the claimant she described management issues. She stated looking at your e-mail some of the wording does appear a little on the terse side there is one example I have seen that does seem very direct and I think I might take offence at this wording in the e-mail arrived especially if there had been no prior discussion via phone call as we're working at the moment more is being done via e-mail and it is so easy for tone to be misinterpreted you could think about your use of e.g. want where would like is softer adding please etc think about how you would feel if you receive this e-mail if you had already discussed this in a phone conversation then a brief e-mail in this style is fine though if I were you I would mention this in the e-mail as discussed in our recent phone calls so it is clear that this has happened.
111. On 16 June 2020, the claimant emailed Ms Ludwig at page 1020k stating *"I'm becoming increasingly concerned about Mr Bachera's attitude and behaviour. The tasks set are simple and if I want the budget monitoring run up to a period 3 to incorporate the recent veriments and journal transactions could quite simply do that ask myself within 10 minutes Mr Bachera seems to have difficulty performing the most simple task.* The claimant informed the Tribunal that he sent this e-mail prior to receiving Ms Ludwig's e-mail notifying him about concerns about his line management of Mr Bachera. The respondent applied for the claimant to disclose the e-mail of 16 June front sheet which showed that in fact it was Ms Ludwig's email that was sent first to the claimant raising her concerns about his line management of Mr. Bachera.
112. On 16 June 2020 (at page 943) Mr. Bachera noted at one stage the claimant was continually arranging meetings to catch up *so he can say he's managing me; he will use this in future interviews as he feels he doesn't get promoted due to lack of line management experience that's why he wants to manage; it's very stressful and actually stopping me from doing things I will work better if I'm allowed to get on with it with occasional nudge if needed.*
113. By email dated 18 June 2020 page 1024 to the claimant, Mr Bachera stated *I went home early as I'm being made to feel incredibly agitated and*

uncomfortable by your management. The first thing you said to me in our one to one is that your work takes priority. It's common knowledge I'm a slow worker have you taken this into account when setting up deadlines. I woke up at 3:00 this morning with a sick sinking feeling in my stomach realising I would have to come into work and maybe get more priority work. The claimant responded to this e-mail (page 1023) in a terse manner and he did not acknowledge that Mr. Bachera was upset at all. The claimant stated "yes I stated that setting up the budget monitoring and salary monitoring spreadsheets for planning transport and green care will be a priority task for you at the beginning of each month.. I believe Cath has now reiterated to Mike and Rebecca that they should contact me if they want to give you additional work so that I am aware of work load levels I've also asked you to provide me with the task list so I can review timescales and see if there could be any work scheduled conflicts." The claimant in his evidence said that he had taken his emails to HR who did not find anything wrong with them. It was not clear who from HR had said the emails were fine or what emails HR was shown but the Tribunal noted that the claimant did not have any insight that this matter of fact and terse response to Mr. Bachera may have demonstrated a lack of empathy and failure to display any soft skills in the email exchange.

114. By email dated 17 July 2020 (page 1053) the claimant asked Mr. Bachera to do a journal transfer for the following; he had identified some matters in bold text and in capital letters. Mr Bachera responded on 21 July *I'm curious why do you embolden certain words when you e-mail me.* The claimant responded on 23 July 2020 at page 1052 *I often use the bold function when I send emails out.. there is no need to overly think about the tone of the wording of my emails; focus your attention to the task..make sure they're done with 100% accuracy".* In his evidence the claimant did not perceive how the reader of this e-mail could have found this offensive. Mr Bachera forwarded this e-mail to Mr. Jones and requested to speak to him about it.
115. Mr Bachera was uncertain about what he should be doing. By e-mail dated 28 July 2020 (page 1084) he emailed the claimant asking when I start July's budget machine should I use the claimant's version or should I copy over June's version. The claimant stated *Can you journal the transfer the period 4 expenditure for employees..only journal transfer the period of 4 costs which colin posted on the main salary journal. The other transactions in the month are corrections."* On 31 July 2020 (page 946) Mr Bachera recorded he had been asked by the claimant if he had processed June's journals; he hadn't but was planning to do them before the end of the month Mr. Bachera responded later that he had and had sent him the journal references on 3 August. Mr. Bachera stated the claimant had *sent me an e-mail with no narration and his e-mail of 27th I guess he wanted to say do the journals. I responded with my e-mail on Friday attached shows I did them on Friday and told him he seems to send emails without thinking or just forgets the previous ones.*
116. On 28 July 2020 (page 1096) Mr. Jones contacted Cath Ludwig and Rachel Cooper to describe that there were still tensions between Mr Bachera and the claimant. He described that sometimes Mr Bachera was picking up on minor things just because of the poor relationship but referenced the e-mail sent below; it appeared patronising to him. Ms Cooper

was concerned (at page 1095) that a member of staff was dreading coming into work and suggested but perhaps an implementation of a process of checking emails before sending them might assist. She described working so much from home and the increased use of emails; *it's important that people talk to each other because it's easy to read too much into an e-mail and take it out of context.* Ms. Ludwig on 28 July (page 1094) said she was happy to pick it up and agreed that the tone can be interpreted as patronising in terms of use of bold text and using capitals. She stated she had raised issues with the claimant including the use of the word "please" or "would you". She described that the claimant was in denial about this but in his last 1:1 a couple of weeks ago the claimant seemed more receptive and was also for the first time open to management training. The claimant was going to look at possible courses. She said she had also had a look at what's on offer and she was going to send him some suggestions. She also suggested a meeting with him, Rebecca and Mike to agree priorities and discuss timings for the claimant's work; it had not been organised so she was going to set it up. She described that both the claimant and Mr. Bachera did seem ok three times a week scheduled team calls but Mr. Bachera was reluctant; he seemed happier about this when we'd emphasised that this was just making sure he and the claimant had a discussion and was not intended as a one to one three times a week. Ms. Ludwig was going to suggest she would check the claimant's emails. Mr. Jones commented that Mr Bachera was very reluctant to speak to the claimant without evidence of the conversation at the moment. Ms Cooper suggested on 30 of July 2020 (page 1093) to encourage both parties to make regular calls; encourage both parties to take some time off; progress the management training; ; vet the claimant's emails and arrange a meeting between the claimant Rebecca and Mike to discuss priorities. Ms Ludwig confirmed she had emailed the claimant to say that she will be reviewing his emails. Mr Bachera was to let her know if he was going to put in a grievance against that claimant. Ms. Ludwig asked Mr. Bachera to give them a week to see if we can improve things and Mr. Bachera agreed.

117. By e-mail dated 3 August 2020 (page 1080) Ms. Ludwig raised with the claimant his line management of Mr Bachera and that Mr. Bachera had advised he was unhappy about the particular tone of the claimant's emails. She invited the claimant to send her the emails he was planning to send Mr Bachera to review them before they were sent. She conceded the claimant may see this as micromanagement but she believed it was needed at least for a period as Mr Bachera said he was dreading coming into work and opening emails from the claimant. She went on to say line management for the first time is always difficult and we are happy to provide the claimant with all the support and help that he needs.

118. On 3rd August 2020 (page 1047) Ms Ludwig fed back on some of the claimant's emails noting that the claimant wasn't actually answering the query raised by Mr. Bachera on 3 August 2020 (p.1046). The claimant responded he was going to request that HR is involved in this situation; he had never known of a situation when a senior accountant has to send emails to the finance manager to be checked. The claimant described it as unprofessional in fact borderline madness. Ms. Ludwig responded she had no problem with the claimant involving HR; the review of emails was something that Rachel actually suggested and this is intended as a

supportive measure. Ms. Ludwig stated it is easy for emails to be misinterpreted and for the sender/ recipient to view what said very differently. An independent review for a while can help by providing that third party view. She described that it was a particularly difficult time and communication is especially important. She suggested a further discussion with the claimant at a meeting later that day. The claimant was happy to discuss further and said he had a phone meeting with human resource a few weeks ago; sent them copies of the previous emails and they have confirmed the tone of emails was fine. The claimant stated that the only person to send any sort of aggressive emails is Mr. Bachera and he felt it was an attempt to undermine him as a manager. Ms. Cooper informed the Tribunal and the Tribunal accepted her evidence that during the period of lockdown when there was increased use of email between colleagues that the respondent had checked others emails; it was not just the claimant's.

119. Ms. Ludwig suggested reducing the number of emails needed to be sent. checked first this was because the tone and wording of the claimants emails to Mr. Bachera were ill judged causing Mr. Bachera unnecessary stress and upset and Ms. Ludwig was trying to avoid a grievance being lodged against the claimant but the claimant refused to take on board any advice provided by Ms Ludwig. She encouraged the claimant to contact Mr. Jones and Rebecca Millard who have been working with Mr Bachera for a long time and had experience of his work. She suggested re-instating the regular calls for regular checkins. She stated that the emails were not inappropriate but could be misinterpreted. The claimant noted that Mr. Bachera's performance had improved this month and the claimant was happy with the journals that had been completed. There were a lot of errors in the end of June monitoring but by end of July it was a lot better. The claimant was happy with the planner and happy with how Mr Bachera was using it.

120. On 6 August 2020 (page 947) Mr Bachera noted in a meeting with Cath Ludwig the claimant had said he hadn't come back to an e-mail. He said he had; Mr. Bachera asked when this was and it went on for a while. He then forwarded an e-mail with no narration which he had sent on 3rd proving he had responded. Mr. Bachera said he was going to reply and apologise then he noticed he had sent it to Cath Ludwig rather on to Mr. Bachera. The checking of the emails by Ms. Ludwig meant that sometimes there was a delay in communication between the claimant and Mr. Bachera.

121. The claimant noted in his PDR dated 25 August 2020 that since he had returned to work in March 2020 that Mr Bachera was not working for the claimant and seemed to be intent on sabotaging his line management by making false statements and raising concerns. He described Mr. Bachera as using a disrespectful tone. He also believed that Mr. Bachera was using a considerable amount of annual leave and flexi leave when he had arranged meetings. The claimant had actually approved the leave. The claimant alleged no one had been able to provide a single example of an e-mail which could be considered to be inappropriate. The claimant said he felt the management experience was cleverly used to sabotage his career and he had been subject to micro management. The claimant felt he being treated differently to other managers of staff in a negative way which was causing him a great deal of stress and anxiety. Ms Ludwig commented that the claimant had taken on line management responsibility for an accountancy

assistant from November 2019 but the working relationship had proved difficult and had been subject of an ongoing HR process.

122. On 25 August 2020 the claimant agreed to book recurring monthly meetings with Mr. Jones and Rebecca Millard to agree Mr Bachera's work priorities. The claimant described a deterioration in the behaviour of Mr. Bachera; muttering and swearing to himself in the office. The claimant had booked two weekly meeting calls with Mr. Bachera on Wednesdays and Fridays. Ms. Ludwig suggested that the claimant and Mr. Bachera work to develop procedure notes for budget monitoring which would be useful for the team as well as involving Mr. Bachera in writing out the procedures and meaning that there should be less need for the claimant to send detailed emails to Mr. Bachera on routine tasks.

Mr. Bachera's grievance

123. On 10 August 2020, Mr. Bachera, raised a grievance against the claimant (see page 1387) and attached a log of emails to his grievance at page 1263. The claimant informed the Tribunal on day six of the hearing that he believed Mr. Bachera had raised a malicious grievance against him and that it was related to his actual orientation because the claimant was bisexual; he said Mr Bachera did not want to work with him because of his sexual orientation and believed that Mr. Bachera was aware of the claimant's bisexuality. He disputed that Mr. Bachera had any cogent complaints about his style of management. Mr. Bachera stated he was unaware of the claimant's sexual orientation and did not like the way the claimant managed him. The Tribunal accepted Mr. Bachera's evidence on this and noted his contemporary complaints to other managers about the way he believed the claimant was inappropriately managing him.
124. Rachel Cooper tried to de-escalate the issues between the claimant and Mr. Bachera on an informal basis see page 1093 by suggesting vetting the claimant's emails at page 1093. Rachel Cooper on receipt of the grievance spoke to Mr Bachera about how he wanted to progress things and Rachel Cooper informed him she would be talking to the claimant about the situation. Rachel Cooper booked a meeting with the claimant in September 2020 discussing the issues Mr Bachera had raised including the claimant not giving Mr. Bachera clear directions and the claimant changing spreadsheets. Mr. Bachera's issues were supported by evidence.
125. During summer of 2020 Mr Bachera was not happy in the working relationship with the claimant and he felt he was being gaslighted and spreadsheets were being manipulated without him being aware of them. He referred to the email on 18 June 2020 at page 1015.
126. In November 2020 Mr. Bachera raised an issue about the claimant's use of inappropriate capital letters and underlining his emails which Mr Bachera found inappropriate and offensive He also raised concerns with Ms Cooper about the claimant's behaviour and tone of emails. Rachel Cooper agreed to look into the matter. When Ms. Cooper met with Mr. Bachera he gave examples of what he felt was inappropriate communication at pages 1071-1079. Mr. Bachera was happy for Ms. Cooper to proceed with this informally.
127. On 11 August 2020 page 1253 the claimant emailed Ms Ludwig that when he booked meetings with Mr Bachera he had not noticed any scheduling conflicts but was happy to reschedule the meeting. The claimant

wanted the meetings to proceed to discuss various points and to see how Mr Bachera had progressed with the green care salary monitoring. Ms. Ludwig noted Mike Jones had now asked Mr. Bachera to do some other work. She commented that it reinforced the perception of the meetings being done to Gurnec rather than being a collaborative way of addressing work queries and suggested to the claimant just one meeting on Friday to go through queries as Mr. Bachera had booked all next week off. than it does need to be this week and she suggested writing that's fine.

Performance Review August 2020

128. On 25 August 2020 (page 1278) the claimant made complaints about Mr. Bachera along with line managers Ian Grosvenor, Catherine Ludwig, Rachel Cooper in his performance review at page 1284 -1287. The claimant raised concerns about Mr Bachera stating that before he became his line manager Mr Bachera had shown growing anger in the workplace; swearing; kicking boxes and punching the table in frustration; making negative remarks about the housing PAA. He had also implied that people in the housing finance team are racist and that's why he was not invited out to teams events in the past. He described since becoming Mr Bachera's line manager he has behaved in a rude disrespectful and aggressive manner towards the claimant. He stated on multiple times Mr. Bachera had put the phone down on the claimant mid-sentence when he contacted him about work tasks. The claimant stated that the work tasks set have not been completed; contained errors and the claimant disputed that he had not explained tasks properly to Mr Bachera. When the claimant asked Mr Bachera to be careful with his spreadsheet work to avoid making formula errors, he said Mr Bachera had responded "*sorry I'm not perfect like you*". The claimant said he had lifted the restriction placed on Mr Bachera booking leave when there was a team meeting day. He said that Mr. Bachera was unhappy with the claimant's emails and the claimant stated he sends out simply the initial task instructions and requirements. The claimant said it was a malicious attempt to undermine him as a manager because Mr. Bachera is refusing to work for him properly. No one has been able to provide a single example of an e-mail which could be considered to be inappropriate. The claimant alleged management experience was cleverly denied and used to sabotage his career and he was blocked for putting his own management ideas in place to improve performance. In fact, having to have my emails pre checked is micromanagement on a manager and inhuman (page 1445). The claimant told the Tribunal that he blamed Ms Ludwig for micromanaging him and the e-mail checking issue was an act of victimisation and unwanted conduct.
129. On 27 August 2020 the claimant was advised that Mr Bachera had submitted a grievance but the intention was to address this as an informal matter and Rachel Cooper will lead on this. The claimant stated he did not see he had done anything wrong. The claimant had gone to HR who advised the e-mail tone was OK. Ms. Ludwig suggested that there was a need to build relationships and to find the best way to suit individual reactions. The claimant reiterated that he can not see nothing wrong with his e-mail style and if anyone has been disrespectful it is Mr Bachera. The claimant was to ask Mr Bachera to check salary monitoring and do the budget forecasting.
130. On 8 September 2020 (page 1428) Rachel Cooper emailed Mr Bachera to acknowledge the receipt of the formal grievance. Ms. Cooper noted

complaints must be raised within three months of an alleged incident and a number of the examples were outside of this time frame and furthermore his grievances were about the way in which Mr. Bachera was managed. She referred to the policy which states the manager has a right to manage *therefore at this stage I'm not proceeding with your concerns as a formal grievance*. She noted he had highlighted aspects of the claimant's management style that could be improved, Rachel Cooper said she would be discussing it with Ms Ludwig as the claimant's line manager and wanted to encourage him and the claimant to have more virtual face to face meetings as too much content that can be lost when communicating via emails.

131. On 9 September 2020 Rachel Cooper e-mailed Kathryn Ludwig stating that the claimant should be told a grievance has been raised against him and that it's not being treating as such because it's more of a management/potential capability issue within financial services to treat people equally no matter their position within the hierarchical structure therefore e-mail should be worded in a tone that would be appropriate to send to a senior manager and management style had to be adapted to the people you're managing.
132. The Tribunal found that advice was given to the claimant on e-mail tone and communication and the claimant was regularly asked to attend available management training which he failed to do. Ms. Ludwig asked the claimant to speak with other managers with experience of managing Mr Bachera but the claimant did not set these meetings up. Ms Ludwig provided suggestions to the claimant about using standardised council procedures and writing procedures and passing over full tasks. The claimant preferred to use his own documents.
133. By e-mail dated 24 September 2020 (page 1298) the claimant informed Rachel Cooper he had become very concerned with the situation at work so much so last week he had a series of meetings with Unison and Thompsons solicitors to discuss available options. He had taken advice but not taken any action. The claimant advised the Tribunal that this was not a threat to the respondent of legal action but he was concerned there was an implicit suggestion that he might have been racist to Mr Bachera which he wanted to seek legal advice. He described being cleverly denied line management responsibility. He complained that he was on holiday last year so could not apply and felt it was deliberate. Due to his health issues he felt unable to make a complain. He stated that he was excluded within the team and did not have any support. It was implied that there was a racist element to the emails he sent; he was not a racist.

