JJE

EMPLOYMENT TRIBUNALS

Claimant: **Mr G Palmer**

Respondent: **The London Borough of Barking and Dagenham**

Heard at: **East London Hearing Centre**

On: **24, 25, 26 & 27 July 2018 and In Chambers on 27 July & 1 August 2018**

Before: **Employment Judge Hyde**
Members **Mr S Dugmore**
Mr L O'Callaghan

Representation
Claimant: In Person
Respondent: Mr S Cheves, Counsel

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that the complaints of direct race discrimination, race harassment and victimisation under the Equality Act 2010 were not well founded and were dismissed.

REASONS

Preliminaries

1. These reasons are set out in writing as the Judgment was reserved. They are set out only to the extent that the Tribunal considers it necessary to do so, and only to the extent that it is proportionate to do so. Further, all findings of fact were reached on the balance of probabilities.

2. By a claim form which was presented on 2 November 2017, the Claimant complained about various acts of race discrimination, harassment and victimisation under the Equality Act 2010. The Respondent presented grounds of resistance as part of a response, both of which were sent to the Tribunal on 14 December 2017. They indicated

the basis on which they resisted all the claims and also raised the issue that the Tribunal had to decide, namely whether some or all of the complaints were out of time.

Evidence Adduced

3. The parties had agreed on documents to be referred to during the Hearing which were contained in two lever arch files which the Respondent was ultimately responsible for the preparation of. The bundle was marked [R1] and consisted of just over 1000 pages. Reference was made mainly to the documents in the first lever arch file. In addition, at the commencement of the case, the Respondent presented an agreed cast list. The chronology was not agreed by the Claimant. The cast list and chronology were marked [R2] and [R3] respectively.

4. Finally, also with a view to assisting the Tribunal's understanding of the factual situation, the Respondent prepared a hand drawn structure chart which was marked [R5]. This detailed the members of the team that we were concerned with.

5. The Claimant gave evidence first and relied on a witness statement marked [C1] as his evidence in chief.

6. The Claimant had also obtained witness orders to secure the attendance of two witnesses on his behalf. These were Kelsey Everett, Building Control Administrator; and Mr Mangal Singh, Building Control Surveyor. Mr Singh worked in the same team as the Claimant, in a complementary role; and Ms Everett worked in a team which provided administrative support to the Claimant's team. They had not prepared witness statements, but they were questioned in chief about matters which the Claimant had set out in his application for the witness orders and permitted to give supplementary evidence abut those matters. They were cross examined to the extent that the Respondent was able to, given the lack of witness statements from them.

7. Before they gave evidence, after hearing representations from both parties, the Tribunal gave directions about how this evidence would be dealt with. In particular, the Tribunal had determined that we would have to take into account the fact that the Respondent may not be able to deal with all the matters raised by the witnesses because they did not have prior notice of the detail of the issues which the witnesses would be addressing. Indeed, the letters requesting the witness orders which outlined the evidence which the Claimant wanted the witnesses to give, were only copied for the Respondent by the Tribunal on the first day of the Hearing. Further, Mr Singh volunteered to the Tribunal that he had some concerns about giving evidence in this case because he had initiated a claim against the Respondent and he was concerned about raising factual matters which could have a negative impact on his own claim. The Tribunal gave him the option of asking to decline to give an answer to any question. In the event, he made no such request.

8. The Claimant made an application for a further witness order in respect of Sharon Harrington at the outset of the hearing. The Tribunal adjourned determination of the application until after we had read the statements, just before the Claimant's evidence commenced. He had made an application to the Tribunal in writing dated 10 July 2018, but which was sent to the Tribunal only as an attachment to an email dated 12 July 2018. Ms Harrington was Deputy Director of Enforcement and Operational Services and had been appointed to carry out an investigation into the behaviour of a colleague of the

Claimant's. She had prepared a report which was part of the Tribunal bundle in which she expressed criticism of the Claimant's line manager, Mr Healy. She had also characterised Mr Healy's management as 'inconsistent'.

9. Having considered this application, which the Respondent resisted, the Tribunal rejected the application. The report by Ms Harrington (dated 24 July 2017) was available to us in any event. There did not appear to be any proper basis for further questions of her by the Claimant, other than 'fishing' questions. Certainly, Ms Harrington was not in a position to have reached a conclusion about the reason why Mr Healy had behaved in an inconsistent manner towards the Claimant, although she found that this had happened. This issue did not fall within the remit of the investigation which she carried out. It was essentially a matter for the Tribunal to decide and a commentary by Ms Harrington would be unnecessary and inappropriate.

10. The witnesses on behalf of the Respondent were Mr Troy Healy, the Claimant's line manager between April 2014 and the end of July 2017; Mr Jonathan Toy, Mr Healy's line manager for most of the timeframe referred to above; and Mr Gary Jones, who covered as a manager of the team that Mr Healy managed while Mr Healy was away or on annual leave until July 2017 when Mr Jones was given the additional responsibility of directly line managing the Claimant. The next witness the Respondent called was Ms Michelle Priest, Human Resources ("HR") Advisor who dealt with the HR support for the team; and Ms C Symonds who dealt with the appeal that the Claimant brought in respect of his grievances against Mr Healy and Mr Ewing. The witness statements were marked [R6] – [R10] respectively.

The Issues

11. The early conciliation process took place between 5 September 2017 when the Claimant notified ACAS of the potential dispute and 5 October 2017 when ACAS issued the certificate. The effect of that process, taking into account the date on which the claim form was presented and the dates of the early conciliation, was that the Tribunal had to examine whether any complaint about something that happened before 6 June 2017 was out of time on its face. It was not disputed that the Tribunal potentially had jurisdiction to deal with such complaints on the basis they had been continuing acts of discrimination.

12. The Claimant's case that the basis on which the Tribunal had jurisdiction was because they were continuing acts of discrimination, was the answer that the Claimant provided in paragraph 6 to the Tribunal's direction that his position on this should be stated. This was also captured at paragraph ii of the List of Issues used in the Hearing.