25 September 2020 meeting

134. Rachel Cooper and Ms Ludwig met with the claimant on 25 September 2020 (page 1302-1308) to discuss his future line management arrangements as currently the claimant was directly managed by Ms Ludwig which was a temporary measure. Rachel Cooper assured the claimant that the grievance submitted by Mr Bachera was not progressing as an official grievance as it did not meet the criteria. It was recognised that managers and subordinates do not always get on and noted there were issues around e-mail tone and the claimant was given general advice. In respect of the emails Ms Cooper said there was nothing too specific but some can come across as a bit direct and invited the claimant to adapt the tone to the

recipient making them more fluffy. The claimant said he had made them fluffier. He acknowledged there was one e-mail where he had said "I want" but this was because Mr Bachera had missed a deadline. Ms Cooper wanted to confirm that standard processes were being used. Due to workload pressures we don't need 100% accuracy on the detail but must balance against timelines standard templates and procedures. Ms Cooper said she did not believe that the claimant had been accused of racism by anybody. The claimant stated that in his review, Ms Ludwig said to be aware that emails could be read as racist sexist or any other ist. Ms. Ludwig confirmed this was a general comment about how emails could be differently interpreted by the recipient but there was no specific meaning about racism; she was giving examples. The claimant stated that Mr Bachera missed deadlines. He was planning to meet up with Mike and Rebecca but the meetings hadn't taken place because of leave clashes. A big issue was made about Mr Bachera prioritising the claimant's work but the claimant stated that he had not set him any large tasks. In respect of the scrutiny of emails Ms Cooper said it was quite normal for emails to be reviewed. The claimant accepted he may be reading too much into this. He described that there were no issues with Mr Bachera before lockdown but had seen a growing buildup of anger over the last few years which the claimant had raised with Rebecca. The claimant had expressed concern at Mr Bachera's anger; talking to himself and kicking a box and banging the desk. The claimant described having been set up to have a difficult person to manage that was a preconceived agenda.

135. Ms Cooper said the line management arrangement was a logical one and fits with the team structure and lines of responsibilities; it was not a setup. The claimant acknowledged she had changed the tone of his emails. Ms Cooper said it was important to recognise where someone is unhappy with your approach. The claimant stated that Mr Bachera appeared to over interpret every single issue and he had not expected him to make so many mistakes. In respect of returning to Mr Grosvenor's line management Ms. Cooper acknowledged that the claimant had some concerns but the line management by Ms. Ludwig was temporary. Ms Cooper informed the claimant that he could not pick up and choose his line manager. The claimant stated he had already discussed this with his Unison and Thompsons union solicitors. Ms Cooper asked the claimant by consulting solicitors what were his aims. The claimant said to become a Principal Accountant and progress further. The claimant alleged that Mr Grosvenor had treated him far worse than he had treated Mr Bachera. He went to Unison who directed him to Thompsons who advised on options for a complaint. Ms Cooper informed the claimant that Mr Bachera had raised a grievance but it was not being progressed as a formal grievance. Ms. Cooper noted that the claimant was raising issues that took place a long time ago. Ms. Cooper accepted in cross examination that she had told the claimant to get over the comments in the context that the claimant needed to move on. The claimant said he thought that Mr Grosvenor had permanently been removed as his line manager. Ms. Cooper did not understand that to be the case and wanted to check with HR. The claimant did not want Mr. Bachera's line management to move elsewhere. The claimant stated he felt this was a positive meeting. The claimant disputed in cross examination that he said this (page 1308) and he informed the Tribunal that the notes were

not accurate. The Tribunal found that this was a consistent theme with the claimant's evidence that anything contained in contemporaneous notes that went against the narrative of his claim, he suggested did not reflect what was actually said. The Tribunal rejected the claimant's contention and found on the balance of probabilities, that he had stated at the meeting on the 24 of September 2020 that it was a positive meeting. On the balance of probabilities, the Tribunal rejected that contention.

136. The claimant also stated that he did not want (page 1307) Mr. Bachera's line management to move elsewhere the claimant was challenged about this in cross examination because he had suggested it was a setup and that he had been deliberately given a difficult person to manage; the claimant stated he was happy to remain as a manager and in fact happy for Mr. Bachera's grievance to be formalised. The Tribunal found there was an inconsistency in the claimant's case that he alleged the management of Mr. Bachera who was difficult and seemed to be sabotaging the claimant's good record of management but still wanted to continue to manage him.
137. The claimant told the tribunal on day 6 of the hearing that the whole situation with Mr. Bachera was manufactured with Ms. Ludwig and Rachel Cooper and they had encouraged Mr. Bachera to make a grievance against him (page 1304). The Tribunal rejected this assertion having heard the evidence of both Ms. Cooper and Ms. Ludwig.
138. On 28 September 2020 (page 1312) Ms. Ludwig sent the claimant summary notes from the one to one meetings with Ms Ludwig in August. The summary notes recorded that the claimant has not had an issue with Mr. Grosvenor since the grievance in 2018 but still had concerns about being managed by him. It was agreed to keep Ms Ludwig as the line manager for now. It was agreed that the claimant and Mr. Bachera should work to develop procedure notes for budget monitoring process so there was less need for the claimant to send detailed emails to Mr Bachera. The claimant did not see he had done anything wrong. The claimant booked recurring monthly meetings with Mr. Jones and Rebecca to agree the claim Mr Bachera's work priorities. The claimant did not respond to these did not provide any comments to these notes.
139. On 7 October 2020 (page 931) at a 1:1 with Ms. Ludwig, the claimant stated he had found a discussion with Manjit about management useful. He was looking at Mr Bachera's monthly time planner. A meeting had been booked with Mike and Rebecca. There was no reason why Mr Bachera cannot do more work for the claimant. The claimant agreed to continue to discuss work priorities with Mike and Rebecca. The claimant confirmed that Mr. Bachera had been improving in quality of work but there were some silly errors and lack of checking generals.
140. On 11 November 2020 page 932 at a 1:1 with Cath Ludwig the claimant stated that Mr. Bachera had refused to meet with the claimant. Ms Ludwig raised the issue of the different versions of the spreadsheets and asked for a single spreadsheet so that Mr. Bachera does the work and the claimant reviews. Ms. Ludwig stated it was important to move Mr. Bachera to do the budget monitoring and then to have a monthly run through of the outcomes. It was suggested that the claimant move away from the dual spreadsheet. There was a query as to whether Mr. Bachera was avoiding meetings. Ms Ludwig advised the claimant he needed to rebook them with Mr Bachera. If

Mr. Bachera was not available Ms Ludwig suggested that October spreadsheet should be done in the standard format without dual spreadsheets. It was agreed that Mr Bachera would do the October budget monitoring and the claimant would review with him.

141. On 11 November 2020 a telephone conversation took place between the claimant and Mr Bachera. The claimant alleged Mr. Bachera had been rude disrespectful and aggressive. Ms Ludwig had heard Mr. Bachera's side of the conversation. Mr. Bachera had made reference to the claimant's failure to progress in the organisation. The claimant apparently made a dig at Mr. Bachera that he had not progressed either; it was a two way crack.
142. Although the claimant suggested that he alone was not given the opportunity for management responsibility which impeded his promotion to a higher level, Mr. Jones in his evidence confirmed that he had no management responsibility. Although his original statement had excluded at paragraph 8 the word "no" in his oral evidence he amended it to say that he had no management responsibility. Both Ms. Ludwig and Ms. Cooper confirmed that this was the case and the Tribunal accepted that he did not have management experience prior to being appointed as Senior Principal Accountant.
143. The behaviour of Mr. Bachera was noted by the respondent in a schedule at page 695. Mr. Jones was asked by the claimant whether Mr. Bachera's behaviour including swearing aggressively was intimidating to female colleagues. Mr. Jones stated that Mr. Bachera did not swear aggressively towards women or anyone else; he was muttering under his breath and to himself, and threw a folder into a cabinet. Mr. Jones noted that no one in the department had approached him to suggest that they found it intimidating behaviour and it was out of character for Mr Bachera.

Mr. Bachera's grievance against the claimant

144. The detail of Mr. Bachera's grievance against the claimant (page 1272) was that he did not think that the claimant was suitable to manage. He stated "*I think he should be stopped from managing.*"
145. The Claimant contended in his evidence that the respondent had never identified any inappropriate emails. Ms Cooper on 2nd February 2021 (page 1470) considered Mr. Bachera's log of emails and identified a number of them as quite petty but she drew HR's attention to four emails where the claimant had insisted that his work should take priority over Mike and Rebecca's *the task you do for me are the priority*; another e-mail where the claimant wanted Mr. Bachera to update the budget monitoring before all of the transactions had been posted causing double work and where Mr Bachera said *I'm being made to feel incredibly agitated and uncomfortable by your management* and the claimant did not address Mr Bachera's concerns. He stated he had no problem doing work for the claimant but he was not a manager. He further stated that he gathered that when the claimant has failed interviews, the reason given is that he has no management experience. He said he was not keen on the idea of the claimant managing him. However Mr. Bachera did say he thought he would try very hard to be a good manager to prove his doubters wrong that has not been the case. Mr. Bachera stated he was upset about a few things and spoke to Rachel Cooper. He listed a number of concerns namely that the work methods were unique to the claimant; he does not follow the corporate

line. He has tried to *get me to do work that was not following the corporate line, he has given me next to no guidance or explained his way of working when he does it not the best then points out errors, the language in his emails is patronising supercilious and at times confusing they're the probably the worst emails I've seen, I once said in an e-mail that I was incredibly agitated and uncomfortable by your management in his response there was no mention of my feelings, he has no empathy and has very limited interpersonal skills, I have raised issues and he quite often just ignores them he doesn't want to address uncomfortable things rather asking for help he'll stick to his guns and he needs help to probably use his time to get the best results he needs to accept new ways of working someone needs to show him how he can work better.* He stated that the claimant's management style made him feel agitated and stressed that Ms Ludwig had tried to address the issues by talking to him and the claimant he raised although the claimant might say may say he will change he won't. Mr. Bachera wanted Michael Jones to be his witness.

146. On 10 November 2020 (page 1333) Ms Ludwig sent the claimant a summary of the one to one meeting dated 7 October 2020; a meeting had been booked with Michael and Rebecca and there was no reason why Gurnec could not do more work for the claimant. The current task should be taking one to two days per month; the quality of work of Mr. Bachera's work was improving but there were still some silly errors.
147. By e-mail dated 10 November 2020 (page 1335) in respect of the transport forecast Mr Grosvenor congratulated the claimant stating he had made good progress.
148. On 11 November 2020 (page 1338) the claimant emailed Ms. Ludwig and Rachel Cooper to say that Mr Bachera had refused to do any salary forecasts for him and had gloated that the claimant had applied for numerous promotions in the past and was unsuccessful stating that his lack of line management experience was the reason for this. He was annoyed that the claimant had set up a second version of the spreadsheet which ignored his comments and had updated or corrected various formulas. He described Mr Bachera of becoming increasingly aggressive in his tone; the claimant said that the complaints about emails were early attempts to undermine him; he had received assurance that his emails were fine. The claimant said for some reason he believed he's acted against me from the moment I became his line manager. *He is using the situation to have me removed as a line manager I'm cleverly being sabotaged as a manager so my ability is questioned. If I am removed as a manager then it will look bad on my records.* The claimant described this as being harassed discriminated against and victimised for a long period of time.
149. By e-mail dated 11 November 2020 (page 1417) Ms. Ludwig emailed Rachel Cooper about the claimant and Mr Bachera stating Mr. Bachera was still not particularly happy with the spreadsheet approach and when the claimant phoned the conversation did not go well. She said she could only hear Gurnec's half of the conversation but he talked to her afterwards and he alleged the claimant had told him to complete the spreadsheet or it would be a breach of contract and he would go to HR. Gurnec challenged B on mistakes made and commented that he himself had made mistakes as well as not doing things agreed previously in meetings. Ms. Ludwig noted that eh claimant was still not giving Gurnec a whole task to do and is maintaining a

dual check sheet and is looking at the sheets independently and going in and correcting changing figures without discussing them with Gurnec. This was confusing Gurnec and making him feel undermined and constantly scrutinised. Mr. Bachera felt he did not know what he was meant to be doing and what the claimant will do; he felt the claimant will change it anyway so what's the point. The claimant's view is that Gurnec is making a lot of mistakes; can't trust him with any more work and Gurnec was booking leave to avoid phone meetings with him. Ms. Ludwig expressed her view that she she found the spreadsheets confusing; which version to use; what formula they are using because there was a mix of numbers and different formula with no consistency even in one spreadsheet. When the claimant was challenged in cross examination about this he told the Tribunal that there was nothing wrong with these spreadsheets he prepared.

150. By e-mail dated 11 November 2020 (page 1338) the claimant stated to Ms Ludwig and Rachel Cooper that following his work chat today Gurnec had said point blank will not do any salary forecasts in the future, he will also not fill in work plans spreadsheets which he had set as an information gathering aid, he will set up the budget monitoring at the start of the month but that is it. The claimant complained that Mr. Bachera gloated that the claimant had applied for numerous promotions in the past and was unsuccessful stating that the claimants lack of line management experience was the reason for this and "there was a reason why" the claimant has not been a line manager in the past. He was annoyed that the claimant had set up a second version of the spreadsheet which ignored his comments and had updated/corrected various formulas he used he has a new issue with emails I send out sometimes I use bold text and sometimes I do not. The claimant alleged that Mr Bachera had become increasingly aggressive in his tone when speaking to the claimant. The claimant told Mr. Bachera he was rude and disrespectful and accused Mr. Bachera of outright lying and deliberately trying to cause issues and conflict even a complaint about emails was an attempt to undermine my position. He said he had received reassurance from numerous people there was nothing wrong with my emails. The claimant added (pages 1357 to 1360) he was not happy that Miss. Ludwig checked and Ms Ludwig noted at page 1365 that the claimant had not sent any emails to check since

151. By e-mail dated 18 November 2020 page 1402 Mr. Jones looked at the claimant's monitoring sheets. He was critical of the claimant's documents; he noted there was a strange grouping; no comments and no new forecast; the amended formatting meant that you could no longer see any headings; the salaries budget column had been moved; numerous salary for cost were not linked to salary monitoring but noted that last month's forecast the claimant's check sheet seemed unnecessary. He also commented that there no formulas showing calculation or explanation for numerous virements 652 lines. Ms Cooper (page 1402 agreed) with the comments of Mr. Jones finding the spreadsheets also confusing. Mr. Jones reported on 18 November to Rachel Cooper (page 1366) that there was no communication between the two of them (Mr. Bachera and the claimant).

18 November 2020 Meeting

152. A meeting was held on 18 of November 2020 between the claimant and Miss. Ludwig and Miss. Cooper because the relationship between the claimant and Mr. Bachera continued to deteriorate.
153. There was a significant dispute of evidence as to whether the respondent told the claimant his line management of Mr. Bachera was being removed. The claimant relied upon an e-mail he sent on 3 February 2021 (page 1493) stating *as you know Rachel removed me as Gurnec's manager*. Ms Cooper's evidence was that she informed the claimant that she was close to moving Mr Bachera on 18 November but had not made a final decision and wished to seek advice. The Tribunal preferred the evidence of Ms. Cooper which was corroborated by Ms. Ludwig who was also in attendance at the meeting and this was corroborated by the notes of the meeting.
154. Ms Cooper informed the claimant she would speak to Mr. Bachera and consider whether to move him because of the numerous issues. Further, she suggested that the claimant might still be allowed to ask for work to be completed by Mr Bachera but a new manager would act as a go between. Further, the e-mail trail revealed on 4 February 2021 (page 1495) Ms Cooper was seeking advice from HR stating *can I move line management of Gurnec Bachera to Mike or Rebecca*. The removal of line management from the claimant was not a decision which Ms Ludwig could take. The Tribunal therefore did not read Ms. Ludwig as making any concession in her e-mail dated 4 February 2021 (page 1493) when she informed the claimant she would deal with Gurnec's leave request, as any agreement that in fact the claimant's line management of Mr. Bachera had been removed from the claimant in November 2020.
155. During their discussion with the claimant about the management of Mr. Bachera, the claimant was informed about the admission of Mr. Bachera, that he would never be the greatest accountancy assistant. Ms. Cooper expressed care should be taken before going down to the capability route. The claimant said the tasks given to Mr. Bachera were not complex and he had found errors and saved a separate version. Ms Cooper said it would be open to challenge if the capability route was used with Mr. Bachera. Ms Ludwig and Mr. Jones stated they were confused by the spreadsheets so Mr Bachera would also be confused. The claimant stated he was building some weekly chats in the calendar but Mr Bachera was booking times off which the claimant accepted he had actually approved. Ms Cooper said it was important to understand how Mr Bachera may be feeling and asked the claimant whether the working relationship between the claimant and Mr Bachera had broken down to such an extent that a break would be helpful. The claimant stated he was happy to continue but he felt that Mr Bachera had been working against him. Ms Cooper said that the claimant needed to make the checks and corrections at the same time as part of the discussion with Mr. Bachera. The claimant raised that Mr Bachera shouted at him over the phone the spreadsheets were confusing. The claimant accepted he had changed the order. The claimant was reluctant to hand over any more work Mr. Bachera because he was making mistakes in salary monitoring and he felt that Mr. Bachera had misinterpreted his use of bold and highlighting. Ms Cooper asked the claimant to consider whether having a disciplinary hearing with Mr Bachera would improve the working relationship. Ms. Cooper stated that Mr Bachera did have a tendency to be brief on the phone but the claimant should set up some meetings using standard spreadsheets and e-

mail monitoring and the claimant had not followed those instructions. Ms Cooper said that the same argument could apply to the claimant for a disciplinary because the claimant could also be criticised for doing or not doing things in the same way he was criticising Mr. Bachera. The claimant maintained his emails were polite and professional. Ms Cooper said she would have to agree to disagree; she would have found them annoying and they did not display the values and behaviours that they wanted in the financial services department. The claimant accepted he threatened Mr Bachera with a breach of contract and disciplinary action.

156. Ms Cooper said to that she is was going to ask Mr Bachera to apologise to the claimant and the claimant said he would be happy to accept Mr Bachera's apology to repair the working relationship but he felt that he had been cleverly sabotaged as Mr. Bachera had been difficult throughout. Ms Cooper said that Mr Bachera was not the most confident and he was confused; Ms Cooper said she would consider moving Mr. Bachera to another line manager. Ms Cooper said possibly the claimant would get somebody else to manage but not immediately because she needed to look at the structures.

157. On 20 November 2020 Ms. Ludwig and Ms. Cooper met with Mr Bachera to encouraged him to offer an apology to the claimant in an effort to smooth things over which he agreed to do. Mr Bachera described the claimant's management style as "a power trip". He accepted he should not have said what he said to the claimant about the management experience and promotion but explained the claimant threatened him with HR and alleged he was in breach of contract. He said he initially found the spreadsheets confusing and asked the claimant for guidance but he did not provide it. He said the claimant had said Mr. Bachera's projections were wrong and he made clear he doesn't want Mr. Bachera to do his budget monitoring. Miss. Cooper described that it was likely that the claimant would stop being his line manager and described the priority of making sure that Mr. Bachera and the claimant were both OK. She expressed her concern for both of them.

158. Ms. Ludwig offered to hold a meeting between the claimant and Mr Bachera to try and discuss the issues and the meeting was set up for 23 November 2020. However, the meeting did not go ahead as the claimant emailed Ms Cooper (page 1377)(in the morning to say he would be making a formal complaint to the Tribunal and would not be attending the meeting unless HR was in attendance. The claimant stated he had again spoken to Unison and a solicitor. Following the advice I was given up with making an external formal complaint to an employment tribunal I believe I've suffered continuous bullying, harassment, victimisation, discrimination as part of the finance team I believe this is because of sexual orientation/ perceived sexual orientation so I'll be making a complaint for detriment, bullying and harassment, victimisation. He said the treatment had been continuing and his line manager had previously threatened his job. Rachel Cooper responded that she would cancel the meeting scheduled as HR had not confirmed they were available to attend (page 1381).

159. By e-mail dated 23 November 2020 (page 1388) Mr. Bachera stated he had an apology to make to the claimant about something he said to him.

160. By e-mail dated 30 November 2020 (page1352) the claimant informed Ms. Ludwig that Human Resource advised him that a preliminary meeting could be set up with himself and Mr. Bachera. The claimant stated Mr.

Bachera has spoken to him in a rude and disrespectful manner which was insubordination. The claimant said HR had confirmed Mr. Bachera's comments were completely inappropriate and disrespectful. Ms Ludwig responded that Rachel Cooper that she had set up a meeting for next Wednesday to discuss work issues.

Grievance dated 11 January 2021

161. The claimant lodged a grievance dated 11 January 2021 (page 1433) and confirmed the grievance was aimed at the Head of Finance Rachel Cooper. The claimant stated he had been subjected to long term and continuous discrimination, harassment and victimisation in the finance department because of his sexual orientation. He said he believed he was being treated differently to every other member of staff in a negative way. He alleged that he had his job threatened multiple times; everyone who gained promotion to a higher grade had their own exact job advertised and given favourable questions. He said he was not allowed to manage the employee and was threatened with disciplinary action.
162. Mr Newman, Director of Finance was appointed to investigate the grievance and held a meeting with the claimant on 28 January 2021 p.1452. Mr Newman met with Ms. Ludwig on 12 February 2021 (page 1515) and met with Ms Cooper on 2 February 2021 (page 1476). The claimant raised the issues of emails being monitored and his line management being removed. Ms Ludwig indicated no changes had been made to his line management at this stage in the working arrangement between Mr. Bachera.

Grievance Investigation

163. The claimant 's case is that he was deliberately given Mr. Bachera, who was difficult to manage. The respondent's case is that Mr. Bachera performance had been managed in 2013 but managed successfully and there were no recent or current issues with the work that he was producing for other senior accountants. It was admitted that Mr. Bachera gets angry with himself at times and there was a long-standing issue with another colleague since 2011; this was a low level issue monitored by management.
164. The claimant was interviewed by Mr Newman in the presence of his trade union representative Mr Rob Underhill on 28 January 2021 (page 1452). The claimant described being upset at the comment about why he had not been allowed to be a manager in the past. The claimant said he did not specifically say it was due to his sexual orientation but he had implied there was a reason behind why he was never allowed to be a manager for years. Mr Bachera was refusing to do tasks for the claimant and was getting angry and aggressive. The claimant said comments made about him in the office before his second grievance can only lead him to conclude it's to do with his sexual orientation; the claimant expressed he was 100% certain. Mr Newman asked the claimant who he meant when he said senior managers have to watch what they say. The claimant confirmed this related to Ian Grosvenor. A representative from HR informed the claimant that an investigation had been undertaken in 2018 so the respondent would not be going over those matters. The claimant said he felt there was continuous

discrimination and he was informed in the meeting on 18 November by Rachel Cooper his line management was to be removed.

165. Mr Newman at page 1466 stated to the claimant this is your third grievance and he had already expressed concerns in relation to the variance in the information the claimant had submitted compared to what was actually contained within his previous two grievances. The claimant had made reference to raising concerns via ACAS and an employment tribunal. He asked the claimant on that basis what is his view in terms of the employment relationship. The claimant alleged that in fact what Mr Newman had said was you need to think carefully about your relationship with the council and how it will affect your position in the organisation if you go ahead and make a complaint to ACAS. This is disputed by Mr Newman. On the balance of probabilities the Tribunal preferred the version of events by Mr Newman and he did not threaten the claimant about his job at this meeting. The Tribunal noted that the claimant was represented by Mr. Underhill, trade union representative at the meeting and he did not raise any concerns about the conduct of Mr. Newman. In the circumstances the Tribunal found Mr. Newman's account more credible.
166. By e-mail dated 3 February 2021 (page 1366) Ian Newman had asked whether the claimant had come up with any ideas himself to avoid line management being removed. The claimant at some point did ask if he could manage another accountancy assistant but Ms Ludwig and Rachel Cooper did not think that was appropriate straight away as it the rest of the team were working quite well so why change things.
167. Mr Newman interviewed Rachel Cooper on 2 February 2021 (page 1476) she stated that it was clear from the start that the claimant wanted to continue to work in his own way ignoring changes that she had implemented to improve consistency across the teams including the use of the agresso planner and more standardised monitoring practises to avoid confusion. She referred to the email of Mr. Jones above. Ms Cooper had suggested the removal of the claimant's line management of Mr Bachera to help him given his health issues during the meeting with the claimant on 18 November. She expressed her concern about going straight into a disciplinary process when Mr. Bachera had not been given the opportunity to apologise. She stated she was concerned that the long term working relationship would be irrecoverable. Further she stated that hopefully after they called off things, it would be easier to deal with. The claimant was not happy that Mr. Bachera flatly refused to do the work for the claimant. The claimant had alleged this was a breach of Mr. Bachera's employment contract. She said that although Mr. Bachera hadn't done what the claimant had asked, the claimant hadn't done everything Ms Ludwig had suggested such as attending HR training; letting her review all emails; arranging meetings with other managers. There should only be one work standardi spreadsheets. She was not putting the claimant through a disciplinary hearing; she had informed the claimant that she would sleep on whether to remove line management from the claimant and discuss the situation with Mr Bachera to see whether he would apologise. Mr Bachera said he would apologise; the claimant acknowledged he shouldn't have said what he said. Ms. Cooper expressed concern that the claimant was going straight to HR without speaking to her or seeking guidance from other managers who do have experience. Ms. Cooper stated she had upheld the claimant's grievance in 2018 and instigated a

disciplinary procedure. She described the recruitment of a senior principal accountant. She had consulted with Robert Marsh to discuss a potential re-grade but thought it would be more appropriate for transparency purposes to recruit via an internal ring fence process at principal accountant level. She stated that the claimant was not going to jump from his role to a senior principal accountant position she stated that the claimant has never been successful in Principal Accountant recruitment process because he is not good enough; the claimant lacks interpersonal skills and she questioned whether he's working fully to grade 10 level.

168. On 12 February 2021 Mr Newman interviewed Cath Ludwig (page 1515). She stated she was reviewing the team structure in 2019 and wanted to give the two senior accountants more responsibility plus the claimant had made continued requests for line management responsibility she described the finance team structure as quite flat in terms of reporting lines. She did not have many accountancy assistants. She felt the best fit for the claimant in terms of line management responsibility and work area would be Mr Bachera. The claimant started to manage Mr Bachera from December 2019 but then took a period of sick leave. They appeared to get on well in the office and had already worked together previously. The claimant did not take up any offers of training. Issues started to emerge in the early summer of 2020. The claimant returned from sick leave and we were all in a working from home situation made things quite difficult. Mr. Bachera raised a grievance against the claimant during the summer 2020 but it was not substantial enough to continue with. In terms of the conversation between Mr Bachera and the claimant on the telephone she described hearing the first part of the conversation in the office but not the second part. She described Mr. Bachera being direct but not rude and swearing. She discussed with Ms. Cooper who was going to see whether Mr. Bachera would apologise to the claimant. Mr. Bachera was going to apologise to the claimant at the meeting on 23 of November but the meeting did not take place. Ms Cooper did not remove line management from the claimant on 18 of November but was minded to do so and was considering it; she just wanted to take the issue away and make up her mind for the next meeting. She stated she did not propose formal proceedings against anyone without first discussing the situation fully with a manager. The claimant has sought advice from HR in relation to the conversation with Mr Bachera and he did not speak to anyone about this prior to discussing it with HR. The claimant then told her and Ms. Cooper he was going to start the disciplinary process. Ms. Ludwig confirmed that there was no reference to disciplinary action to be taken against the claimant; Ms. Cooper was making a hypothetical point namely if the claimant could take that approach with Mr Bachera then we could take the same approach with him if that was all that was required to instigate a disciplinary process. The claimant had not done all he had been asked to do. She mentioned that both Mike and Rebecca have been happy working with Mr. Bachera but Mr. Bachera found the work set by the claimant was confusing. The claimant was advised to speak to Manjit. She stated none of the issues that she had with the claimant have anything to do with his sexuality; she didn't know what it was and it was irrelevant. She said she had seen the impact the claimant has had on Mr Bachera and it's not insignificant. She recalled that Mr Grosvenor had told the claimant he was working more at a Principal Accountant assistant level and not a senior

accountant level concentrating on unnecessarily complex budget monitoring tasks, adding/moving columns and figures to different places in spreadsheets causing confusion. The claimant has not shared any suggestions with the team. The claimant had a good relationship with Mr. Bachera prior to taking up line management responsibilities. Issues with Mr Bachera's conduct were being monitored and low level. It was expected that the claimant would move back to Mr Grosvenor following a review period of about for six months. Ms. Ludwig stated her management of the claimant was not ideal given the claimants tasks. In August 2019 the claimant was unhappy to be managed by Mr. Grosvenor again. She described the phone conversation between the claimant and Mr. Bachera as both taking a crack at each other; in response to Mr. Bachera's comments, the claimant responded "you're just an accountant assistant and you haven't been promoted either".

Ending of Line Management of Mr. Bachera

169. On 3 February 2021 (page 1496) in response to a holiday approval request of Mr. Bachera, the claimant stated he had raised a formal grievance to Ian Newman and Human Resources in part about Mr. Bachera's behaviour. The claimant told Mr. Bachera he could forward any e-mail requests intended for him to Cath Ludwig. Mr. Bachera told the Tribunal that this email gave him a great deal of stress and he believed the claimant had done this deliberately; grievances were confidential and Mr. Newman was a very senior person in the council which was frightening. The Tribunal determined it was unnecessary for the claimant to have replied in this manner to Mr. Bachera and could have simply forwarded the email to Ms. Ludwig to deal with and inform Mr. Bachera she would be dealing with the request.
170. The claimant also forwarded this e-mail on the same date (at page 1493) to Ms Ludwig stating as you know "Rachel removed my line management and in fact threatened me with disciplinary action for emailing him directly so can someone else approve.." The Tribunal did not find the fact that Ms. Ludwig did not dispute this was an acceptance by Ms. Ludwig that line management of Mr. Bachera had been removed from the claimant prior to this date. Ms Cooper inquired on 4 February 2021 (at page 1495) with HR whether she could call Mr Bachera and give him some reassurance that nothing is going to happen to him and whether she could move line management of Mr. Bachera to Mike or Rebecca. The Tribunal found it was only at this stage that line management of Mr. Bachera was removed from the claimant.

Outcome of the Grievance

171. During meeting on 4 March 2021 (page 1536-1542) with the claimant and his trade union representative Mr Underhill, Mr Newman rejected the claimant's grievance. Mr Newman confirmed that he told the claimant on 28 January that he would not investigate the previous grievances which had already been investigated and responded to. He found that the claimant did not object to the arrangement of managing Mr. Bachera when he was informed he was to be given line management responsibility. The responsibility was aligned to the work areas and despite the claimant raising a number of concerns within the grievance submission the claimant

had not previously objected. The claimant did not object until the summer of 2020 when he was made aware of a grievance lodged by Mr. Bachera which the Head of Service and Finance Manager were dealing with informally to protect the employment relationship between the claimant and Mr Bachera. The claimant was aware of previous concerns regarding the accounting assistant but raised no previous concerns; those issues were being monitored and were at a low level. The claimant was given advice and support in carrying out his management role but he did not take up a number of suggestions including training, such as having difficult conversations, or have discussions with other line managers despite being encouraged to do so. Mr. Newman determined there had been a breakdown of the claimant's working relationship with the accountancy assistant. It was alleged that the claimant had made unprofessional comments to Mr. Bachera and while there are no witnesses to the full conversation from both parties the accountancy assistant was office based at the time of the conversation so the first part of the conversation was witnessed. This was described as direct but not rude. Mr. Newman found the claimant had contributed to tensions between himself and the accountancy assistant by persisting in setting procedures of you're the claimant's rather than the standard procedures used by other managers and providing work on a bit by bit basis rather than the whole task which caused confusion. Mr. Newman found these issues were raised with the claimant during a one to one supervision and support was being provided to attempt to protect the working relationship; this included suggestions of wording to soften your emails. There are no issues in the work that the accountancy assistant undertakes for the other qualified accountants. Mr. Newman concluded that the claimant had taken a harsh informal approach to the management of Mr Bachera and sought advice from HR where it would have been an expectation to discuss any concerns with his line manager. He further stated that management had tried to help the claimant to understand the impact of the claimant's style of management by encouraging the claimant to think how he would feel if treated in the same way; the claimant had misinterpreted that as a threat of disciplinary action. When the accountancy assistant tried to raise a grievance against the claimant, management supported the claimant in that they did not deal with this formally but attempted a reconciliation. The claimant claimed he was disciplined. Mr. Newman confirmed no disciplinary investigation had been commenced against you and no disciplinary action taken. Mr. Newman stated the temporary removal of line management was considered as a way to manage conflict between the claimant and the accountancy assistant; no decision had actually been taken at the time the claimant raised a grievance. Line management of Mr. Bachera was removed following the claimant's e-mail to Mr. Bachera on 4 February when the claimant informed him he was part of the grievance and the claimant asked that he direct his emails to the finance manager.

172. In respect of the complaint that the claimant was not given the opportunity to apply for the Senior Principal Accountant post, Mr. Newman found that this was ring fenced to principal accountants to apply therefore no senior accountants had the option to apply. In respect of vacancies in 2019 the claimant said were deliberately advertised when the claimant was on annual leave, this referred to a principal accountant post advertised in June

2019. The advert was live from 21 of June and 5 of July; the claimant's annual leave dates were from 24 of June to 9 of July. There was no evidence that the claimant requested an extension to the deadline to apply for these positions. Although the claimant asserted he does more challenging work than principal accountants, he was unable to list specific tasks to support this. Mr. Newman stated that in view of the breakdown in the working relationship between the claimant and the accountancy assistant he recommended mediation be explored; he suggested the claimant engage with the finance manager and head of financial services with a view to restoring line management responsibility as and when that's appropriate for both yourself and the accountancy assistant.

173. Mr. Newman also confirmed the claimant that his line management had not been removed until after he had raised his grievance and following in the e-mail that he sent to Mr Bachera on 4 February 2021. As a result it was felt that the employment relationship was untenable at this stage and that the arrangement needed to be ended.

174. Mr Newman told the Tribunal that he does not recall checking personally the claimant's time sheet but noted now at page 900 on 20 of June the claimant was exercising flexi leave. He disputed under cross examination that the respondent had merely brushed away genuine concerns of harassment. Mr Newman said he did not say that the claimant had artificially constructed a Tribunal claim but he did say to the claimant that he questioned whether the claimant had artificially created a link between the events of 2018 and the events during 2020. Mr Newman disputed that he had ever said to staff in less senior positions that the claimant was not good enough. He informed the Tribunal that he had not done any work directly with the claimant and therefore could not form a view. Mr. Newman did not accept under cross examination the claimant was not getting a fair opportunity or that he was under any disadvantage by reason of his protected characteristic; he did not recognise the allegation of a culture of homophobia. The Tribunal accepted Mr. Newman's evidence who they found credible and compelling.

175. On 8 March 2021 the claimant was provided with a written outcome of the formal grievance (see page 1544). Mr Newman repeated the outcome he previously provided orally. He stated that the claimant had made very serious allegations against the Head of Service and Finance Managers stating that you have been treated differently based on your sexuality or perceived sexuality but you have not provided any evidence to support this allegation having questioned the finance manager and the head of financial services. From his awareness of their general conduct Mr. Newman stated he determined this to be unfounded. The claimant was given a right to appeal to Kevin O'Keefe.

Grievance appeal 15 March 2021

176. The claimant appealed the decision by e-mail dated 15 March 2021 (page 1440) The claimant said the process was unjust and biased and there were large elements of his grievance which appeared not to be investigated in particular the clever discriminatory practises he believed the finance department has put in place to restrict key experience over a long period of time to him. He described the entire process was used as a mechanism to question his honesty, integrity and professionalism. He maintained all his

statements are 100% honest. He stated he was particularly concerned with a comment from Mr Newman that he had made an unsupported allegation of discrimination against the accountancy assistant, the finance manager and head of financial services and that the claimant had attempted to link recent events to his grievance in 2018 which was dealt with at the time “to artificially construct a case for continuous discrimination” The claimant described this comment as outrageous and hurtful. The claimant was also further concerned as line management was removed subsequent to the grievance following his e-mail to the accountancy assistant on 4 February 2021. The claimant asserted he was verbally removed as a manager in November 2020 and went on to say *“I've achieved great results for the council which seems to go unrecognised I could thrive at work if bullying and harassment stops and if treated fairly and equally which is all I have ever asked for”*.

177. Patricia Colden, an external person from West Midlands Employers heard stage 2 of the grievance on 27 April 2021 (see page 1561). The claimant was represented by Theresa Kelly, trade union representative. The claimant alleged at page 1142 that the respondent had given him Mr. Bachera to manage even though they knew it could not work because he had behavioural and competency issues. He complained he was not allowed to manage and his managerial practises for example additional checking measures which he put in place were working and reducing the number of errors. If the finance manager and head of finance had allowed him to manage as everyone else seems to be able to do so he would have improved the work standard but was blocked. The claimant alleged at page 1146 he was removed as a manager because of his tone and checking process. He said he asked for that to be put in writing but she refused. The claimant did not accept the grievance outcome letter as it stated his line management of Mr. Bachera was removed in February when he was told in November. Again, he said Mr., Newman could have clarified this during his investigation. He also complained that the most recent 2021 MAR had not been submitted centrally as of today. The outcome that the claimant wanted was that management responsibility of Mr Bachera be restored and he be allowed to manage. He required an apology and financial compensation. He wanted to be treated fairly and equally. The claimant stated that he was the only manager put in charge of someone outside their team which puts him at a disadvantage.