13. At a closed preliminary hearing before Employment Judge Ferguson which took place on 21 March 2018, the issues were largely identified. These were set out at paragraph 4 in the Employment Judge's Record of Preliminary Hearing dated 27 March 2018 (pp48 – 55). Further, the Claimant was asked to provide further detail about the dates on which he relied in respect of certain aspects of the allegations. The Claimant's responses to the questions posed by the Tribunal were set out in 7 numbered paragraphs in his email dated 4 April 2018 (p55D). Unfortunately, the Claimant did not address the email correctly so it was not received by the intended recipient on behalf of the Respondent, Joe Pinter. The email was added to the bundle, and at this Tribunal's direction, a revised List of Issues was prepared and presented at the beginning of the second day of the Hearing which incorporated the Claimant's responses to the order of

Employment Judge Ferguson. That revised List of Issues was marked [R4] and the statement of the issues from that document is reproduced below. The Claimant's responses were, by and large, set out in bold in [R4].

"Time limits/limitation issues

i. Were all of the claimant's complaints presented within the time limits set out in section 123(1)(a) & (b) of the equality Act 2010 ("EQA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period; whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred; etc.

ii. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 6 June 2017 is potentially out of time, so that the tribunal may not have jurisdiction to deal with it. **The Claimant's claims that there has been continuing acts of discrimination** (para 6)

EQA, section 13: direct discrimination because of race

iii. has the respondent subjected the claimant to the following treatment

(a) Troy Healy allowing Dave Ewing not to work with the claimant when Dave Ewing said that working with the claimant was one of the reasons he wanted to resign. This was communicated to the claimant orally by Troy Healy. The claimant believed this happened in the early part of 2017 but will confirm the date (see orders below). **The Claimant is unable to confirm the dates. (Para 1)**

(b) Troy Healy proposing a "1-2-1" meeting with the claimant on 5 July, at short notice and without reference to the claimant's availability, at which another manager would also be present. The respondent says the reason for this was in part because the claimant had shouted at Troy Healy in the office. The claimant accepts there was a disagreement but denies shouting.

(c) Troy Healy refusing to move the time or date of the meeting.

(d) On 3 July Troy Healy effectively accepting the account of a member of the public who complained about the claimant, without having asked the claimant about it.

(e) Troy Healy deciding to delete the role of Senior Planning Enforcement officer, for which the claimant had applied at Toy Healy's encouragement. **The date Troy Healy encouraged the Claimant to apply for the role was around 15 January 2016 (Para 2).** The claimant believes that he scored higher than the other candidate and that Troy Healy decided to delete the role because he did not want to offer it to the claimant. He believes this was in the summer of 2016 but will confirm.

(f) For the last few years in which he was the claimant's line manager (claimant to confirm the precise time period), **Troy Healy began manage the Claimant since April/May 2014 until early August 2017 when Gary Jones became the Claimant's line manager (Para 3).** Troy Healy negatively affecting the claimant's productivity by doing the following:

(a) Troy Healy delaying processing requests for case closures from the claimant

(b) Lack of support to the claimant in dealing with a backlog of cases, including discouraging the use of administrative staff and refusing to relocate new cases temporarily to another member of staff.

(g) Troy Healy refusing to follow the claimant's recommendation of getting legal authorisation after Robyn Payne had left, resulting in the claimant and Teri Sinfield being required by Troy Healy to serve notices and enter properties without legal authorisation. The claimant will confirm when this happened. **From December 2015 - June 2016 the Planning Enforcement Officers were not authorised to perform basic duties which I repeatedly raised as a concern verbally and in writing on 14 June 2016 as the situation persisted. (Para 4)**

(h) Troy Healy giving the claimant negative assessments based on low productivity without taking into account the fact that the claimant refused to do the above work because it was illegal. Dates of such assessments to be provided. **Negatively assessed by Troy Healy on many occasions and in writing in July 2016, September 2016 and December 2016 following my raising the issue of officers acting ultra vires due to a lack of authorisation (para 5)**

(i) Troy Healy querying the claimant's whereabouts on 5 June 2017

(j) Troy Healy interfering with the Claimant's appraisal in late August or early September 2017, adding negative comments.

iv. Was the treatment "less favourable treatment", i.e did the respondent treat the claimant as alleged less favourably than it treated or would have treated others (comparators) in not materially different circumstances? The claimant relies on the following comparators:

- In respect of allegations (b), (f), and (i): Dave Ewing and Terri Sinfield (both white)
- In respect of allegation (d): Dave Ewing
- In respect of allegation (j): Terri Sinfield

v. If so, was this because of the claimant's race?

EQA, section 26: harassment related to race

vi. Did the respondent engage in the conduct set out at (a), (c), (f), (i) and (j) above?

vii. If so was that conduct unwanted?

viii. If so, did it relate to the protected characteristic of race?

ix. Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

Equality Act section 27: victimisation

x. Did the claimant do a protected act, in that he gave evidence at an investigation meeting relating to disciplinary proceedings against Dave Ewing on 28 June 2017 and alleged at that meeting that Troy Healy had unlawfully discriminated against the claimant because of his race?

xi. Did the respondent subject the claimant to the 4 alleged detriments set out at (b), (c), (f) and (j) above?

xii. If so, was this because the claimant did a protected act?

xiii. If the claimant succeeds, in whole or part, the tribunal will be awarded compensation and/or damages, will decide how much should be awarded. Specific remedy issues that may arise and that have not already been mentioned include:

(a) Did the respondent unreasonably fail to comply with a relevant ACAS code of practice, if so, would it be just and equitable in all the circumstances to increase any (compensatory) award, and if so, by what percentage, up to a maximum of 25%, pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 ("section 207A")?