Grievance Appeal Investigation

178. Patricia Colden interviewed Ian Newman on 13 May 2021 at page 1579. Mr Newman stated there was no suggestion at the time of any homophobia; he said the substance of the complaint in 2018 as he recalled was that his manager crossed the line of professional behaviour; in the level of frustration and anger and the way he spoke to him but no hint of homophobic bullying. He stated that all three employees had received an informal warning and two junior staff told to desist. Mr. Grosvenor needed to exercise management control in the office and he believed that was the right conclusion. He felt able to hear this grievance because he was not involved in it and said he entered into the grievance investigation with an open mind and gave the claimant multiple opportunities in the initial meeting to explain the basis of his comments. He asked whether there was anyone else who could support his allegations. Mr. Newman said having heard all the

evidence, he could not ignore that he was fully aware that both Rachel and Cath work with another colleague, a director who is openly homosexual; that has no impact on the working relationship and that he is held in high regard for his abilities. Mr. Newman said he gave the claimant multiple opportunities for him to say what the problem actually was; he does not then give you anything. Mr. Newman said he very definitely did have concerns that the claimant had brought a serious allegation against two members of staff which he could not give foundation for and did make it clear in his outcome that he was concerned he had made those allegations without foundation. Mr. Newman said that it did appear that he was trying to construct a case of ongoing discrimination based on a protected characteristic. Mr Newman stated page 1586 if the claimant is right that there is an agenda calculated to bring him down he questioned why he has not been disciplined or taken down the capability route. He said that there have been issues to his approach to management which arguably could have led to capability action but none had been taken by the respondent.

179. Michael Jones was also interviewed on 9 June 2021 by Patricia Colden at page 1167. Mr. Jones described that the management of Mr Bachera was OK then just before we started home working there were rumblings and he was having conversations with the accountancy assistant and Mr. Bachera became quite distressed at times and upset. Managers got involved and tried to temper the approach. He was told by Mr Bachera that he was dreading reading the emails from the claimant and dreading coming into work. He was obviously stressed and he was genuinely stressed. He was forwarded emails from the claimant to Mr Bachera and they included bold red sections on a couple of occasions; "aggressive" is best probably the best description. Mr. Jones stated that they seemed to get on well in the early days and there would be a jovial and chatty atmosphere with the three of us. This changed not long after the claimant took up the management role but he was unable to pinpoint a point at which that changed.

180. Patricia Colden interviewed Louise Birch on 10 June 2021 at page 1171 she confirmed that things were said to the claimant about his sexuality. The team were probing whether he had a girlfriend been asking if he was gay those people are principal accountancy assistants and none of us are involved in senior meetings. She described the fact that the claimant was given someone to line management but that's where it went wrong. She described the person he was managing was distressed at times and he was involving Michael Jones because he was upset and trusted Michael because he had worked with him. He was upset sent an e-mail to me and Michael Jones and then he logged off and left for the day. It was just too much and he needed some air. She stated that she believed she might have spoken to Rachel Cooper because she tried to contact Gurnec and she described it as a clash of personalities and styles; it feels like it's gone a bit too far and probably could have been resolved a lot easier is a shame it's got to this point.

Outcome grievance appeal 2021

181. On 22nd June 2021 Patricia Colden met with the claimant and his trade union representative Ms Kelly and informed to the claimant that she had not upheld agreement.

182. The outcome of the stage 2 grievance appeal was provided by way of report dated 22 June 2021 page 1170/5. It was noted although the claimant believed that the grievance which involved the finance manager and the head of finance who were senior managers, his grievance should have been passed to another directorate. He confirmed that neither he nor his trade union representative, Mr Underhill raised concerns at the time. Patricia Colden concluded there was no evidence to support the allegation that the stage 1 grievance process was unfair whilst it was felt that more extensive investigation could have taken place subsequent interviews with two additional witnesses have provided information in support rather than in conflict with the findings of the stage one process. No elements of the claimant's appeal were upheld. She noted however there was evidence of a breakdown in trust between the parties due to a cumulative impact of the three formal grievances which have now been considered. She noted that the claimant was asked how the council could assist him to move forward positively and he indicated he would be prepared to participate in mediation. Although he noted attempts involving Mr. Bachera had failed. The claimant had particular concerns regarding the fact that Mr Grosvenor had been restored as his line manager irrespective of the fact the previous allegations against him were upheld. It was recommended that consideration should be given to the initiation of the mediation process in an attempt to rebuild relationships subject to the prior agreement with all parties and consideration should be given to the possibility of transferring the claimant to another team or line manager and those options should be discussed with the claimant as soon as possible.
183. By e-mail dated 5th October 2021 the claimant page 1191 informed Ms Ludwig, Ian Grosvenor and Rachel Cooper that he had already attended management courses and was prepared to attend any internal management courses but felt a classroom environment might be better.

Applications for promotion Career Progression

184. At paragraph 113 of the claimant's witness statement he alleged in July 2016, July 2017, May 2019 and November 2019 successful candidates had been doing the job and had effectively been progressed in the department. He suggested he had been excluded by Rachel Cooper. He alleged certain people were being promoted into the roles and he did not accept that it could be that people demonstrated the skills more fully than him. His case was by reason of his sexual orientation his role had been manipulated to make sure that other candidates were successful over him.
185. The Tribunal has already set out its findings about the September 2019 notification of the principal accountant role above. The advertisement in June 2019 coincided with Mr Walters being on flexi leave/on holiday. The Tribunal did not accept that the timing of the advertisement was a deliberate attempt to prevent the claimant from applying for the role. Ms. Ludwig confirmed that the job was discussed in the office informally and in a team meeting in May 2019. The Tribunal accepted this evidence and that the claimant was aware of it but did not apply. Further on his return to work from holiday he did not seek at any time an extension to apply for the job. The promotion opportunity arose as a consequence of a senior principal accountant leaving and an internal promotion for a principal accountant to the role leading to a further vacancy to replace that principal accountant. On

the balance of probabilities that claimant was aware that the principal accountant post was about to be advertised having been aware of the previous recruitment exercise to senior principal accountant and that the outcome of that had resulted in a principal accountant vacancy.

186. On 21 January 2020 (page 937) Rachel Cooper decided to treat the Senior Principal Accountant role as a ring-fenced appointment as the principal accountant post was deleted from the structure. She also informed all principal accounts that she had decided to re-designate the principal accountant for regeneration enterprise into a senior principal accountant role due to the increasing complexity and responsibility resulting from the numerous regeneration projects such as Black Country enterprise zone pooling, impact, very light rail, metro, local growth fund/LEP funding. She stated she had been advised by HR that to fill the SPA role she could ring fence the post to all internal Principal Accountants as the PA post currently in region will not be backfilled. Ms Cooper said if anyone was interested in applying for the job please complete the attached application form by January 31. If you would like to know more about the role please discuss with Cath Ludwig or myself. This did exclude the claimant but it excluded every other grade 10 senior accountant. The Tribunal rejected that the reason was specifically to exclude the claimant from applying.

Recruitment Process

187. All interviews for posts in financial services follow corporate procedures and use the standard templates and documentation. This applies to all recruitment including the principal accountant and senior principal accountant roles for which the claimant applied. There was a panel of three accountants from at least the grade above that which is being recruited so for the principal accountant post the panel will be senior principal accountants and or financial manager and for the senior principal accountants post the panel will be finance managers and or head of service. Panels include representation in terms of gender ethnicity and disability as far as possible and include wherever possible 2 panel members from the teams recruiting and one panel member from 18 not directly involved in the recruitment. One panel member senior principal accountant capital included the HR business partner and two finance managers to ensure that there was at least one member of the panel who had not been involved previously with the claimant's case in any way.
188. Interview questions are agreed in advance between the panel and there are normally about 9 to 11 questions covering all the areas on the person specification. In some of the interviews one question has taken the form of a presentation where the candidates are given in advance the subject of a presentation of up to 10 minutes. Applicants are able to use the PowerPoint or other visual aids as preferred and present to the panel at the start of the interview. All questions are scored by each member of the panel using the corporate standard scoring from nought to five as follows. 0 indicate no evidence was obtained during the interview for this area; 1 Poor marked significant weaknesses across most of the competency; 2 marginal; marked significant weaknesses across some areas and some weaknesses in specific areas; 3 moderate; acceptable across the competency as a whole; there may be some marked strengths and some weaknesses on other areas of the competency; 4 good marked strength on some aspects of the competency and 5 excellent marked strength on most aspects of the

competency. Panel members take notes during the interview and score individually. The claimant has been provided with the manuscript notes along with feedback when requested at panel discussion there moderate scores and agrees of final score for each question and is recorded on the individual panel members contemporary notes and on the interview scoring sheet. The interview scoring sheet is uploaded to the recruitment system called talent link following the interviews and decision on appointment. The respondent's process is that questions are generally weighted equally and the candidates scoring the highest score is successful. There is no pre-designated cut off point where an appointment will not be made if no candidate reaches the score but on some occasions the panel have not appointed because they have not felt comfortable in a candidate competency. In general, the panel looked for an average of at least moderate answers in most cases. Candidates are not automatically ruled out should they have difficulty answering say one or two questions other than through the impact on their total score. Ms. Ludwig's evidence was that the claimant who commented he was disadvantage during the interview process because there's generally a question of management and until recently he did not have that line management experience. Management experience does not mean it must be direct line management and it's perfectly possible to achieve at least a moderate score of three by describing supervision training and collaborative activities or the candidates experience of being managed as well as managing or supervising. It accounts for on average 10% of the total score. Examples of management questions can be "provide a challenging situation you have dealt with which resulted in a positive outcome".

Other recruitment opportunities

189. In November 2020 there was an advertisement for a senior principal accountant post which was ring fenced to existing principal accountants as it involved the creation of one senior principal accountant and the deletion of one post. This was agreed with HR and hence applications were limited to current principal accountants. The claimant alleged that the Head of Finance assessed his skills and experience pre-interview and he was not notified and given the opportunity to apply. This is not correct the Tribunal accepted the respondent's evidence that the post was a ring fenced position for the reasons above.
190. In January/February 2021 there was a vacancy for a senior principal accountant. Ms Cooper communicated her decision to ring fence the vacancy to existing principal accountants grade 11 in an e-mail on 21 January 2020 following advice from HR. The claimant was employed at grade 10 level and did not have the skills or experience to apply for the role nor did the other senior accountants within the council who were similarly excluded from the particular recruitment process.
191. The claimant applied for senior principal accountant role in March 2022 and for principal accountant positions in June 2022 and February 2023. The claimant was unsuccessful and requested feedback and the scoring sheets were provided.
192. In August 2021, J, the technical accountant covering revenue pensions and capital (a unique role at G13 grade) requested to go part time three days per week. This request was accepted and a new role senior principal accountant grade G12 covering treasury and capital was created for 30 to

37 hours per week. Funds from other vacancies were used to fund the additional post.. The role was advertised externally. The interview panel consisted of Mr Uppal, Stacey Carter, finance manager; and Mr. Marsh, HR business partner. Jennifer MacGregor a principal accountant within the central finance team was successful in obtaining the job doing 30 hours per week. Feedback was prepared and agreed by the interview panel and sent to the claimant with reference to soft skills.

193. Jennifer Macgregor's promotion meant that there was a principal accountancy vacancy within central finance whose main responsibility was final accounts preparation. The post was advertised externally but the claimant did not apply. No one was interviewed for the permanent role because the applicants were not qualified the respondent engaged with agencies but did not find any suitable candidates.
194. On 3rd October 2021 at page 1674 E Ms. Ludwig urged the claimant to apply for a vacant post and Mr Grosvenor spoke to the claimant about it. The claimant had not applied because he stated (page 1674C) on 4 October that he was not in the right place at that time. However at page 1674C on 4 October Ms. Ludwig encouraged the claimant. The claimant then contended in his evidence it was highly unusual for the job to be opened up and it was simply a setup. When asked whether his line manager was just supporting him to apply the claimant responded that Ms Cooper had already assessed he did not have the skills. The Tribunal did not accept that this was the case.
195. In respect of the role of capital and treasury accountant this was a leap of some two grades from grade 10 to grade 12. The claimant contended he had done similar work in corporate finance and from 2014 he had done the role. At page 1238 feedback was given for the interview in November 2021 it is stated that the regulatory framework for capital and treasury was the weakest answer in the interview. The claimant had only mentioned CIPFA code of practise. A good working knowledge of the regulations and overarching principles was a key requirement for the role so advice and guidance can be provided to colleagues including senior management such as the director of finance and legal on major projects. The claimant was noted to have provided a relatively weak answer to question five about influencing and persuading other officers to comply with proper process. It was suggested he provided a limited example where a budget holder had quoted an incorrect section 106 contribution on decision sheet. The claimant made a few general points about rules and regulations but did not provide major examples of influencing budget holders or colleagues to take correct course of action. Being able to enforce proper process and to resist pressure is another key aspect of the role. In respect of question 8 about collaboration and teamwork the claimant had talked a lot about fostering innovation but not how it had been successfully implemented. He also mentioned journal post back process but not being able yet to successfully get it rolled out. The question was about successful team working. The claimant did not quite answer the question; he did not say a lot about soft skills needed for successful team working. The claimant suggested he didn't think a lack of soft skills was a legitimate reason not to get the promotion. The respondents said soft skills is only one area in which the claimant failed to provide information and that he had clearly prepared a lot of examples of career achievements which he wanted to turn or tell the panel about but the achievements were not always entirely relevant to the specific questions in

the interview so there was a limitation as to the credit that could be awarded to those answers.

196. The claimant described Mr Uppal as the lead interview with Mr Marsh HR representative and Stacey Carter. The claimant believed that the panel had actually been changed for him. The Tribunal did not accept this evidence or the implicit suggestion that this was deliberate to down mark the claimant; this panel also interviewed other candidates. Mr Uppal had informed the claimant that he did a decent interview but didn't display the soft skills and that was the main reason for not getting the job. The claimant said however this was not correct from his feedback it was question 3 which was the weakest answer. The claimant then told the Tribunal it was really the way that Mr Uppal said it; he then added that the claimant had said "I couldn't work with colleagues because of my complaints". This was an embellishment to the claimant's evidence. The feedback document is clear and supported by the individual scores and comments; the claimant was not successful because he did not score as highly as others.
197. Mr. Uppal was successful in obtaining a job in another local authority and left the respondent on 31 January 2022. Stacy Carter moved sideways to take on the central finance role. J who was doing three days a week retired after ill health and employment ceased on 31 January 2022. The respondent had difficulty appointing externally to the Principal Accountant role for the final accounts therefore a more junior member of staff expressed an interest in moving across to central finance. This individual had been working as a senior accountant grade but could not pass their examinations so had to be downgraded to a principal accountancy assistant. The respondent determined the changing of roles was an opportunity to start afresh at the lower grade. The respondent revisited workloads and tasks and in the end concluded this was the best solution for the needs of the team and the individual. To replace Ms Cooper as finance manager although the role had been taken by Stacy Carter an internal advert was placed in three candidates were interviewed in December 2021. The interview panel consists of Mohammed Farooq, lead for legal services and monitoring officer, Robert Marsh and Rachel Cooper. The successful candidate was Ian Grosvenor. Catherine Ludwig finance manager also had housing responsibilities which meant that she was not full time in finance. The housing team was restructured and there was not a full time role that Ms. Ludwig could have considered. Ms. Ludwig requested a move to the team supporting Adult Children's Health and well-being which had previously been the responsibility of Stacey Carter. Ms. Ludwig moved from housing so the respondent determined to go from two principal accountants supporting housing to one senior principal accountant and one principal accountant. The senior principal accountant role would be the point of contact for the housing director previously Miss Ludwig and this would replicate the structure in the wider team.
198. In March 2022 Sarah MacDonald senior principal accountant left the organisation this left three vacant senior principal accountant posts arising from Sarah MacDonald (adults), Ian Grosvenor (public realm) and a new post (housing). These posts were advertised externally but no external candidates were interviewed. The interview panel consisted of three finance managers Ms. Ludwig; Stacey Carter and Ian Grosvenor. The successful

candidates were Thomas Huntbatch (adults) Michael Jones (housing) and Rebecca Millard public (realm/environment). The unsuccessful candidates were the claimant and Manjit Gill. Michael Jones Rebecca Millard had been the two principal accountants within housing; Thomas Huntbatch was a principal accountant within children's. The claimant was provided with feedback.

199. The claimant's interview for the position of senior principal accountant on 9 March 2022 grade 12 (page 1699); he was interviewed by Ms. Ludwig; Stacey Carter and Ian Grosvenor. Interview slots in March 2022 were changed to accommodate the claimant. Both the claimant and Manjit who was at the same grade as the claimant were unsuccessful in the applications. 3 applicants at grade 11 applied. The claimant suggested that his answers didn't match the scoring document and that he provided a good presentation. The Tribunal noted that the respondent identified some good points from the claimant's interview. The claimant suggested that the respondent had artificially increased those scores because the panel were aware of his Tribunal claim and his discrimination claim. He alleged staff management scores were artificially inflated. He also alleged that Mr Grosvenor asked him additional questions and he didn't need prompts (page 1701 and 1702 was the scoring and the questions provided to the claimant). The Tribunal having heard the evidence of Mr. Grosvenor and Ms. Ludwig reject these allegations. There was no agenda to artificially inflate scores or deflate scores because of the Tribunal claim or because of the claimant's sexual orientation; the claimant was scored objectively by all three interviewers.
200. In respect of the feedback for the interview on 9 March 2022 it was stated the presentation showed a good generic awareness of economic political national issues week in the application specifically to the council and the Senior Principal role. During the presentation eye contact was limited and the claimant read verbatim from slides. He also did not consider the audience not being able to see the presentation fully. the claimant had provided a good answer for staff management giving appropriate responses described in a negative situation self reflection at the end of what could be done differently in terms of difficult conversations. The claimant failed to pick up on professional ethics and verbal reasoning skills to persuade and the need for informing the finance manager his scoring for this position. At page 1700A the appointable candidate range was points between 32 to 37 with a maximum score of 50. The claimant scored 22 points which was not sufficient to secure a role.
201. On 15 March 2022 the claimant was unsuccessful in obtaining the senior principal accountant position. The feedback is set out to page 1687 to 1688 it states that the weakest answering the interview was about regulatory framework for capital and treasury the claimant only mentioned CIPFA code of practise a good working knowledge of regulations and overarching principles is a key requirement for this role so advice and guidance can be provided to colleagues including senior management such as the director of finance and legal or major projects in terms of questions about collaboration and teamwork the question was about successful team working in the responses were more about implementing change not quite answering the question the claimant did not say a lot about soft skills needed for successful team working the weakest immoderate answer concerning question four

about capital financing some sources were mentioned such as loans and grants but did not fully explain them and give sufficient examples focused a bit too much on the HR a self financing settlement in 2012 which was not directly answering the question. General comments at page 1688 stated you focused a lot on what you had achieved on your own but you did not provide sufficient examples of non-technical ie soft skills required to work successfully with colleagues and influence them to meet objectives.

202. In May 2022 two principal accountant roles were externally advertised (housing and children). The selection panel on 10 June 2022 was Jane Davidson, SPA children's; Ms. Ludwig, finance manager with responsibility for children and Ian Grosvenor finance management with responsibility for housing. The claimant and two external candidates were shortlisted. Later one external candidate dropped out. The external candidate Sheila Foley was successful. The claimant's scores were 10 points lower than the successful candidate.
203. The claimant alleged that Mr Grosvenor and Ms. Ludwig had an influence over Jane Davidson who he did not believe was a real discriminator but was influenced by them and he based this on the analysis of the scoring sheets. He said that some of his answers matched the model answers. The respondent informed the tribunal that there was no such thing as a model answer or anything like it produced by the respondent. He felt that Miss Ludwig and Mr Grosvenor scored him extremely harshly so that he didn't get the job. The Tribunal rejected this evidence having heard the evidence of Ms. Ludwig and Mr. Grosvenor; the claimant did not perform well in the interview and accepted in cross examination that he was nervous.
204. The claimants interview marking sheets for 10 June 2022 can be found at page 1724. The claimant was asked at page 1728 about his line management and he received good marks. The claimant said he was prompted. The claimant said he had answered well on questions and should have received higher marks. At page 1730 the claimant was noted as providing a moderate answer to question 3; the claimant suggested he had given a model answer but still got a low score. At 1732 he was scored five for equality. There were two job roles and two applicants; one person got the role but the respondent decided the claimant was not appointable. The claimant noted at page 1748 Jane Davidson scores are apparent; she only marked 2 for the presentation but the claimant felt she was influenced by the others. Although the claimant accepted he was under stress he felt that Mr. Grosvenor and Ms. Ludwig were influenced by his sexual orientation and influenced Jane Davidson. The Tribunal rejected this evidence. The claimant had a highly inflated opinion of his abilities which was not shared by the respondent witnesses. He was scored objectively in accordance with his answers.
205. In July 2022 Kirsty Lister accountant submitted her resignation. Miss Cooper determined not to look for a permanent role and explored covering with temporary agency staff whilst recruitment to other posts was completed. The decision was made by Miss Cooper who took into account the time of recruitment namely over the summer; the internal staff progression through accountancy training and the external job market. The Tribunal accepted that this rationale was genuine.

206. On 18 May 2022 (page 1718e) the claimant raised another grievance. He alleged that he was 100% certain that Rachel Cooper was implementing discrimination practises against him because of his sexual orientation and that he was being victimised. He alleged that Miss. Cooper felt the homophobic comments were just banter and inappropriate jokes in the office. He stated he was being treated less favourably because he was being deliberately restricted from obtaining experience whilst others were being opportunities to have necessary experience. The Tribunal noted that Ms. Cooper had very little to do with the interview process and the claimant was unable to explain why he believed there was a policy implemented by Ms. Cooper to thwart his progression in the organisation.

Interview 2023

207. The claimant was interviewed in 2023 for a grade 11 post and he received feedback on 15 February 2023 (page 2475). The claimant was interviewed by Catherine Ludwig, Laura Jones and Ian Grosvenor. The claimant received a total of 13 points. There were approximately 15 people who were interviewed and the claimant's scoring was towards the bottom of the group of candidates. The Tribunal rejected the claimant's evidence he was unfairly scored.

208. The written feedback page 1789 to 1790 described the presentation as a marginal answer the presentation gave a great deal of detail but this was largely transactional the basic concepts of standing costing were outlined but little understanding was demonstration of how this can be used to improve service efficiency for example analysis of variances the presentation style was poor reading slides and talking to the laptop making limited eye contact. He provided A marginal answer concerning brief overview of the current role and explain what you will bring from it to the PA role and a module answer in respect of what he knew about the council's overall budget position with key challenges facing local government he provided a poor answer in terms of his experience of sharing financial information with senior officer members in differing forums he provided a good answer in terms of line management a marginal answer in terms of what makes a good team a moderate answer about the mechanisms in place when dealing with pressurised situations a Marshall answer concerning proficiency in ICD an excellent answer in terms of promotion of equality diversity and inclusion module answers in concerns of systems of working practises constantly changing what elements of the job or do you think would be most challenging the written notes of the panel I set out at pages 1790a.

Grievance 18 May 2022 Grievance 18 May 2022 and 4 July 2022

209. The claimant raised a fourth grievance on 18 May 2022 and lodged a fifth grievance on 4 July 2022 The claimant at page 1718 E raised a grievance against Rachel Cooper head of finance for direct discrimination stating that 100% certain she is implementing discrimination practises against me because of my sexual orientation victimisation I'm 100% certain she further applying victimisation practises I'm suffering detriments because I complained about discrimination harassment regarding my sexuality in a previous grievance Rachel felt homophobic comments were just banter an inappropriate jokes in the office he said he was treated less favourably than

other employees in the department deliberately restricting his experience was making us sure others have the necessary experience to advance he believed there was a non compliance with the Dudley council's own equality policy and the equality and diversity act of 2010 he believed that Rachel was deliberately restricting management experience manipulating management experiences suspending management experience because of his sexual orientation. His grievances were about non appointments to posts.

210. The grievances were investigated by Lucia Falchi. The claimant did not raise the scoring of the interview panel as part of his grievance investigated by Luisa Fulci.
211. Luisa Fulci, Director of Digital Customer and Commercial Services heard the claimant's grievance on 15 July 2022 (page 1811 to 1822). In this interview the claimant said he believed that Rachel Cooper manipulated the questions to give people an advantage he had no evidence but said Mr Grosvenor and Ms. Ludwig may have sent the questions to Rachel; he said he was not sure what her role was in writing the questions and what her role was. The claimant made these very serious allegations without any evidence at all but mere speculation. The claimant disagreed with his score of two out of five for a presentation because he was reading in finance most people do read from the screen and it was discriminating to score me down for this.
212. She conducted further interviews for these two grievances on 18 August 2022 (see pages 1842-1859). The claimant heavily amended the interview notes in red and refused to accept that the grievances were to be limited to incidents in the last three months.

Outcome of grievance

213. The outcome of the investigation is set out at page 1870-1875. It was stated that the claimant 's peers have line management responsibility; there has not been other opportunities for line management that the claimant could have been considered for. It was found that there is no evidence of not having any individuals to manage has been a detriment in interviews. It was noted that the claimant had scored highly where he had demonstrated he had reflected. The example on relational structures referred to work the claimant did in corporate finance which went back many years; maybe a decade ago; that the panel prompted the claimant for a more recent example which the claimant did not provide. It was found that the notes made by the panel and the scoring and the notes are written differently yet consistent. It was concluded there was no evidence of any decision that discriminates against the claimant and no evidence of Rachel being involved in any decision that could have impacted the claimant's opportunity to progress since the last similar grievance concluded. It was determined that Rachel Cooper had very little to do with the interview process when the claimant was unsuccessful as stated in the conclusion at page 1874. In the course of the interview notes the claimant mentioned for the first time he was being assessed for autism.
214. It was also found that at the interviews with the panel members the questions were set in a compliant way and were not designed to favour any candidate. There was no evidence questions were selected for specific candidates. During the June interview the only other candidate was external so that in the case of external candidates specifically the panel cannot

- determine how external candidates will respond and what questions favour them. She was assured that Rachel was not involved unduly in the process.
215. In respect of the March interview the other candidates were working at a higher grade than the claimant (grade 11 versus grade 10) and that the role you were applying for was a grade 12. It was found that the other candidates were more likely to have the experience required to be promoted. Although the claimant had stated that he had been qualified for longer than others with more knowledge and more experience than the other candidates no conclusion could be reached this was the case; being qualified for longer doesn't necessarily translate into promotion. There was some evidence from the interviews that the claimant was not necessarily aware of all the work others in the team do whilst the claimant listed activities he did above what he thought others did this did not necessarily translate into greater knowledge and experience.
216. Further the June interview also would have involved a promotion for the claimant from grade 10 to grade 11; the only candidates were the claimant and an external candidate. A third candidate dropped out; both external candidates had experience of working at a higher grade than the claimant. The claimant stated that the candidates which are already pre selected for the promotion would obtain the promotion. It was found that this could not have been the case in the circumstances that an external person was given the role. The panel members followed a consistent approach of having three members one of whom is always from another team to provide transparency. Some panel members were not aware of the claimant's protected characteristic. The completed scoring matrix showed the scores of all candidates; the differences between the scores the claimant received and those of the other candidates received were not negligible. The difference between the claimant's score and that of the successful candidates was much bigger than one or two. It was concluded that the claimant had made allegations against Rachel Cooper however was unable to provide concrete evidence relating to the reference period to support these allegations. The witnesses established that Rachel was not involved in the interview process and has had very little, if no direct communication with yourself for many months. The claimant alleged he was not successful in obtaining the post due to his protected characteristic yet he also claimed he was not successful as the roles were being given to friends of management. Mediation was recommended. The assessment for autism, although the claimant did not say it impacted on his job role did imply that it may have affected his presentation skills; she also offered staff counselling.
- Appeal of grievance outcome
217. By e-mail dated 6 October 2022 (page 1952d) the claimant sought to appeal the grievance outcome stating that any appeal should be made to a higher grade position. He suggested he was being subjected to direct discrimination because of his sexual orientation and victimised. He stated that new evidence had come to light that the two jobs were advertised in the finance department and there were two candidates; the claimant and an external candidate and the respondent appointed the external candidate and did not appoint the second post.
218. The grievance appeal took place on 9 December 2022 page 1962A. It was heard by Chris Berry of the West Midlands employers. The claimant was represented by Rob Underhill. The claimant felt that in responding to his

grievance evidence including the interview feedback had been ignored which was dishonest and harsh.

219. On 20 February 2023 (page 1972K) the claimant was given the outcome of the grievance appeal. Mr. Berry did not uphold the claimant's grievances and considered each of the claimant's complaints in turn concluding that the claimant's marks at interview were markedly lower than successful candidates.

Applications 2023

220. The claimant was unsuccessful in his applications in January 2023. The feedback from his interview at page 1969 described the claimant's experience gained as a qualified accountant was a marginal answer; he had been prompted to identify key risks for budget monitoring and forecasting he provided a poor example in terms of his experience of dealing with difficult clients or budget holders with limited discussions on how he would develop relationships. He provided a poor answer about line management focused on perception of the previous management experience and issues with senior managers rather than describing the approach. It was stated that he referred to the Tribunal claim and an alleged deliberate denial of management experience; it was concluded he provided a marginal answer on how to deal with pressurised situations and conflicting priorities. He provided a moderate answer about reporting complex financial information and model answers in respect of making improvements to the service and giving examples of how to deal with change.

221. The claimant cross examined Ms Ludwig about the reference to the ongoing claim. On reflection Ms Ludwig said this is something that she added to her notes as a note. The notes for these interviews at 1972a 1972j. The notes prepared by Jane Davidson indicated that the claimant set out he was deliberately denied an opportunity for management and no line management experience. The interview notes of Ms Ludwig noted that Mr Grosvenor had asked a number of prompt questions. The claimant felt this disadvantaged him but Mr. Grosvenor considered this was necessary to obtain answers. On the balance of probabilities the Tribunal accepted Mr. Grosvenor's account; under cross examination the claimant accepted that he was nervous going into interviews by reason of the fact that he had not accomplished promotion despite applying through a number of posts.

222. The claimant was not appointed to the post of Principal Accountant. The respondents say because the unanimous opinion of the panel is that he did not perform at interview to a standard which justified the appointment to the post he was scored 27 out of a maximum 55 points equivalent to 49% which equates to average answers; being marginal or moderate; the score indicated the claimant would not be able to undertake the job successfully although some of the answers or two of the answers were good or excellent for the other nine questions he achieved one score of three moderate 7 scores of two marginal and one score poor. The views of the interview panel were that the claimant tended to focus on transactional which was the expectation for a principal accountancy assistant or new senior accountant position but not for a principal accountant role. It demonstrated the claimant's limited awareness of the impact of the work undertaken; how accountancy works such as management or costing reports can be used to support service improvement and increase efficiency how the finance team

can present reports and engage with senior officers in the directorates and how tasks are handled within the team. Accordingly on 15 February 2023 the claimant was unsuccessful in obtaining the senior principal accountant position.

Knowledge of time limits

223. The claimant was accompanied to the grievance meeting on 26 September 2018; 6 December 2018 grievance appeals; 28 January 2021 and 23 April 2021 by Mr. Underhill/Theresa, Unison trade union representatives. On 8 April 2010 page 632 the claimant (in the context of the complaint about Mr. Uppal) stated he had taken legal advice. At the date of the appeal of his grievance 1 November 2018 at page 786 the claimant stated that he was still in time to make a complaint to the Employment Tribunal. The claimant in submissions informed the Tribunal that he was aware of a right to bring a claim to the Tribunal in 2018 but was unaware of a harassment complaint. This information had not been tested in cross examination and the claimant had not asserted in his evidence any impediment which prevented him from bringing his claim to the Tribunal. The Tribunal did not accept the claimant's evidence. At each stage the claimant consulted with his trade union and had referred to taking legal advice as above and on 24 September 2020. The Tribunal found that the claimant had every opportunity to check with his union and legal advisers about potential claims and he did so.

Submissions

224. Both both parties provided the Tribunal with very detailed written submissions and supplemented these with oral submissions.
225. The respondent submitted the claimant had displayed a pattern of behaviour; where the claimant considered he was being challenged on the basis of his performance or otherwise, he responded by raising grievances. The respondent submitted any alleged failure made against the claimant was excused by him and aggressively defended with a perpetual reliance upon the protected characteristic of sexual orientation. The respondents submitted that the claimant was unable to establish a prima facie case. Further it was submitted that the claimant was incredible, unreliable, unreasonable and vexatious.
226. The respondents submitted there was no continuing act of discrimination. The respondent relied upon the following cases s admitted following the case of **Polystar Plastics Limited v Liepa (2023) EAT 100; Kumari v Greater Manchester Mental Health NHS Foundation Trust (2022) EAT 132; Hendricks v Metropolitan Police Commissioner (2002) EWCA Civ 1686; Pugh v National Assembly for Wales UKEAT/0251/06; Sougrin v Haringay Health Authority (1992) IRLR 416; Pennine Acute Hospitals NHS Trust v Power UKEAT/0019/11; Hale v Brighton & Sussex University Hospitals NHS Trust UKEAT/0342/17; South Western Ambulance Service NHS Foundation Trust v King (2020) IRLR 168.**
227. The respondent submitted that there was no evidence of harassment related to the protected characteristic of sexual orientation and referred the Tribunal to the cases of **Brooks v Findlay Industries UK Limited ET/1304323/04**. Further the respondent submitted that the claimant had

failed to establish a prima facie case of direct discrimination and relied upon **Nagarjan v London Regional Transport & ors (1999) IRLR 572; Gould v St. Johns Downshire Hill (2021) ICR 1; R v Governing Body of JFS and the Admissions Appeal Panel of JFS (2010) IRLR 136; Amnesty International v Ahmed (2009) ICR 1450; Secretary of State for Justice v Dun EAT0234/16**. The respondent submitted that the claimant had acted in bad faith and referred to **Saad v Southampton University Hospitals NHS Trust UKEAT/0276/17; HM Prison Service v Ibimidun UKEAT/0408/07; Shamoon v Chief Constable of the Royal Constabulary (2003) ICR 337; Warburton v Chief Constable of Northamptonshire Police EA-2020-00376**. The respondent submitted that there was no causative link between the alleged treatment and the protected act relying upon **Peninsula Business Service Limited v Baker UKEAT/0241/16; Martin v Devonshires Solicitors UKEAT/0086/10; Pasab Limited v Woods UKEAT/0454/11; Micheldever Tyre Service Limited v Burrell UKEAT/0427/12; Essex County Council v Jarrett UKEAT/0045/15**. The respondent referenced section 136 of the Equality Act 2010 and the following cases; **Smith v Intelling Limited UKEAT/0307/19; Barton v Investec Henderson Crosthwaite Securities (2003) IRLR 332; Igen v Wong (2005) IRLR 258; Hewage v Grampian Health Board (2012) IRLR 870; Royal Mail Group Limited v Efobi (2021) UKSC 33; Ayodele v Citylink Limited (2017) EWCA Civ 1913; Khan v Home Office (2008) EWCA Civ 578; Field v Steve Pye & Co EA-2021-000357; Anya v University of Oxford (2001) IRLR 377; Chapman v Simon (1994) IRLR 124; Wheeler v Durham County Council (2001) EWCA Civ 844; Qureshi v Victoria University of Manchester (2001) ICR 863; Commissioner of Police of the Metropolis v Denby UKEAT/0314/16**.

228. The respondent submitted that many of the claimant's complaints were out of time; the claimant did not raise the issue of harassment prior to August of 2018. He had been represented by his trade union at this time; had the ability to obtain specialist legal assistance; was aware of the tribunal process and determined not to pursue the claim before the tribunal. In 2021 the claimant changed his mind. The respondent accepted that the Tribunal's discretion when extending time is wide and relied upon the cases of **Kumari v Greater Manchester Mental Health NHS Foundation Trust (2022) EAT 132**. However, submitted that it was not just and equitable to extend time and permit the claimant who was raising the issue in 2018 to run claims of harassment from 2015. During his evidence the claimant went back as far as 2007. The respondents submitted that memory does not improve over time; there will be significant pressure to the respondent if time is extended; the quality of the evidence is apparently not only in relation to the claimant's ability to provide clear and precise evidence but in relation to those who face the accusation in 2018.