(b) Did the claimant unreasonably fail to comply with a relevant ACAS code of practice, if so would it be just and equitable in all the circumstances to decrease any (compensatory) award and if so, by what percentage (again up to a maximum of 25%), pursuant to section 207A?"

Findings of Fact and Conclusions

14. On 3 October 2008 the Claimant commenced his employment as a Planning Enforcement Officer ("PEO") within the Planning Enforcement and Building Control Team (pp. 59-68). He described himself as of Afro-Caribbean origin. Unless otherwise stated, everyone else referred to was white.

15. He was directly managed by Troy Healy, Regulatory Service Manager, from April 2014. Mr Healy took over management of planning enforcement, the area in which the Claimant worked in April 2014 and in September 2014 the Respondent incorporated a further management responsibility in respect of the building control service into his role.

16. On 31 October 2015 Jonathon Toy started employment as Operational Director, Enforcement Services a post which was in the Claimant's line management structure at all material times. He held this post initially on an interim basis, until 26 April 2016 when he became the substantive Operational Director.

17. In November 2015 Terri Sinfield started working for the Respondent in an administrative support role (p 417). In Autumn 2016 she joined the Claimant's team as a trainee PEO.

18. On 17 January 2016 the Claimant applied for the role of Senior Planning Enforcement Officer ("SPEO") (p 76). He and the other candidate, (Lorcan Lynch) were interviewed in late February 2016 by Gary Jones, Head of Regulatory Services, Enforcement Services (p 83) and Troy Healy, Regulatory Service Manager, Enforcement Services (pp76-88). Both Mr Jones and Mr Healy were junior to Mr Toy in the hierarchy. Neither candidate was appointed. The Claimant was not informed of the outcome until he requested this in July 2016.

19. In April 2016 the management team presented a restructure proposal to the staff for consultation, whereby a new centralised Prosecutions Team would be set up. The restructure proposals made no reference to the SPEO post. The structure was formally adopted in July 2016 **(**pp 89 - 111).

20. On 8 July 2016 the Claimant sent an email to Troy Healy, following his appraisal, raising a number of matters, including asking why he had not received a written response to his application and interview for the SPEO position (p115). There was scant documentary or other evidence before the Tribunal about how matters developed as a

consequence. Many of the issues raised subsequently formed part of this complaint to the Tribunal.

21. Mr Healy sought advice from HR on 18 October 2016 about how to address concerns about the Claimant's performance/conduct, such as failure to comply with reasonable management requests, and timekeeping (p134). After consultation with Ms Priest, which extended to February 2017, no formal action was taken.

22. On 22 March 2017 Troy Healy witnessed events surrounding the terror attack on Westminster Bridge in London. He was adversely affected by this and between April and July 2017, Mr Healy's managers considered that he struggled to cope, particularly with conflict.

23. On 8 June 2017 Dave Ewing, the other Building Control Surveyor on the Claimant's Team was suspended due to the Respondent receiving an allegation of inappropriate use of Facebook. The Respondent embarked on a disciplinary investigation, conducted by Sharon Harrington, and he was disciplined in late July 2017.

24. On 14 June 2017 the Grenfell Tower fire occurred. This led to a heightened focus on Building Control services within local government. Mr Toy's impression was this also led to the issues arising from witnessing the terror attack on 22 March 2017 resurfacing for Mr Healy. He described Mr Healy up that point as being in a very fragile state.

25. **On 28 June 2017 Jonathon Toy (pp 727-728) and the Claimant (pp 640-643) were interviewed by Sharon Harrington as part of her investigation into possible misconduct by Dave Ewing. The Claimant made allegations about Dave Ewing which were not relevant to the matter being investigated, but which raised allegations of misconduct by Mr Ewing, including race discrimination. These were the agreed protected acts.**

26. On 30 June 2017, an incident took place in the office. Mr Healy alleged that the Claimant shouted at him during this incident (p185). The Claimant disputed that he had shouted at Mr Healy but said that there had been a disagreement between them about a work-related matter.

27. The Claimant raised a detailed formal grievance against Troy Healy on 31 July 2017 (pp293-303 and 812-920).

28. Meanwhile, on 3 July 2017 Troy Healy received a complaint about the Claimant's conduct from a resident at Ventnor Gardens which led to an email exchange between the Claimant and Troy Healy about what had occurred and what action would now be taken (pp 202-207).

29. There was a further lengthy and difficult email exchange between the Claimant and Troy Healy on 5 July 2017 about Mr Healy's proposal that a 1-1 meeting with Claimant at which Mr Healy would be accompanied by another member of management, should take place on Friday 7 July 2017 between 10am and midday (pp 187-196). The Claimant asserted that he had other commitments at the time Mr Healy was proposing, by way of his GMB duties.

30. The Respondent had by now planned to give Mr Gary Jones line management responsibility for the Claimant on an interim basis (p233). This was subsequently made permanent and extended to management of the whole Team in the Autumn of 2017.

31. Around the middle to the end of July 2017 complaints were made by certain staff members against the Claimant.

32. In July 2017 David Ewing was disciplined and given a 2nd written warning for 12 months.

33. On 24 July 2017 Sharon Harrington sent a confidential report to Jonathon Toy, Michelle Priest and Peter Watson (both of HR) regarding Troy Healy's poor management (pp 280-283).

34. In July 2017 Gary Jones was appointed as the Claimant's interim Line Manager.

35. On 31 July 2017 the Claimant lodged a detailed formal grievance against Troy Healy (pp 294-303 and 812-920).

36. On 1 August 2017 the Claimant lodged a detailed formal grievance against Dave Ewing alleging discrimination relating to his protected characteristics and GMB Union role (pp 307-311 and 921-937).

37. On 3 August 2017 a grievance hearing chaired by Jonathon Toy was convened. Michelle Priest attended as HR representative. The Claimant attended with his Union Representative Gary Doolan (p 316a).

38. On 7 September 2017 a grievance outcome letter was sent to the Claimant. It concluded that Mr Healy's actions were not racially discriminatory although there were inconsistencies of management (pp 369-371).