229. The claimant submitted He had been subjected to continuous acts of discrimination by reason of his perceived or actual sexual orientation. The claimants submitted that from 2009 that Mr. Uppal had referenced the claimant's sexual orientation and that individuals at the Council did not respect him. The claimant stated he was unaware of his rights and protections under the Equality Act until after 18 November 2020. He submitted that Rachel Cooper had referenced 2018 homophobic comments as banter and that he should get over it. The claimant submitted the only

reason that she would make these comments was because of his sexual orientation there were no performance issues or personality clashes. The claimant refuted he had acted in bad faith. He generally believes his complaints are true and his beliefs are sincere. He submitted the respondent had failed to provide any evidence of his alleged poor performance. The claimant disputed that he had pursued the tribunal claim or an assumption or a hunch; he genuinely believes he was less favourably treated because of his sexual orientation. He submitted he had provided substantial evidence of discriminatory behaviour which has shifted the burden of proof to the respondent. He's admitted that there are only minor criticisms of work outputs. His presentation during the 2022 June interview were excellent and received a low score. He believes that he was genuinely down scored because of his sexual orientation and that he had complained about poor treatment. The claimant submitted derogatory comments about his sexual orientation show differential treatment compared to heterosexual colleagues and a hostile work environment. He referred the tribunal to the following cases **Cox v NHS England improvement; B&P Paribas; Giwa -Amu v Department of work and pensions; Plaistow v HMP Woodill; Sommer v Swiss RE corporate solution services; Williams v Ministry of Defence; Macken v BNP Paribas and Barrow v Kellog Brown and Root (UK) Limited.**

230. The claimants submitted that the respondent had made false claims about his management performance. He submitted the respondents witnesses were inconsistent and not credible

Law

231. The complaints of direct sexual orientation discrimination, harassment and victimisation were brought under the Equality Act 2010. Section 39 (2)(d)prohibits discrimination against an employee by subjecting him to a detriment. Section 39 (3)prohibits victimisation. Section 40 (1)(a) prohibits harassment of an employee. Conduct which constitutes harassment cannot also constitute a detriment (see section 212 (1) of the Act) meaning that it can only be pursued as a harassment complaint.
232. Tribunals should have regard to any relevant provisions of the Code of Practice on Employment issued by the Equality and Human Rights Commission which came into force on 6 April 2011 ("the code").

Harassment

233. A person A harasses another B, if (a) engages in unwanted conduct related to a relevant protected characteristic and (b) the conduct has the purpose or effect of (i)violating their dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
234. It is not sufficient that the unwanted conduct occurs; it must be shown to be related to the relevant protected characteristic.
235. Harassment does not have to be deliberate to be unlawful. If the unwanted conduct related to the relevant protected characteristic was deliberate and is shown to have had the purpose of violating B's dignity or of creating an intimidating hostile degrading humiliating or offensive environment for B; the definition of harassment is made out. The Tribunal must consider the factors set out in section 26 (4) of the Act namely (a) the

perception of B and (b)the other circumstances of the case (c)whether it is reasonable for the conduct to have that effect.

236. Not every adverse comment or conduct may constitute a violation of a person's dignity. In **Richmond Pharmacology v Dhaliwal** Tribunals were advised not to encourage a culture of hypersensitivity by imposing liability on every unfortunate phrase so not to cheapen the significance of the meaning of the words used in the statute i.e. "intimidating hostile degrading" which were an important control to prevent trivial acts causing minor upset being caught in a concept of harassment. Even if there is a conduct which is sufficient to attract the necessary epithets, the conduct must still be related to the protected characteristic.
237. The tribunal had regard to the principles summarised in paragraphs 85 to 89 of **Pemberton v Inwood 2018 ICR 1291** and to chapter 7 of the code which deals with harassment.

Direct discrimination

238. Section 13 of the Equality Act 2010 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.
239. Under section 23 (1) of the Act where a comparison is made there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.
240. In order to find discrimination has occurred, there must be some evidential basis on which the Tribunal can infer that the claimant's protected characteristic is the cause of the less favourable treatment. The Tribunal can take into account a number of factors including an examination of circumstantial evidence.
241. The Tribunal must consider whether the fact that the claimant had the relevant protected characteristic had a significant or more than trivial influence on the mind of the decision maker. The influence can be conscious or unconscious. It does not need to be the main or sole reason but must have a significant; that is not a trivial influence.
242. The effect of section 23 is to ensure that any comparison made must be between situations which are genuinely comparable. The case law makes it clear that it is not necessary for a claimant to have an actual comparator to succeed. The comparison can be with a hypothetical person of a different sexual orientation. The Employment Appeal Tribunal and higher courts have emphasised including in the case of **Amnesty International v Ahmed 2009 IRLR 884** in most cases where the conduct in question is not overtly related to (the protected characteristic-sexual orientation here) the real question is the reason why the decision-maker acted as he or she did. Answering that question involves consideration of the mental process, whether conscious or subconscious of the alleged discriminator, to identify whether the protected characteristic had any material influence and it may be possible for the Tribunal to make a finding as to the reason why a person acted as he or she did without the need to concern itself with constructing a hypothetical comparator.

Burden of Proof

243. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two stage process is followed. Initially it is for the claimant to prove on the balance of probabilities primary facts from which

the Tribunal could conclude in the absence of an adequate explanation from the respondent that the respondent committed an act of unlawful discrimination.

244. At the second stage discrimination is presumed to have occurred unless the respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof the respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the claimant's sexual orientation. The respondent does not have to show that its conduct was reasonable or sensible for this purpose merely that its explanation for acting the way that it did was non-discriminatory.
245. In the case of **Hewage v Grampian Health Board (2012) IRLR 870**. The Supreme Court approved guidance on the burden of proof were set out by the Court of Appeal in **Igen Limited v Wong 205 EWCA Civ142** and the **Madarassy v Nomura International PLC (2007) ICR 867**. Although the concept of the shifting burden of proof involves a two stage process, that analysis should only be conducted once the tribunal has heard all the evidence including any explanation offered by the employer for the treatment in question. However if in practise the tribunal is able to make a firm finding as the reason why a decision or action was taken the burden of proof provision is unlikely to be material.

Victimisation

246. Section 27 of the Equality Act provides that “a person A victimises another person B if A subjects B to a detriment because B does a protected Act or A believes that B has done or protected act”.
247. Pursuant to subsection 2, each of the following is a protected act
- (a) bringing proceedings under this act
 - (b) giving evidence or information in connection with proceedings under this act
 - (c) doing any other thing for the purposes of or in connection with this act making an allegation whether or not express the a or another person has contravened this act
 - (d) giving information or making a false allegation is not a protected act if the evidence or information is given or the allegation is made in bad faith.
248. This provision does not require any form of comparison. If it is shown that a protected act has taken place and the claimant has been subjected to a detriment, it is essentially a question of “the reason why” for which the test is as for direct discrimination. Something amounts to detriment if the treatment is of such a kind that a reasonable worker would or might take the view that in all circumstances it was to his detriment see paragraph 31 to 37 of **Shamoon v Chief Constable of the RUC (2013) ICR 337**.

Time Limits

249. The relevant time limit set out at section 123 of the Equality Act 2010. Proceedings on a complaint within section 120 may not be brought after the end of (a) the period of three months starting with the date of the act to which the complaint relates or (b) such other period as the employment tribunal thinks is just and equitable.
250. Under subsection 3, (a) conduct extending over a period is to be treated as done at the end of the period and (b) failure to do something is to be treated as occurring when the person in question decided on it.

251. The normal three months' time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.
252. In **Hendricks v Metropolitan Police Commissioner 2002 EWCA Civ 1686** the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or continuing state of affairs which the claimant was treated less favourably. An example is found in the case of **Hale v Brighton and Sussex University hospitals NHS Trust UK E80/0342/17** where it was determined that the respondent's decision to instigate disciplinary proceedings against the claimant created a state of affairs that continued until the conclusion of the disciplinary process.
253. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the tribunal thinks is just and equitable pursuant to section 123(1)(b).
254. The Tribunal has a wide discretion to extend time on a just and equitable basis. The Court of Appeal confirmed in the case of **Adedeji v the University Hospitals Birmingham NHS Foundation Trust 2021 EWCA Civ 23** the best approach is for the Tribunal to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. This will include the length of and reasons for the delay but might depending on the circumstances include some or all of the suggested list from the case of **British Coal Corporation v Keeble 1997 IRLR 36**.
255. It is for the claimant to show that it would be just and equitable to extend time. The exercise of discretion should be the exception not the rule **Bexley Community Centre (trading as Leisure Link) v Robertson 2003 EWCA Civ 576**.

Credibility

256. The claimant had a grandiose opinion of his own ability and considered that his work was far better than his superiors in the organisation. This was in the context of the claimant having taken six times to pass his accountancy examinations. The claimant tended to be quite arrogant about his abilities and was unwilling to accept guidance provided by his line manager, Ms Ludwig to undertake management course training, or discuss management experiences with other colleagues who had line management responsibility of employees. Further he rejected the respondent's standard procedures and documents and determined to use his own version believing they were better. The claimant tended to raise grievances when the respondent felt it necessary to manage the claimant's performance. The Tribunal found due to the claimant's perception of his abilities he had convinced himself that any treatment must be related to his sexual orientation or perceived sexual orientation.
257. The claimant made very serious allegations about others with a paucity of evidence. The claimant tended to express how he felt but had little empathy for the very serious allegations he made against others with no supportive evidence. The Tribunal found the claimant to be unreliable as a witness. The claimant informed the tribunal that at his second stage grievance hearing outcome page 1175 he was informed by the chair that he should give up his employment tribunal claim against the respondent. This

allegation was not included at page 1617 on 24 June 2021 and he was unable to explain to the Tribunal why he had failed to include that very serious allegation in his letter. The claimant also contended it was incorrect for the respondent to suggest that he only complained about Gurnec Bachera following Rachel Cooper raising it with him. However, the e-mail trail revealed on 16 June at page 1018 timed at 13.20 for Rachel Cooper raised with the claimant concerns about his treatment of Mr Bachera. The claimants e-mail followed this at page 1020K at 13.40. The claimant did raise his concerns about Mr. Bachera after he was aware about concerns of his management of the claimant.

258. The claimant's case is that Mr Grosvenor didn't know he was bisexual before 2015 but had perceived him as gay since 200.8 The claimant believed he had updated the old payroll system which he believed could have been looked at by Ms. Cooper to determine his sexual orientation he believed he had been perceived as a gay man. This was supposition.
259. The claimant disputed the accuracy of a number of documents concerning management assessment reviews prepared by his manager Mr Grosvenor page 713 August 2018 and a further document page 714 1 of August 2018. The claimant suggested that the documents were a lie. During cross examination on day 4 the claimants conceded that the documents contained some half truths but in some matters were lies. The claimant stated that not all of the note of the meeting on the 25 of August 2020 was accurate in particular the references to him suggesting that the meeting was "positive". He felt that had been added because his overall impression of the meeting was negative. This was a similar pattern of the claimant's behaviour who suggested that the notes written by his manager Ian Grosvenor or others were in part true and other parts were not completely true. Further in respect of 25 of August 2020 the claimant suggested that Rachel Cooper had told him that she was going to remove the management of GB from the claimant this was not included within the notes.
260. The claimant had a tendency to embellish his evidence for example in the grievance which he lodged on 6 of September 2018, he had been critical of comments that were made by Jane Hickman and Tracy Mosley. He did not assert that Mr Grosvenor his manager had made any comments but had laughed at a comment about Jane Hickman suggesting whether he was gay and wanted to bum another colleague. He added at the grievance meeting on 26 of September 2018 (page 740) that Tracy Mosley and Jane Hickman were stroking the hands of Mr Grosvenor and preceded to offer to stroke other parts of Mr Grosvenor. 5 years later in a schedule of loss prepared for the purposes of the Tribunal hearing at page 875 the claimant contended "I also told Rachel Cooper of an instance where in a private meeting room Tracy Moseley and Jane Hickman was stroking Ian Grosvenor's arm and then moving down to his legs; they appeared to be masturbating him and Ian was going along with it yes yes yes". Then he pretended to ejaculate and in a mocking motion wiped his arm with the pretend ejaculate. This was a very significant and more serious allegation than listed at page 740 but the claimant did not make the allegation at the time.
261. Part of the claimant's case is that from July 2015 Rachel Cooper put in place a deliberate policy to deny the claimant management experience and responsibility which disadvantaged the claimant before and during the interview for the post of principal accountant. This was an allegation of direct

sexual orientation discrimination. Under cross examination on day four of the hearing the claimant was asked why he considered that Rachel Cooper would act in this manner towards him and how she knew about his sexual orientation. The claimant stated that he was not sure and he had not really worked with Rachel Cooper. He then stated that she may have been doing it on behalf of Mr. Grosvenor or Mr. Uppal but he was not sure. This was in the context that Rachel Cooper had actually upheld the claimant's grievance about inappropriate behaviour in her grievance outcome in November 2018 at page 740. Later under cross examination he said he had updated the earlier pay roll system (this was different to the PIMs system he said he updated in 2017) and he thought Ms. Cooper had looked at it and would have known about his sexual orientation. He then stated the respondent perceived him as a gay man; he felt he was both perceived or his actual sexual orientation meant he was treated less favourably. The Tribunal found that the claimant constantly changed his evidence and embellished to suit the narrative that he believed he had been discriminated against by reason of sexual orientation. This was done in the absence of any corroborative material.

262. The claimant alleged in his evidence that Mr. Uppal had told him that staff do not respect him because of his sexual orientation. When asked why he failed to include this in his grievance; he said the comment was made in 2015/2016 and in 2018 he was lodging a grievance against Mr. Grosvenor and he could only include matters three months before. In the context that the claimant did complain the Tribunal rejected that Mr. Uppal ever said this; the claimant would have formally complained had he done so.
263. The Tribunal did not accept the claimant's contention that the culture in the respondent was homophobic. Quite contrary to this, the Tribunal was informed about a senior level manager who was extremely well respected by the team who was openly gay. Many of the witnesses who gave evidence to the Tribunal were unaware of the claimant's sexual orientation or assumed he was heterosexual.
264. Mr Grosvenor described the management experience of the claimant as frustrating. He described the claimant had a tendency of doing things his way; or believing he was correct which included refusing to adopt standard procedures/forms but adopting his own. This could have been a matter for disciplinary or capability procedures (Mr Newman told the Tribunal) but no action had been taken against the claimant because at every stage he raised a grievance. Ms Cooper stated that where the respondent sought to flag up some performance deficiencies the claimant lodged a grievance. Ms Cooper described to the Tribunal that she had taken some feedback at interview and worked on improving herself. The claimant failed to take on the feedback given on his unsuccessful interviews; taken the feedback extremely personally and accused the respondent of sexual orientation discrimination.
265. Tracey Moseley and Jane Hickman said that they did chat along with the claimant and were surprised he complained about what they had said and had delayed for some 12 months in doing so. Following receiving a warning they had kept their conversations with the claimant entirely professional. The Tribunal found Ms. Ludwig to be an honest witness. The claimant had pointed to a comment in Ms. Ludwig's note of a job interview with the claimant that stated that the claimant had mentioned his case against the

respondent. When cross examined and shown the other interviewers comments who had not noted it, Ms. Ludwig stated that the claimant must not have said this. Her notes were in the context of the claimant stating in interview about his treatment. The Tribunal did not consider in the overall context of this witnesses evidence that it really detracted from the fact that she was substantially telling the truth to the Tribunal.

266. The Tribunal found Ms. Cooper to be a very impressive and credible witness. She told the Tribunal she did not know the claimant's sexual orientation until the claimant lodged his ET1; she had never enquired with the claimant what his sexual orientation was even when he lodged his grievance because it was irrelevant and of no concern to her. She felt the claimant was raising complaints where he felt his performance was subject to criticism. He was not succeeding in interviews because he was not displaying the skills at the interview and was failing to learn from the feedback.
267. Ian Grosvenor was a straightforward witness who accepted that he had failed to close down inappropriate conversations and discussions in the department as he should have done as a manager and that he had learned from the 2018 grievance including being subject to a warning. He stated this did not detract from his management of the claimant thereafter or in assessing the claimant at interviews. The Tribunal having heard all the evidence accepted it. In his experience managing the claimant was frustrating. The claimant was unwilling to take advice or guidance but very much liked to do things his own way which included not following generally agreed practises and procedures.
268. Iain Newman, the tribunal found to be an impressive witness. He had looked at the claimant's grievance of 2021 and rejected it. The claimant sought to suggest that he had been biased and in particular because he had been involved in the decision making of removing the claimant's management of Mr. Bachera. Mr Newman informed the Tribunal, which was accepted, that the claimant removed himself from Mr. Bachera's management when he declined to deal with Mr. Bachera's holiday leave and forwarded the email to Ms Ludwig to deal with. The Tribunal did not consider as a manager to Ms. Cooper or being aware of the removal of management of Mr. Bachera that Mr Newman could not hear the claimant's grievance with an open mind. Mr. Newman did express frustration that the claimant was constantly lodging grievances.
269. The Tribunal found Mr. Jones to be a credible witness.

Conclusions

Direct sexual orientation discrimination Equality Act 2010 section 13

270. Did the respondent do the following things:-
- 270.1 In February 2015 Amarjit Uppal put in place a deliberate policy to deny the claimant management experience which disadvantaged the claimant before and during the interview for the post of principle accountant;
This was asserted by the claimant but without any evidence. The Tribunal determined that Mr. Uppal did not handle the issue of the claimant's performance in a professional manner; this was the outcome of the grievance lodged by the claimant which centred upon meetings

with Mr. Uppal to discuss the claimant's performance. However, there was no suggestion at that time that Mr. Uppal knew about the claimant's sexual orientation or perceived that the claimant was a bi-sexual man. There was no suggestion from the claimant that he had informed Mr. Uppal he was a bi-sexual man. There was no evidence that there was a deliberate policy to deny the claimant management experience which placed him at a disadvantage. The claimant did not present any evidence but merely asserted that Mr. Uppal had put in place a deliberate policy. The Tribunal determined that there was insufficient material to establish a prima facie case of discrimination and the allegation is dismissed.

270.2 In July 2015 Rachel Cooper put in place a deliberate policy to deny the claimant management experience and responsibility which disadvantages the claimant before and during the interview for the post of principal accountant;

Again, the claimant asserted this but provided no supportive evidence. The claimant accepted under cross examination he did not work with Rachel Cooper; he did not know her. He speculated that she might have looked at his change on the old HR system to his status as "bi-sexual"; prior to notification to his manager, Ian Grosvenor in 2018. He alleged he discovered that Rachel Cooper was discriminating against him in this manner much later but without providing details about this. The claimant was unable to explain if Rachel Cooper was a discriminator why she had upheld his grievance in 2018 finding that there had been inappropriate comments made to him. Rachel Cooper's evidence is that she was unaware of the claimant's sexual orientation until he issued Tribunal proceedings. When she heard the claimant's 2018 grievance, she did not know nor did she enquire what the claimant's sexual orientation was; she did not see it as relevant in a working environment. The Tribunal found that Ms. Cooper was a credible witness and was unaware as to the claimant's sexual orientation and had not perceived him as a bi-sexual man. Further it was not established on the evidence that Ms. Cooper had put in place a deliberate policy to deny the claimant management experience to disadvantage him. The Tribunal rejected the claimant's contention as unfounded.