39. The Claimant went on sick leave having been diagnosed with work related stress on 26 September 2017. His sick certificate covered a period to 10 October 2017 (p388). He subsequently remained off sick until 4 January 2018.

40. On 9 October 2017 the Claimant appealed against the grievance outcome (pp 403-404).

41. On 24 October 2017 the Claimant sent written representations in support of his grievance appeal (p 403). He informed the Respondent that he would not attend the appeal hearing.

42. The claim form was presented on 2 November 2017.

43. In early November 2017, Mr Jones was made the overall manager of the Planning Enforcement Team (pp407-502). The Building Control and Planning Enforcement teams were separated.

44. On 9 November 2017 the Appeal Hearing took place, chaired by Claire Symonds and an appeal outcome letter was sent to the Claimant (p 406). She made no changes to the earlier decision, and noted, among other things, that the Claimant's line management

had now changed permanently, which was the remedy he had sought in his original grievance.

45. On 12 December 2017 Troy Healy raised a formal grievance against the Claimant. He alleged that the Claimant had made a malicious allegation of race discrimination against him (p 409-410).

46. From early January 2018 the other grievances raised against the Claimant by Teona Cretu, (p415), Terri Sinfield (p417) and Dave Ewing (p 419) were addressed by the Respondent. All were rejected in due course.

47. On 22 February 2018 Mr Ewing submitted an appeal against the grievance outcome (p446). Ms Sinfield's appeal was submitted on 26 February 2018 (p448), and Mr Healy's was submitted on 2 March 2018 (p 450).

48. On 19 March 2018 Troy Healy left the employment of the Council. At the time he gave evidence, he was working as an associate planner within a private consultancy.

49. On 15 May 2018 Troy Healy's appeal was rejected**.** All other the appeals were also rejected (pp 482-3).

50. There was no suggestion that the structure chart presented by the Respondent [R5] was in any way erroneous.

51. [R5] showed that the team was managed by Mr Healy and then Mr Jones at the material times and that up to 2017, Mr Healy was direct line manager for the two planning enforcement officers, Ms Sinfield and the Claimant, as well as for the two Building Control Surveyors, Mr Mangal Singh and Mr David Ewing. There was no dispute that Ms Sinfield was white, aged about in her mid 50's or early 50's.

52. There were also two building control apprentices who were employed at various stages during the material times. One was called Georgiana–Teona Cretu. She was described as white Romanian origin. The other apprentice was Terrence Smith. No evidence was given about his ethnic origins. The Claimant's evidence which was not contradicted was that he was the only African-Caribbean member of staff in the team. The Tribunal assumed on that basis therefore that Mr Smith was white British.

53. Mr Healy described his ethnic origins as Irish Jewish. When the Tribunal in these reasons refers to the 'team', these are the members of staff being referred to. Mr Jones occupied a parallel position but the members of staff that he managed as part of his role were not part of this team. Mr Gary Jones appeared to be white British.

54. The Tribunal also was told about Kelsey Everett who gave evidence. She worked as a part of the administrative support for the team. She also appeared to be white British.

Consideration of the Specific Issues

55. The Tribunal's decisions about whether the treatment alleged formed part of a continuing act and therefore, whether the Tribunal had jurisdiction to deal with them was dealt with at the end after findings had been made about each of the issues. Further, the

issues are identified with the letters of the alphabet/numbers that they contained in the revised list of issues [R4]. Further, in these reasons they are dealt with in broadly chronological order.

Issue (f)

56. The Claimant alleged that for the last few years in which he was the Claimant's line manager, (from April/May 2014 until early August 2017 when Gary Jones became the Claimant's line manager), Troy Healy negatively affected the Claimant's productivity by doing the following:

(a) Delaying processing requests for case closures from the Claimant; and

(b) A lack of support to the Claimant in dealing with a backlog of cases, including discouraging the use of administrative staff and refusing to reallocate new cases temporarily to another member of staff.

57. The evidence put forward by the Claimant in support of this allegation in his witness statement was at paragraph 17.

58. The matters in issue (iii)(f) were said to constitute direct race discrimination; and in the alternative, race harassment (issue (vi) – (ix)); and victimisation (issue (x) – (xiii)).

59. The protected act relied upon by the Claimant in respect of the victimisation complaint was that he gave evidence at an investigation meeting relating to disciplinary proceedings against Dave Ewing on 28 June 2017 and alleged at that meeting that Troy Healy had unlawfully discriminated against the Claimant because of his race. Although this was listed as an issue, there was no dispute that these events had occurred. Moreover, the Respondent did not argue that this did not constitute a protected act. The Tribunal considered that it patently did.

60. The issue therefore in relation to the victimisation allegation was, to the extent that the Tribunal found that the Claimant had been treated unfavourably, whether that treatment was caused by the protected act on 28 June 2017.

61. The first issue which arises in relation to this victimisation complaint is that the majority of the timeframe during which the Claimant complained about being treated unfavourably, predated the doing of the protected act. On that basis alone, it was unlikely that the Claimant would be able to establish the necessary causation. However, it was further relevant that the Claimant had not questioned Mr Healy about the allegation that he delayed processing requests for case closures from the Claimant. There was also a lack of detail provided by the Claimant about specifically when this was said to have occurred, beyond the time frame of approximately three and a half years set out in the list of issues.

62. When various statistics relating to his productivity in relation to the service of notices and live cases, were put to the Claimant in cross examination by Mr Cheves, Mr Palmer agreed to them. Thus, it was not in dispute that:

- In the period October 2008 to April 2014 (5 years), the Claimant served 10 notices.

- In the period April 2014 to March 2015 from the start of Mr Healy's period of managing the Claimant, the Claimant served 17 notices.

- In the period April 2015 to March 2016, the Claimant served 27 notices.

- In the period April 2016 to April 2017, the Claimant served 20 notices.

- In the period April 2017 to September 2017, the Claimant served 17 notices.