270.3 In July 2016 Rachel Cooper put in place a deliberate policy to deny the claimant management experience and a responsibility which disadvantage the claim before and during the interview for the post of principal accountant;

The Tribunal repeats its findings set out above. This allegation was rejected by the Tribunal.

270.4 From June 2016 Catherine Ludwig set management level meetings at the grade above the claimant to exclude the claimant; Ms. Ludwig's evidence, which the Tribunal accepted, was that meetings were set up so that her direct reports were in attendance. Phyllis who was a grade 10 employee (same grade as the claimant) was invited to meetings because she directly reported to Ms. Ludwig. The claimant actually reported to Mr. Grosvenor who directly reported to Ms. Ludwig; so Mr. Grosvenor attended management level meetings. Although the claimant alluded to events prior to 2015 in his cross examination namely that Toni Hale grade 10 who was permitted to attend meetings; Ms.

Ludwig had no knowledge as this was before her time as a manager and in any event the claimant's allegation commences in June 2016. There was no evidence that Ms. Ludwig was aware of the claimant's sexual orientation or perceived him as bi-sexual until after proceedings were issued. The claimant failed to establish a prima facie case of discrimination and the allegation fails and is dismissed.

270.5 In August 2016 Ian Grosvenor failed to submit the claimant's performance review statement to centrally to cover up management responsibility in experience requests;

In August 2016 and in August 2017 performance review statements were not recorded centrally. Mr. Grosvenor's evidence, which the Tribunal accepted, was that the content of performance review and development meetings were discussed in 1:1s with his line manager. The Tribunal did not find established on the evidence that Mr. Grosvenor was aware of the claimant's sexual orientation in 2016 or 2017 or that any failure to centrally lodge performance reviews was a means to cover up requests for management responsibility. The claimant failed to establish a prima facie case and the allegations fails. This allegation is dismissed.

270.6 In August 2017 Ian Grosvenor failed to submit the claimant's performance review statement centrally to cover up management responsibility and experience requests;

The Tribunal refers to its findings above. The allegation fails.

270.7 In November 2018 Rachel Cooper falsely stated in 2016 and in 2017 not one employee who worked in the finance team had their performance review statements submitted centrally in order to cover up what she was subjecting towards the claimant;

This allegation was not put to Ms. Cooper. The Tribunal accepted the evidence of Rachel Cooper that she was unaware of the claimant's sexual orientation until he issued proceedings This allegation is dismissed.

270.8 In September 2017 Rachel Cooper put in place a deliberate policy to deny the claimant management experience and responsibility which had the effect of disadvantaging the claimant before the interview process for the post of senior principal accountant;

The Tribunal accepted the evidence of Rachel Cooper that she was unaware of the claimant's sexual orientation until he issued Tribunal proceedings. The Tribunal did not find this allegation was made out and there was no evidence to support this allegation. This allegation is dismissed.

270.9 On 31 August 2018 Ian Grosvenor made false comments regarding the claimant's performance

The claimant withdrew this allegation under cross examination on day 5 of the hearing. The claimant conceded that Mr Grosvenor did not make any false comments about his performance on this date. In the circumstances this allegation is dismissed upon withdrawal.

270.10 In May 2019 Rachel Cooper put in place a deliberate policy to deny the claimant management experience and responsibility which had the effect of disadvantaging the claimant before the interview process for the post of senior principal accountant;

The Tribunal repeats its findings as set out above. This allegation is dismissed.

270.11 In September 2019 claimant discovered Rachel Cooper had deliberately not informed the claimant about promotion opportunities made available in June 2019 by advertising the position the exact moment the claimant was out of the office and therefore would be unaware promotion opportunities until September 2019;

The Tribunal accepted Ms. Cooper's evidence that she was unaware as to the claimant's sexual orientation until he issued his first claim. Her evidence to the Tribunal was that his sexual orientation did not cross her mind until his 2018 grievance. She assumed the claimant was heterosexual and the wording of his grievance said 'perceived sexual orientation'. Ms. Cooper denied this allegation. Ms. Cooper's evidence to the Tribunal is that she did not knowingly advertise a job when the claimant was out of the office. The job advert was to replace someone who left the respondent's office so the claimant would have been aware that the post was likely to be advertised. He could have requested a manager or colleague to let him know about the advert for the vacancy. He could also set up email alerts from the council's website prior to or raised the matter immediately on his return to work. The claimant did not seek an extension of time to apply for the role on his return from holiday. The Tribunal determined that the claimant had failed to establish a prima facie case. Further that Ms. Cooper was unaware of the claimant's sexual orientation and did not deliberately advertise the role whilst he was away from the office. This allegation is dismissed.

270.12 In November 2019 Rachel Cooper put in place a deliberate policy to deny the claimant management experience and responsibility which put the claimant before and during the interview for the post of senior principal accountant

This allegation fails and is dismissed for the reasons set out above.

270.13 In December 2019 Rachel Cooper/Catherine Ludwig allowed the claimant to be a manager of an accountancy assistant; the accountancy assistant had known performance and behavioural issues and the appointment did not match the organisational structure

The crux of the claimant's complaint is that he was in effect set up to fail. The claimant was permitted to manage Gurnec Bachera because he wanted management experience. Some behavioural problems with Gurnec Bachera dating back to 2017 concerned his relationship with another team member were noted in a log. Prior to being allocated to manage Gurnec Bachera, the claimant and Gurnec Bachera had a good relationship and the claimant delegated Mr. Bachera work to do. There were no concerns raised by the claimant on being informed he was to assist in managing Gurnec Bachera. The claimant's team had a flat structure with little opportunity to line manage. The Tribunal accepted the respondent's evidence it was an adequate match to give the claimant the part management responsibility for Mr. Bachera. In evidence the claimant said he should have been managing Tracey and Jane who he had alleged had harassed him in 2018. The Tribunal found this inconsistent with his objections to Ian Grosvenor managing him and there was no evidence that the claimant had actually made this suggestion. This allegation is dismissed.

270.14 In December 2019 the respondent advantaged all other full time senior accountants (without protected characteristics) by advertising roles in their current work teams/areas and giving them favourable interview questions;

The respondent advertised roles and recruited where there was an organisational need. The Tribunal found it was likely that if an individual who worked in a team and had experience of the work applied for a promotion in that team, they were likely to be successful because they were more likely to be able to evidence the competencies. The suggestion that other senior accountants were given favourable interview questions was highly speculative and was an unsubstantiated allegation. This allegation fails.

270.15 In May 2022/November 2020 Rachel Cooper and Catherine Ludwig were reviewing each and every word of emails claimant sent to Gurnec Bachera in order to find issues with performance and justify discrimination

Mr. Bachera raised concerns about the claimant's emails to him. He considered they were supercilious; the claimant used to underline words, used bold and capitalise words, put them in red and highlighted words. This was in the context of Mr. Bachera feeling that the claimant talked down to him. In the context of COVID where staff were under a lot of stress and having to regularly communicate via email some colleagues were complaining about the tone of other colleagues' emails. The respondent was checking a number of other colleagues' emails at this time. In respect of the claimant, the respondent was checking the emails sent to Gurnec Bachera in the context of a complaint made by Mr. Bachera about the tone of the emails. This was a supportive step by the respondent's managers towards the claimant and the Tribunal rejects that it was a means to find issues with the performance of the claimant or to justify discrimination. In the context that a number of colleagues email traffic was being checked at this time, there was no less favourable treatment because of the claimant's sexual orientation. This allegation is dismissed.

270.16 On 18 November 2020 the claimant discovered Rachel Cooper had not informed the claimant about a senior principal accountant promotion opportunity in the claimant's current team

The respondent made the decision to ring fence this role to principal accountants only; the claimant along with other accountants not at the principal accountant level were not permitted to apply for the post. This treatment had nothing to do with the claimant's sexual orientation.

270.17 On 18 November 2020 the claimant's experience and skills were pre-assessed before the application process for the post of senior principal accountant. Rachel Cooper also set the job for grade 11 candidates and above to prevent the claimant from learning about the position and applying for the position

The respondent determined to ring fence this role to principal accountants only; the claimant along with other accountants not at the principal accountant level were not permitted to apply for the post. There was no pre-assessment of the claimant's or his colleagues' skills. Applications for the post were limited to employees at the principal

accountant level. This treatment had nothing to do with the claimant's sexual orientation.

270.18 On 18 November 2020 Rachel Cooper unjustly suspended the claimant's management experience

The claimant was informed that the respondent was considering suspending the claimant's management duties at the meeting on 18 November 2020. The Tribunal did not find this specific pleaded allegation made out. At the meeting on 18 November 2020 Miss. Cooper informed the claimant that she was thinking about removing management responsibility for Mr. Bachera. The respondent had not made a final decision and Ms. Cooper was seeking HR advice. A meeting was fixed for 23 November but the claimant informed Miss. Cooper he was raising a grievance against her and this meeting did not take place. When Mr. Bachera sought approval for holiday leave from the claimant on 4 February 2021 the claimant informed Mr. Bachera he was raising a grievance against him. The email trail shows Ms. Cooper seeking advice from HR and management responsibility of Mr. Bachera was removed from the claimant in February 2021. The allegation is dismissed.

270.19 On 4 February 2021 Rachel Cooper and/or Iain Newman unjustly suspended the claimants management experience

At the meeting on 18 November 2020 following the complaints made by Gurnec Bachera about the claimant's management of him, Rachel Cooper noted that the relationship between the claimant and Mr. Bachera was breaking down. She considered removing management of Mr. Bachera as an option in order for things to settle down. She only discussed this as an option and had not formed a final view. Ms. Cooper's evidence to the Tribunal was that she wanted to seek HR advice. Another meeting was set up for 23 November 2020 but this was cancelled because the claimant took out a grievance against Ms. Cooper. There was no determination at this point as to the removal or not of the claimant's management responsibility of Mr. Bachera. On 4 February 2021 Mr. Bachera sought approval of holiday leave from the claimant. The claimant in response informed Gurnec Bachera he was complaining about him. The email trail shows Ms. Cooper seeking advice from HR. In the context that the relationship between Mr. Bachera and the claimant had broken down to the extent that the claimant was formally complaining about Mr. Bachera, the respondent justly suspended the claimant's management of Mr. Bachera. The Tribunal determined this had nothing whatsoever to do with the claimant's sexual orientation.

270.20 On 5 November 2021 the claimant was treated less favourably because of his sexual orientation because Armajit Uppal told the claimant that despite a decent interview for the Senior Principal Accountant post (grade 12) the main reason for not obtaining the promotion was because the claimant does not display the correct soft skills to work successfully with colleagues and influence them to meet objectives

The interview panel consisted of Mr Uppal, Mr Marsh, HR and Stacey Carter. During his evidence to the Tribunal the claimant stated it was really the way that Mr. Uppal said the remark that led him to believe he

was discriminated against because of his sexual orientation. Further he felt question 3 was his lowest score so the feedback was inconsistent. The Tribunal did not hear from Mr. Uppal but was provided with the feedback from the interview at page 1949 to 1950 and Miss. Cooper gave evidence that she spoke to Mr. Uppal who denied that anything he said to the claimant could be construed as discrimination. The interview feedback seemed genuine feedback; it was balanced with some positives and some negatives. The general comments section provided a summary which stated *you focused a lot on what you had achieved on your own but she did not provide sufficient examples of non-technical / soft skills required to work successfully with colleagues and influence them to meet objectives*. The Tribunal determined on the balance of probabilities that Mr. Uppal read the general comments section to the claimant which was consistent with what the claimant said he was told. The document on specific questions is more detailed which the claimant was actually provided with. The Tribunal determined that the reading of the summary of the feedback to the claimant had nothing whatsoever to do with the claimant's sexual orientation. This allegation is dismissed.

270.21 On 15 March 2022 the claimant was unsuccessful in obtaining one of the three senior principal accountant posts

The claimant was interviewed for the post of principal accountant by a panel of three; Ian Grosvenor; Catherine Ludwig and Stacey Carter (see page 1790A). The process followed the usual procedure as discussed above. The claimant was assessed. He was unsuccessful. Mr. Grosvenor's evidence was that existing principal accountant candidates performed significantly better than the claimant and were successful. This evidence was corroborated by Ms. Ludwig. The Tribunal found that the claimant was unsuccessful because he failed to score as highly as others; this had nothing to do with his sexual orientation. The allegation is dismissed.

270.22 On 30 March 2022 Rachel Cooper put in place a deliberate/ continued with a deliberate policy to deny the claimant management experience and responsibility which puts the claimant at a disadvantage before and during the interview for the post of senior principal accountant

This allegation is a repeat of the allegation the claimant makes from 2015. This was an assertion made by the claimant unsubstantiated by evidence. The Tribunal found this allegation was not well founded and is dismissed.

270.23 On 15 March 2022 Ian Grosvenor and Catherine Ludwig harshly scored the claimants presentation interview answers and made false and dishonest statements regarding the claimant's interview performance because of the claimant sexual orientation

The claimant contended that his interview and presentation were close to the textbook answer. There was no textbook answer. The claimant felt his presentation was unfairly criticised. The Tribunal heard from Mr. Grosvenor and Ms. Ludwig and preferred their evidence. They scored the claimant in accordance with the standard interview process and did not agree with the claimant's own assessment of himself during the interview. The Tribunal determined that the claimant was not subject to false or dishonest statements but he had not performed as well at

interview or during his presentation as he perceived. His treatment had nothing whatsoever to do with his sexual orientation. This allegation is dismissed.

270.24 On 15 March 2022 Ian Newman continued with its threats when he made it clear as a threat if the claimant made any external complaint regarding discrimination harassment and victimisation it would damage his relationship with the organisation

Mr. Newman's communication with the claimant was by letter dated 8 March 2021 when the claimant was provided with the outcome of his investigation of this third grievance (page 1544-9). The claimant was provided with a right of appeal. The claimant attended a meeting with his trade union representative and Mr. Newman on 4 March 2021 which concluded in a discussion about the possibility of mediation. At no time during that meeting is it noted that the claimant's trade union representative raised an objection to any comments made by Mr. Newman. The Tribunal preferred the evidence of Mr. Newman and reject that a threat was made. This allegation is dismissed.

270.25 On 15 June 2022 the claimant was unsuccessful in obtaining one or two principal accountancy posts

The claimant was interviewed by Ian Grosvenor, Catherine Ludwig and Jane Davidson. The claimant was assessed in accordance with the standard interview process. The claimant failed to score as highly as other candidates. This had nothing to do with his sexual orientation. This allegation is dismissed.

270.26 On 15 June 2022 Rachel Cooper put in place a deliberate/continued with a deliberate policy to deny the claimant management experience and responsibility which puts the claimant at a disadvantage before and during the interview for the post of principal accountant

This allegation is a repeat of the allegation the claimant makes from 2015. This was an assertion made by the claimant unsubstantiated by evidence. The Tribunal found this allegation was not well founded and is dismissed.

270.27 On 15 June 2022 Ian Newman continued with his threats when he made it clear as a threat if the claim made any external complaint regarding discrimination harassment and victimisation it would damage his relationship with the employer

From 11 June to 27 June 2022 Mr Newman was away from work on holiday. He did not have his work laptop with him and did not communicate with the claimant or with any work colleague to direct them to do anything or say anything in relation to the claimant. This allegation is dismissed.

270.28 On 15 June 2023 Ian Grosvenor and Catherine Ludwig harshly scored interview answers and made false and dishonest statements regarding the claimant's interview performance because of the claimant's sexual orientation

The Tribunal preferred the evidence of Mr. Grosvenor and Ms. Ludwig and found that the claimant was objectively assessed. He was unsuccessful; this has nothing to do with his sexual orientation. This allegation is dismissed.

270.29 The claimant was unsuccessful in obtaining one of the six principal accountant positions at grade 11
The Tribunal were taken to the schedule of scorings for all candidates. The claimant was unsuccessful along with a number of candidates because he was scored objectively at a lower score than the successful candidates. This had nothing to do with his sexual orientation. This allegation is dismissed.

270.30 On 15 February 2023 Rachel Cooper put in place a deliberate/ continued with a deliberate policy to deny the claimant management experience and responsibility which put the claimant at a disadvantage before and during the interview for the post of principal accountant
This allegation is a repeat of the allegation the claimant makes from 2015. This was an assertion made by the claimant unsubstantiated by evidence. The Tribunal found this allegation was not well founded and is dismissed.

270.31 On 15 February 2023 Ian Grosvenor and Catherine Ludwig harshly scored the claimants interview answers and made false and dishonest statements regarding the claimant's interview process because of the claimant's sexual orientation
The Tribunal heard evidence from Mr. Grosvenor and Ms. Ludwig and preferred their evidence. The Tribunal rejects that they made false and dishonest statements about the claimant's interview process. The claimant was fairly assessed but was unsuccessful; this had nothing to do with the claimant's sexual orientation. The allegation is dismissed.

270.32 On 15 February 2023 Ian Newman continued with his threats when he made it clear as a threat that if the claimant made any external complaint regarding discrimination harassment and victimisation the claimant is allegedly subject to the claimant would damage his relationship with the employer January 2021.

The Tribunal did not find that Mr. Newman threatened the claimant as alleged. The Tribunal found that Mr. Newman observed that continually raising grievances and making claims does not enhance the employee/employer relationship. This was a matter of fact. The Tribunal did not find that Mr. Newman expressed this observation because the claimant was bi-sexual.