- In the period June 2016 to June 2017, the Claimant's live cases i.e. cases which had not yet been closed off, was reduced from 163 to 84.

63. The evidence in the last bullet point above was also set out in paragraph 64 of Mr Healy's witness statement.

64. Against that evidence which was agreed by the Claimant, there were no specifics of Mr Healy delaying the processing of requests for case closures from the Claimant.

65. The second limb of the allegation in issue (f)(b) was about the lack of support to the Claimant in dealing with a backlog of cases including discouraging the use of administrative staff etc. In relation to the main contention about lack of support in dealing with a backlog of cases, once again there was an absence of specific evidence about this from the Claimant. In the papers and in the documentation, the point had been made on the Claimant's behalf that Mr Healy should have allocated new cases for a time to the other member of staff, Ms Sinfield, who carried out the same duties as he did. The Tribunal considered that Mr Healy's refusal to do so was justified. There did not appear to be any good reason why the other member of staff who was on the face of it dealing with their caseload appropriately and who, it was not disputed, had a higher level of productivity than the Claimant, should be burdened by having to deal with all the new cases which were coming in.

66. The second aspect of this limb of the allegation was that Mr Healy also discouraged the Claimant from "leveraging" administrative staff to assist with the backlog. Mr Healy's approach was that the officer who had the delegated responsibility for serving or preparing the formal documents should work on those documents themselves. Whether this was right or not, the Claimant was unable to show a different approach as far as Mr Healy was concerned between the treatment of himself and the treatment of Terri Sinfield. Ms Everett who attended pursuant to the witness order, gave evidence that she had volunteered to assist Ms Sinfield, but that Ms Sinfield had indicated that she preferred to do the administrative work herself. The Tribunal did not consider that this in any way undermined the Respondent's case that there was no difference in treatment between the Claimant and Ms Sinfield by Mr Healy.

67. The Tribunal reminded itself that the issue here was not about judging what sort of a manager Mr Healy was but about whether he had discriminated on racial grounds and/or victimised the Claimant and/or harassed him, as alleged. The evidential basis for a finding of actual or potential differential treatment of others was lacking. The Tribunal did not consider therefore, that the Claimant had established facts from which the Tribunal could conclude that he had been directly discriminated against and therefore the burden of proof did not shift to the Respondent. Similarly, in relation to the harassment allegation, the Tribunal did not find any evidence of harassment in Mr Healy's actions.

68. The victimisation complaint was therefore not well founded and the direct discrimination and race harassment allegations were also not well founded in Issue (f) in paragraphs (iii), (vi) and (xi).

Issue (g) in para (iii)

69. This direct race discrimination allegation was that Troy Healy refused to follow the Claimant's recommendation of getting legal authorisation after Robyn Payne had left, resulting in the Claimant and Terri Sinfield being required by Troy Healy to serve notices and enter properties without legal authorisation. Pursuant to the order of Employment Judge Ferguson, the Claimant confirmed that the timeframe in relation to this allegation was from December 2015 to June 2016 in which he alleged that the PEOs were not authorised to perform basic duties which he repeatedly raised as a concern verbally and in writing on 14 June 2016 as the situation persisted.

70. The first and obvious issue was whether this allegation was out of time. On the face of it as a discreet allegation it certainly was. The second point was that Terri Sinfield was white, and on the Claimant's case, they were treated the same way.

71. The Respondent's case was that at the relevant time the Claimant certainly was authorised to serve notices and enter premises. It was consistent with the evidence which the Claimant accepted when it was put to him as set out above in relation to the notices that he served, that he did indeed carry out such functions during the time he complains about. The Tribunal noted that once again there was an absence of any particularity to this allegation. The Claimant had failed to identify an occasion on which this had caused him difficulty. The Tribunal reminded ourselves that even in the way the Claimant put his case, that is he was being required to work without proper legal authorisation, this would have impacted equally on himself and Terri Sinfield.

72. The Claimant clarified during his evidence to the Tribunal that he viewed this as one example of Mr Healy having failed to respect him professionally by rejecting the point that the Claimant was making in this respect.

73. We considered that at the time, Mr Healy was satisfied that he and the officers had the relevant authority and indeed the fact that it was not disputed that Terri Sinfield worked without objection during this period was also consistent with the finding that she also reached the view that she was appropriately authorised. To that extent therefore, it appeared from Mr Healy's perspective that he disagreed with the Claimant about the question of whether they had legal authorisation. This did not appear to the Tribunal to be a matter which Mr Healy was required to accept the Claimant's opinion on. The Claimant made no reference whatsoever to any incident or any questioning of his authority nor did he seek to argue before the Tribunal and establish that he did not in fact have legal authorisation.

74. In relation to the difference in opinion between the Claimant on the one hand, and on the other hand, that of Mr Healy and by inference Ms Sinfield, the Claimant relied on the fact that he had authorisation up to when Mr Payne left. Mr Payne had occupied a post similar to that of Mr Toy. He told the Tribunal that the Respondent did not dispute that a letter had been issued to him and others who had delegated authority to confirm that they had this authority. The Tribunal questioned whether the Claimant believed that

the authority had lapsed when Mr Payne had left. The Respondent's position was that the authorisation was not personal to Mr Payne but was attached to the position that he occupied. If the Claimant had that authority while Mr Payne was in position, the Tribunal did not see why he should believe that he no longer held it when he was in the same position and was being asked to perform the same duties as before. But having said all of that, the Tribunal considered that this at the very highest was a difference in view about the processes to be followed in order to confirm that the Claimant was duly authorised. It did not constitute less favourable treatment of the Claimant, or subjecting the Claimant to a detriment.

75. When in due course the organisation was able to issue cards to the enforcement officers, the Claimant was satisfied with that step. There was no suggestion that Mr Healy resisted the provision of cards. As the Tribunal has said to the extent that there was a difference between the member of the team and the manager about the way in which matters should proceed, Mr Palmer was right and he did not in fact have authority. The Tribunal considered it clear beyond any question that it would be the manager who was thereby responsible. It was apparent from the emails that the Claimant had sent, that he had raised his disagreement with the way in which Mr Healy viewed the position. The Claimant did not directly identify Ms Sinfield as a comparator but it is apparent in these circumstances that she was a comparator as the circumstances were the same for her. As we found above there was no difference in treatment by Mr Healy in relation to her.

76. The Tribunal also was not satisfied that Mr Healy not following the Claimant's recommendation as to how this matter should be dealt with, constituted a detriment to the Claimant. It was a decision for Mr Healy to make rather than for the Claimant.

77. In all the circumstances therefore, the Tribunal rejected the complaint of direct race discrimination. There was no evidence that the decision to refuse to follow the recommendations in any way related to the Claimant's race. The Claimant simply relied on submissions about negative stereotypes of himself as an African-Caribbean man. There was no basis in the history between these two men to attribute that motivation to Mr Healy.

78. Mr Healy's evidence was that until The Claimant accepted that it was not in dispute that around 2017 he and Mr Healy had for example, lunched together and discussed personal matters. Also, he accepted that Mr Healy had helped him when his car had broken down and that Mr Healy had paid for a tow rope in order to tow the Claimant's car. Further, we accepted on the evidence presented that Mr Healy had assisted the Claimant in terms of the development of his career by encouraging him and supporting his Master's degree and by arranging for the Claimant to attend site visits in relation to Building Control. This went outside of the scope of the Claimant's role and therefore Mr Healy was not required to have agreed to this. In addition, he organised for the Claimant to work compressed hours so that he could go on his course and provided a reference to the University so that Mr Palmer could undertake his course.

79. Further, although this is dealt with later in these reasons, it was not in dispute that Mr Healy encouraged the Claimant to apply for the Senior Planning Enforcement Officer role in early 2016 and when the Claimant had missed the deadline, Mr Healy reminded him of it and extended the deadline in order for him to be able to submit his application.

Issue (iii)(e)

80. In this Issue, the Claimant alleged, as direct race discrimination, that Troy Healy decided to delete the role of senior planning enforcement officer ("SPEO"), for which the Claimant had applied at Troy Healy's encouragement. The Claimant provided clarification pursuant to Employment Judge Ferguson's order that the encouragement to apply for the role was around 15 January 2016. The allegation continued that the Claimant believed that he had been scored more highly than the other candidate and that Troy Healy decided to delete the role because he did not want to offer it to the Claimant.

81. In the event, it was not in dispute that the Claimant had applied for this role and that he was interviewed for it and that another candidate was also considered up to the interview stage as well. That candidate was Mr Lorcan Lynch. He was white Irish. At the time, Mr Lynch was engaged as a contractor for the Council performing roles which overlapped with the substantive duties of the SPEO.

82. The Claimant believed that Mr Healy wanted Mr Lynch to secure the position. The two men were interviewed by Mr Healy and Mr Jones. The contemporaneous documentation confirmed that Mr Jones believed that the Claimant had performed better at interview and that Mr Healy had preferred to appoint Mr Lynch. The Tribunal had the interview scoring comments and marks that Mr Jones had prepared but those prepared by Mr Healy were not available (pp76-88). The closing date for the application was initially 15 January 2016. The Claimant's application was acknowledged on 17 January 2016 (p78) by the HR team and the interview was arranged for 24 February 2016. It was confirmed by Mr Jones on 3 February 2016.

83. From the contemporaneous record, namely an email between Mr Jones and Mr Healy of 26 February 2016 (p83), it was apparent that Mr Jones believed that although the Claimant had given "a much stronger interview" than Mr Lynch, he did not feel that the Claimant had performed well in all areas which were being considered. He identified areas in which both candidates had performed less well than he would have expected. Mr Jones' oral evidence, which the Tribunal accepted, being consistent with his contemporaneous commentary, was that he would not have recommended that either candidate should be appointed.

84. The relevant documents were at pages 83 (email from Gary Jones to Troy Healy on 26 February 2016 shortly after the interviews, identifying why he believed that Mr Lynch had given a stronger interview but also identified deficiencies in both candidates). The next relevant document was a note (p 87) dated 3 March 2016 from Mr Jones in which he asked Mr Healy to retain a copy of "our notes/scoring" for Mr Jones' records. Finally, there was an email chain on 7 March 2016 consisting of two emails (p88). The first was from Jonathan Toy to both Mr Healy and Mr Jones in the following terms: "*Good Morning, before you appoint to this post can I please see the scoring and the personal spec. I wouldn't mind going through this with you both. I don't want to hold you up so I can meet this afternoon if that works for you?"* The evidence from Mr Toy was that he wrote this email and intervened in this way because he was engaged in a review of the structure, the main thrust of which was to bring in a dedicated prosecutions team and that he wanted to review whether it was appropriate to continue with recruiting for this position and how the duties of the role they were considering appointing to would fit into the bigger plan for a dedicated prosecutions team. The second email was from Mr Jones to Mr Healy and Mr Toy also on 7 March 2016, indicating that he was happy to meet that

afternoon with Mr Toy and Mr Healy. There were no notes of the meeting and the witness statements did not address the content of that meeting. Indeed, there was a shortage of contemporaneous documentation about this meeting.

85. The Tribunal considered that the Respondent's position that appointment to the post was not taken forward because it conflicted with the larger plan in terms of establishing a council enforcement service, was credible. The chronology shows that reorganisation consultation proposal was published at the beginning of April and at section 1.1. it set out the Council's proposals to establish a Council Enforcement Service, through the restructuring of current services that existed within Enforcement, Parking, Highways, Emergency planning, CCTV, Security and Regulatory Services for the London Borough of Barking and Dagenham. It continued that these proposals were part of the Council's wider "ambition 2020 agenda" and supported the three priorities for the Borough. In short, the Tribunal accepted that this was part of an ongoing review which was completely unrelated to any details of the Claimant's own employment.