Harassment related to sexual orientation Equality Act 2010 section 26

271. Did the respondent do the following things

271.1 On 19 July 2018 and 2 August 2018 did Tracy Mosely and Jane Hickman discuss whether the claimant was gay or straight? Did Tracy make a comment that "there is no such thing as bisexual you are one thing or the other" and did both Jane and Tracy ask the claimant if he "give it" or "takes it" and asked whether the claimant wanted to "bum" another member of staff

The Tribunal finds that they did make these comments but made them in about 2017. The comments were related to sexual orientation. The claimant did not inform Tracey Mosely or Jane Hickman that he found the comments offensive or that they should stop the comments and he enjoyed a reasonable relationship with both women discussing various private matters such as his girlfriend and his neighbour dispute with them. However, the Tribunal finds that the comments were related to

sexual orientation and had the effect of creating a humiliating or offensive environment for the claimant. The claimant sought trade union advice (page 740) on 26 September 2018. The claimant's trade union representative, Mr. Underhill was present during the grievance hearing before Ms. Cooper. The claimant had also sought legal advice in November 2018 see page 786. The claimant informed the Tribunal that following the grievance hearing he was not subject to inappropriate comments. The Tribunal found it was incredible that the claimant an accountancy professional who had sought trade union and legal advice was unaware of his right to bring a discrimination claim to the Tribunal until 2020. The Tribunal found that the allegations are out of time and the Tribunal does not consider that it is just and equitable to extend time. Discrimination claims are fact sensitive and should be brought to the Tribunal in a timely manner. The claimant's reason for delay was not accepted. The claimant had the opportunity to seek advice from his trade union representative and legal advice. The respondent's witnesses were being required to remember events a long time ago. This allegation is dismissed.

271.2 On 19 July 2018 and 2nd August 2018 Ian Grosvenor was present and laughed at Jane Hickman and Tracy Mosely 's conversation

Ian Grosvenor failed to close down comments made by Jane Hickman and Tracy Mosely. The Tribunal did not find that Mr. Grosvenor laughed about their comments. Following Ms. Cooper's grievance investigation the claimant accepted that no further similar comments were made. The Tribunal found that Mr. Grosvenor was a weak manager in respect of this issue and failed to maintain professional boundaries with his junior staff. He did not stop the comments because of this but did not laugh at the conversation. The allegation as pleaded is dismissed.

271.3 Since April 2015 did Ian Grosvenor Jane Hickman and Tracy Moseley created a toxic hostile uncomfortable and homophobic working environment for the claimant with their unwanted inappropriate behaviour sexual innuendo is homophobic comments

The Tribunal found no suggestion this was occurring since 2018; see the wording of the claimant's grievance. The Tribunal found the comments made by Jane Hickman and Tracy Moseley took place in about 2017 and since 2018 there was no further comments. The Tribunal did not find Mr. Grosvenor had made comments. The allegation is the same as above. The Tribunal note that the allegations are out of time and are dismissed.

271.4 From the grievance outcome in November 2018 the claimant was blanked in the office by Tracey Mosley and Jane Hickman and other staff; they ignored him and only spoke to the claimant where necessary in order to create a toxic environment and to further harass the claimant

The Tribunal heard evidence from the claimant, Tracey Mosely and Jane Hickman. Tracey Mosely and Jane Hickman informed the Tribunal that following the claimant's complaint they entered only professional conversations with the claimant. They explained they were wary about what they should say to the claimant and kept all conversations professional and civil. The claimant said since his grievance in 2018 there were no comments about sexual orientation. The Tribunal did not find that the claimant was ignored but was spoken to in a professional

manner. This did not create an intimidating, hostile, degrading, humiliating or offensive environment. This allegation is dismissed.

271.5 On 27 August 2020 did Gurnec Buchera raise a malicious grievance against the claimant

Mr. Bachera did raise a grievance against the claimant. The Tribunal did not find it was malicious but it was deemed to be mostly petty by Ms. Cooper. The Tribunal takes into account the context of COVID where people's sensitivities were heightened. Mr. Bachera did genuinely feel that the claimant was a poor manager and the management relationship of him was not going well. There was no evidence that Mr. Bachera was aware of the claimant's sexual orientation or perceived the claimant as bi-sexual. The Tribunal rejects that this grievance was lodged maliciously or was related to the claimant's sexual orientation. This allegation is dismissed.

271.6 On 26 September 2020 and 18 November 2020 did Rachel Cooper say to the claimant that comments that he had reported in 2018 as harassment were just banter and inappropriate jokes and that the claimant should just get over them

Miss. Cooper accepted that she had informed the claimant to move on in the context the claimant should draw a line under these matters; they were not ongoing. She accepted that when she initially heard the claimant's grievance in 2018 she used the word banter because she believed some true office banter is good for the team and that not all of the examples given by the claimant were inappropriate comments. The Tribunal found that Miss Cooper did inform the claimant to move on and she did state in 2020 that the matters reported in 2018 were banter and inappropriate jokes; she believed that the claimant should try and move on. This was not related to the claimant sexual orientation but general advice to the claimant to stop ruminating about matters in the past. This allegation is dismissed.

271.7 On 11 November 2020 did Gurnec Buchera speak to the claimant in a rude unprofessional and aggressive manner in a telephone conversation telling the claimant how much he annoyed and agitated him; stating that the claimant was not promoted in previous interviews and mocked the claimant stating he was denied management experience and said "there was a reason for it" implying it was because of the claimant sexuality.

The claimant and Mr. Bachera had a crack at one another (Ms. Ludwig's evidence). Mr. Bachera was rude to the claimant and mentioned that the claimant had not been promoted. Mr. Bachera accepted shortly after these comments he would apologise to the claimant. This had nothing to do by implication or expressly to the claimant's protected characteristic of sexual orientation. Ms. Ludwig referred to both Mr. Bachera and the claimant having a crack at each other. Mr. Bachera was unaware of the claimant's sexual orientation. Mr. Bachera did not believe that the claimant was a good manager; by this point their relationship had significantly deteriorated. This allegation fails.

Victimisation

272. There is no dispute that the claimant did a protected act when he raised a grievance in September 2018 about inappropriate language.

273. Did the respondent do the following things

273.1 In September and October 2018 Ian Grosvenor attempted to micromanage the claimant to an unprecedented level because he was going to document the homophobic harassment inappropriate behaviour and sexual innuendos he was subject to an witnessed on the performance review paperwork

Mr. Grosvenor raised in the claimant's performance review his inability due to work pressures to have provided the claimant with as much time as he should have done. The Tribunal found that Mr. Grosvenor raised his concerns about the claimant's performance prior to the claimant actually raising a grievance in 2018; the claimant raised the grievance following concerns about his performance being brought to his attention. It was appropriate in that context that as a manager Mr. Grosvenor should line manage the claimant's performance. The Tribunal did not find that Mr. Grosvenor sought to micromanage the claimant; in fact following the concerns raised by Mr. Grosvenor about the claimant's performance he applied the time he had not previously due to work pressures. The Tribunal rejected this level of management was because the claimant raised a grievance. This allegation is dismissed.

273.2 In May /June 2020 the claimant was set up to fail as manager but Rachel Cooper Katherine Ludwig and Gurnec Buchera. Insignificant issues of management practises were highlighted but aggression swearing insubordination or inappropriate behaviours from Gurnec Buchera were ignored deemed insignificant and not investigated properly;

The Tribunal rejected the claimant's contention he was set up to fail. The claimant requested management experience; the respondent facilitated this by allowing the claimant to manage in part Mr. Bachera. The claimant did have an unfortunate management style which was in part exacerbated by the claimant's use of non-standard documentation which Mr. Bachera found confusing. Some of the emails sent by the claimant to Mr. Bachera could be interpreted as the giving of orders as opposed to instructions from a line manager to a team member. Mr. Bachera raised concerns that he did not feel like attending work. Ms.Cooper and Ms. Ludwig did attempt to provide some advice to the claimant about his management style and checked some of his emails sent to Mr. Bachera. Mr. Bachera was spoken to about his comments to the claimant about the fact that the claimant had not been promoted and agreed to apologise. A log was kept about Mr. Bachera's conduct historically and his behaviour of talking/swearing to himself were also noted. As a manager the claimant was expected to set a standard; guidance was required to assist the claimant with his management of Mr. Bachera. The Tribunal did not find the factual allegation made out and in any event the conduct of the respondent was unrelated to the claimant's lodging of a grievance.

273.3 On 3rd August 2020 the claimant was blocked from contacting Gurnec Bachera directly by e-mail by Rachel Cooper and Catherine Ludwig all emails sent by the claimant to Gurnec Bachera had to be pre checked by Catherine Ludwig sent back to the claimant and recent to Gurnec Bachera;

Mr. Bachera raised concerns about some of the claimant's emails. As noted above some of the emails sent by the claimant to Mr. Bachera

were in the form of orders as opposed to management instructions. The Tribunal found that the respondent took appropriate management action by putting in place a system of checking emails sent by the claimant to Mr. Bachera in order to maintain the management relationship and the management experience of the claimant. This was unrelated to the fact the claimant had done a protected act.

273.4 Between May 2020 in November 2020 did Rachel Cooper and Catherine Ludwig Chris scrutinise each every word of the claimant 's emails to the accountancy assistant

The claimant's emails to Mr. Bachera were monitored because Mr. Bachera complained about them. In the context of COVID when employees sensitivities were heightened and most of the communication was by email, the respondent was checking colleague's emails; this was not unusual and others had their emails monitored. The checking of the claimant's emails had nothing to do with the fact that the claimant raised a grievance.

273.5 On 12 November 2020 and 18th November 2020 Rachel Cooper blocked the claimant from setting up a preliminary meeting with the accountancy assistant for alleged insubordination and the claimant alleges that she threatened the claimant with retaliatory disciplinary action if the claimant wish to proceed with the meeting

The Tribunal rejected the claimant's assertion that Miss. Cooper threatened him with retaliatory action. The Tribunal preferred the evidence of Miss. Cooper. Miss. Cooper determined there was a conflict of interest because the claimant had raised complaints and grievances against Mr. Bachera so it was not appropriate to hold a disciplinary meeting or a pre-meeting to consider insubordination. Ms. Ludwig emailed the claimant on 13 November 2020 and requested that the claimant should not meet with Mr. Bachera as Miss. Cooper had organised a meeting to discuss issues see page 1352. The claimant was asked how he would feel if the situation was reversed; this was not a retaliatory threat. This allegation is not well founded and is dismissed.

273.6 On 18 November 2020 Rachel Cooper unjustly removed management responsibility; suspended the claimant for managing staff and refused to put the management suspension in writing;

The Tribunal has rejected this allegation as set out above. This allegation is dismissed.

273.7 On 4 February 2021 the claimant was suspended from managerial duties by Rachel Cooper and or Ian Newman to retaliate for raising a discrimination grievance and previous protected act documents did the claimant get any written documentation for February and did the claimant have a chance to provide evidence to defend himself

The Tribunal has made findings about this above. The claimant's management of Mr. Bachera was removed for the reasons set out above. The Tribunal rejects this was done because the claimant had done a protected act.

273.8 On 4 March 2021 the claimant was unjustly suspended as a manager by Ian Newman in grievance outcome meeting to cover up the discrimination and retaliate for raising a grievance

The Tribunal has already set out its findings as to the reasons of removing the claimant's line management of Mr. Bachera. This has nothing to do with the claimant doing a protected act.

272.9 On 4 March 2021 Ian Newman accused the claimant of artificially constructing a case based upon a protected characteristic

274. Mr Newman's evidence to the Tribunal was that the claimant had been given multiple opportunities in the course of a grievance meeting with him on 28 January 2021 to explain why he believed Mr Bachera's behaviour and Ms. Ludwig and Ms. Cooper's behaviour towards him was based on sexual orientation (see pages 1455 to 1457 and page 1461). Mr. Newman considered that the claimant did not give evidence to support his belief. On 4 March 2021 Mr Newman fed back to the claimant the outcome of his investigation. In his opinion the claimant had made unsupported allegations and he tried to link recent events to his grievance in 2018. Mr Newman believed the claimant artificially was constructing a case for continuous discrimination based on the protected characteristic of sexual orientation page 1539 to 1540. Mr Newman wanted the claimant to reflect on the seriousness of the allegations which if true could have led to disciplinary action against his work colleagues. The Tribunal did not find that Mr. Newman stated this because the claimant had done a protected act; Mr. Newman stated this because following his investigation he found the claimant's discrimination allegations unsubstantiated. This allegation fails and is dismissed.

274.1 On 5 November 2021 Armijit Uppal told the claimant that despite the decent interview for the senior principal accountant post grade 12 the main reason for not obtaining the promotion was because the claimant doesn't display the correct soft skills to work successfully with colleagues and influence them to meet objectives clearly implying this was because the claimant had made complaints regarding discrimination non compliance with the council's equality policy and non-compliance with the Equality Act 2010 and the claimant cannot work with colleagues
The Tribunal has dealt with this factual allegation above. The Tribunal determines that this allegation is not made out and feedback given by Mr. Uppal to the claimant was consistent with the summary feedback and had nothing to do with the claimant's protected act. This allegation is dismissed.

274.2 On 15 March 2022 the claimant was unsuccessful for one of the three senior principal accountant positions

The Tribunal has dealt with this factual allegation above; the claimant scored less well than 6 other candidates. His lack of success was nothing to do with his protected act. This allegation is dismissed.

274.3 On 15 March 2022 Rachel Cooper put in place a deliberate continued with a deliberate policy management experience and responsibility which put the claimant at a disadvantage before and during the interview for the post of senior principal accountant;

The Tribunal has dealt with this factual allegation above and found no deliberate policy was in place as alleged. This allegation is dismissed.

274.4 On 15 March 2022 Ian Newman continued with his threat when he made clear threat that the claimant made any external complaint regarding the discrimination harassment and victimisation claim it

alleges he subjected to the claimant would damage his relationship with the employer;

The Tribunal has dealt with this factual finding. The Tribunal found that Mr. Newman had historically observed that continually raising grievances and making claims does not enhance the employee/employer relationship. This was a matter of fact. The Tribunal did not find that Mr. Newman expressed this observation because the claimant had done a protected act. This allegation fails and is dismissed.

274.5 On 15 March 2022 Ian Grosvenor harshly scored the claimant's presentation and interview answers to give artificially low scores on certain questions. He made false and dishonest statements regarding the claimant's interview process performance because the claimant made complaints under the Equality Act regarding the direct discrimination Ian Grosvenor subjected him to

The Tribunal has already found that the claimant was fairly scored and not harshly scored. This allegation is not well founded and is dismissed.

274.6 On 15 March 2022 Catherine Ludwig deliberately scored the claimant presentation interview harshly

The Tribunal has already determined that Catherine Ludwig scored the claimant in accordance with the presentation he provided at interview. The claimant accepted during cross examination that he was nervous attending interviews because of the lack of success he has had thus far. The Tribunal did not find that Catherine Ludwig deliberately scored the claimant at interview harshly. This allegation fails and is dismissed.

274.7 On 15 June 2022 the claimant was unsuccessful for one of the two principal accountant positions

The claimant was unsuccessful for one of the two principal accountant posts at grade 11 because he scored less well than the appointed candidate and the respondent decided not to appoint a second principal accountant. This had nothing to do with the claimant's protected act.

274.8 On 15th of June 2022 Rachel Cooper put in place a deliberate continued with a deliberate policy to deny the claimant management experience and responsibility which put the claimant at a disadvantage before and during the interview post senior principal accountant

This allegation is not well founded as set out above.

274.9 On 15 June 2022 in Newman continued his threat when he made clear if the claimant made any external complaint regarding discrimination and victimisation it would damage his relationship with the employer

The Tribunal has already dealt with this allegation above and determined it was not established on the facts. The allegation is dismissed.

274.10 On 15 June 2022 Ian Grosvenor harshly scored the claimants presentation interview answers to give artificially low scores many questions he made dishonest statements regarding claimant interview performance because the claimant made complaints under the Equality Act regarding the direct discrimination in Grosvenor subjecting him to

The Tribunal has already determined that Mr. Grosvenor scored the claimant in accordance with the answers he provided at interview. The claimant accepted during cross examination that he was nervous attending interviews because of the lack of success he has had thus far. The Tribunal

did not find that Mr. Grosvenor deliberately scored the claimant at interview harshly is allegation fails. This allegation fails.

274.11 On 15 June 2022 Catherine Ludwig deliberately scored his presentation in interview harshly because the claimant had made complaints through the Equality Act 2010 regarding the discrimination he was subject to

The Tribunal has already determined that Catherine Ludwig scored the claimant in accordance with the answers he provided at interview. The claimant accepted during cross examination that he was nervous attending interviews because of the lack of success he has had thus far. The Tribunal did not find that Catherine Ludwig deliberately scored the claimant at interview harshly. This allegation fails.

274.12 The claimant was unsuccessful for one of the six principal accountant position grade 11

The claimant was unsuccessful for one of the six principal accountant posts at grade 11 because he scored less well than 6 other successful candidates. His lack of success was nothing to do with doing a protected act.

274.13 On 15 February 2023 Rachel Cooper put in place a deliberate/ continued with a deliberate policy to deny the claimant management experience and responsibility which put the claimant at a disadvantage before and during the interview for the post of principal accountant

The Tribunal has already found that the structure of the claimant's team is flat. He informed the Tribunal he would be happy to line manage Jane Hickman and Tracey Moseley who he complained about in 2018 and had been found to have made inappropriate comments in 2018. The Tribunal did not accept that the claimant would be happy to do so and was inconsistent with his position that he was unhappy that Ian Grosvenor (also disciplined in 2018) line managed him. There was little opportunity to line manage within the claimant's present team. This allegation is not well founded.

274.14 On 15 February 2023 Ian Newman continued with his threat when he made it clear that if the claimant made any external complaint regarding the discrimination, harassment and victimisation their claims alleges he was subjected to the claimant would "damage" his relationship with the employer (January 2021)

The Tribunal rejects this allegation.

274.15 On 15 February 2023 Ian Grosvenor harshly scored the claimants interview answers to give artificially low scores on certain questions. He made false and dishonest statements regarding the claimant's interview performance because the claimant made complaints under the Equality Act regarding the direct discrimination Ian Grosvenor was allegedly subjecting him to

The Tribunal has already determined that Mr. Grosvenor scored the claimant in accordance with the answers he provided at interview. The claimant accepted during cross examination that he was nervous attending interviews because of the lack of success he has had thus far. The Tribunal did not find that Mr. Grosvenor deliberately scored the claimant at interview harshly. This allegation fails.

274.16 On 15 February 2023 Catherine Ludwig deliberately scored the claimants interview harshly because the claimant made complaints through the Equality Act 2010 regarding the discrimination, he was subject to.

The Tribunal has already determined that Catherine Ludwig scored the claimant in accordance with the answers he provided at interview. The claimant accepted during cross examination that he was nervous attending interviews because of the lack of success he has had thus far. The Tribunal did not find that Catherine Ludwig deliberately scored the claimant at interview harshly is allegation fails.

275. The claimant's claims are dismissed.

Employment Judge Wedderspoon

14 January 2024

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