86. The proposal for reorganisation further provided at paragraphs 1.6 and 1.7 that the Council was in the process of adopting a new enforcement policy and that it was expected that this would be agreed in the summer of 2016. It continued that it was important to recognise that in certain circumstances, enforcement action could result in fees, fines and prosecutions and that there were clear guidelines set out in legislation and case law on how such monies could be used. It was clear from the content of that document that there was a move to concentrate the function of prosecution within a central service rather than have it sit within the separate teams and services as before.

87. The report also stated that the proposals formed part of the Council's requirements to make overall savings of £70m by 2020 (p89 para 1.4). The summary of the new structure was also included (pp91 - 94 at para 3.1)

88. The Tribunal accepted the evidence of Mr Jones, against whom, no allegations of poor management or discrimination or breach of the Equality Act 2010 were made by the Claimant. Indeed, it was part of his case that Mr Jones was a better manager than Mr Healy. He certainly came across as a fair and balanced witness. The Tribunal accepted Mr Jones's description of the discussion which preceded the deletion of the SPEO post. He described having a conversation with Mr Healy about the respective merits of the candidates and that although the Claimant had performed better in interview than Mr Lynch, it was stated by Mr Healy that Mr Lynch was effectively in post and performing the role of an SPEO competently but that both candidates had been deficient in certain important areas as identified in the email already referred to at page 83. They also acknowledged that in accordance with HR requirements, the documentary evidence about the scoring put the Claimant ahead.

89. Mr Jones also described the discussion with Mr Toy and Mr Healy which Mr Healy's email evidenced took place in early March 2016, in which there was a conversation about where the role sat and the needs of the organisation and that the general trend to set up a designated prosecution team was in conflict with the recruitment of someone to the SPEO post doing those roles which may very well then be made redundant. He described that as a result of this conversation it was decided that the role would be deleted. Mr Jones was not involved in making the decision and understood that the person with the appropriate authority to have made a decision would have been

Mr Toy. He referred to the fact that Mr Toy had created and presented a case for this to the relevant committee.

90. He also explained that as part of their discussions they had identified that neither the Claimant nor Mr Lynch had the relevant qualification to perform some of the roles which it was anticipated that the officers in the new structure would need to perform such as bringing prosecutions under the Proceeds of Crime Act.

91. The Tribunal considered that the Respondent's failure to have notified apparently either Mr Lynch and certainly not the Claimant of the outcome understandably left the Claimant feeling aggrieved. It was not disputed by Mr Healy, that Mr Healy had fed back to the Claimant that he had given a strong interview. The Tribunal accepted that this was the case and this was consistent with Mr Jones's contemporaneous email to Mr Healy (p83).

92. The Tribunal considers that the likelihood was that the processes within the Council and indeed within the departmental team failed in that it was not picked up prior to the advertisement and selection process that it was likely that this recruitment would conflict with the structure under discussion. When Mr Toy apparently picked this up belatedly at the beginning of March 2016, the Tribunal did not find it surprising that the post was not then in the event recruited to.

93. There were no circumstances which led the Tribunal to believe that this outcome was as a result of the Claimant's race or colour. The Tribunal considered that on the balance of probabilities, the fact that Mr Healy encouraged the Claimant to apply for the role was an indication that Mr Healy did indeed intend to give him an opportunity to go for this position. This was also consistent with Mr Healy having extended the time limit to allow the Claimant to put his application in. The Tribunal can only determine these matters on the balance of probabilities. We accepted that these actions on Mr Healy's part were well intentioned and we also accepted the description of the performance of the two candidates as described by Mr Jones. There was no reason to believe that race played a factor in the eventual outcome.

94. In all the circumstances therefore, the Tribunal was not satisfied that this complaint was well founded and it was therefore dismissed.

Issue (iii)(h)

95. The next complaint chronologically was issue (h). By this the Claimant alleged, as direct race discrimination, that Troy Healy gave him negative assessments based on low productivity without taking into account the fact that the Claimant had refused to do the above work because it was illegal. Dates of such assessments were said to have been on many occasions and in writing in July 2016, September 2016 and December 2016 following the Claimant raising the issue of officers acting ultra vires due to a lack of authorisation. This last clarification as to the dates that the Claimant relied on, were provided by him pursuant to the direction of Employment Judge Ferguson at the closed preliminary hearing in March 2018.

96. The Tribunal considered that this allegation was closely related to Issue (f) above. The Tribunal has already made adverse findings about the issue of the Claimant being authorised to do work and Mr Healy's response to that objection. As above when dealing

with Issue (f), it was relevant that the Claimant had not disputed the figures put to him as to his productivity nor indeed was there any dispute during the Hearing about the greater productivity of Terri Sinfield.

97. The evidence about the relative performance of the two PEOs was in a contemporaneous email from Mr Healy to the Claimant dated 12 December 2016 (pp120-121). This email was part of a chain in which Mr Healy was responding to Mr Palmer's objection to Mr Healy refusing to allocate all new cases for a while to Ms Sinfield. Mr Healy explained:

> "*Terri cannot take on new cases coming in because that would place an undue burden on her in relation to the 6 month case resolution target. In 6 months time, she would have had to deal with a much higher number of cases.*
>
> *It would also mean that in 6 months time you would have no cases falling due at ll.*
>
> *I do not regard that as appropriate or fair….*". Having asked the Claimant for an estimate of the time taken up by his GMB duties, he then continued "*Terri has fewer cases than you because she has closed more cases than you on average for approximately a year. Cases allocated to you in the last year 160, cases allocated to Terri in the last year 203. You have closed 112 cases in the last year. Terri has closed 225*" (pp114, 118-122).

98. For the same reasons as set out above in relation to issue (f), we were satisfied that issue (h) was not well founded and was dismissed. It was also in relation to incidents which were supposed to have happened between July and December 2016 and therefore as a discreet allegation, it was out of time.

99. The next allegations chronologically were issues (a), (i), (d), (b) and (c), and finally (j).

100. On 5 July 2017 Gary Jones sent an email to Jonathon Toy regarding the Claimant's GMB activities. He had taken time off, but it was unclear what he was doing and he refused to tell Gary Jones the reason why (pp 229-232).

101. On 6 July 2017 the Claimant sent an email to Sharon Harrington and Michelle Priest in which he complained about Troy Healy targeting him since giving evidence at Dave Ewing's disciplinary hearing; he claimed he was being subjected to a detriment (p 234).

Issue (a)

102. The Claimant alleged as an act of direct race discrimination alternatively, race harassment, that Troy Healy allowed Dave Ewing not to work with the Claimant when Dave Ewing said that working with the Claimant was one of the reasons he wanted to resign. It was said that this was communicated to the Claimant orally by Troy Healy and the Claimant believed that this happened in the early part of 2017.

103. In an email from Mr Palmer to Mr Healy sent on 13 December 2016 (pp118-119), amongst the various work-related issues that the Claimant raised, he referred in the context of explaining his levels of productivity that he had already told Mr Healy that he

was demotivated during the entire time that he was not authorised even after that. He continued

> "*I have explained that this demotivation is largely due to Dave's behaviour and that given his status within the team as I perceived it and the fact that he was saying I would never get to work in building control and that he would stop me, I felt that I was in a dead end job with no way of progressing. You have stated that Dave Ewing has no control over such matters and this encouraged me greatly although knowing that you have told him that he does not have to work with me is worrying as we are all part of one team. I am genuinely worried that Dave Ewing has stated that he has an adversarial relationship with him when I have had nothing but polite words to say to him and I do not want him to be believed by management to my detriment".*

104. The Tribunal understood from this email that the detriment the Claimant was alleging was that he would unjustifiably have a bad reputation among the managers.

105. Mr Ewing had stated that he did not wish to carry out joint site visits alone with the Claimant as he found him aggressive, unprofessional and insubordinate. In order to avoid possible conflict in the face of such strongly expressed sentiment, and because it was not necessary for them to conduct joint site visits, Mr Healy agreed to Mr Ewing's request. He also took into account that the recruitment and retention of qualified Building Control surveyors had proven to be extremely difficult ([R6] para 56). As the Claimant's contemporaneous email confirms, Mr Healy had explained the situation to him at the time. In the circumstances we accepted Mr Healy's evidence about what lay behind his decision to keep the two members of staff separate on the balance of probabilities.

106. In his oral evidence, Mr Palmer did not accept that there was an antagonistic relationship between himself and Mr Ewing. He accepted that there was office banter exchange between them but he believed that Mr Ewing did not like to be on the losing end or receiving end of such banter. He acknowledged that he may have rubbed Mr Ewing up the wrong way and that at times he initiated such banter. He complained however that Mr Ewing had not let him know that he had had this effect.

107. Mr Palmer also explained to the Tribunal that it was not a requirement of his job that he should work with Mr Ewing. Mr Healy had arranged for the two PEOs to go on visits with the Building Control Surveyors if they wanted to, in order to give them experience so they could develop their careers potentially. This was particularly important for the Claimant who was in the process of obtaining a building control qualification. However, the Claimant's view was that he did not consider he could learn anything from Mr Ewing because Mr Ewing was not qualified to the extent that was necessary and that the Claimant could gain the relevant knowledge from the other Building Control Surveyor, Mr Singh. In respect of only one element of his job, the Claimant might have needed to attend a site with a Building Control Surveyor and that was for the purposes of a planning application. However, as the Claimant explained, he preferred in any event, to conduct these visits with Mr Singh.

108. This issue did not feature greatly in the oral evidence. Indeed, it did not appear that the Claimant asked any questions of Mr Healy about this. To the extent therefore, that it is alleged that Mr Healy's action of allowing Dave Ewing not to work with the Claimant

because of difficulties Mr Ewing said he had with working with the Claimant, was an act of direct race discrimination or race harassment, the Tribunal did not consider that the Claimant had established evidence which would lead us to draw that conclusion. It was consistent with Mr Healy's method of management that he would seek to avoid confrontation and he did that not only in relation to the Claimant but in relation to others as well. In all the circumstances therefore, there was no proper evidential basis from which we could conclude that the discrimination or harassment alleged was made out.

Issue (i)

109. The Claimant alleged as an act of direct race discrimination and harassment that Troy Healy queried his whereabouts on 5 June 2017.

110. There was some confusion during the hearing and within the Claimant's evidence as to whether he was complaining about events on 5 June or 5 July 2017.

111. On their face, if the Claimant was complaining about matters which happened on 5 June, these allegations would be out of time subject to any finding about being continuing discrimination. 6 June was the relevant date. We considered the likely date of Mr Healy's query.

112. In so far as the Claimant described events as happening at a time when Mr Healy was on holiday, it was more likely that he was complaining about events which had happened on 5 June 2017. There was also some support for this in the contemporaneous documents and indeed Mr Healy confirmed that he was abroad from the end of May to the beginning of June 2017. The Respondent's case was that Mr Healy was working during a period of annual leave. The Tribunal found that to be credible given the pressure that he had been under when he was at work, after having witnessed the aftermath of the Westminster Bridge terrorist attack.

113. His case was that he had been in contact with Mr Jones for a completely separate reason and that during the course of a discussion with Mr Jones, he raised the Claimant's whereabouts in the context of needing some information from Mr Palmer, which he believed Mr Palmer had compiled. Mr Jones confirmed the gist of this conversation but indicated that he had simply said to the Claimant that Mr Healy would be in contact with him in due course. There was no documentary evidence about this issue of Mr Healy querying the Claimant's whereabouts or any complaint by the Claimant at the time.

114. The Claimant characterised this as an example of Mr Healy's "*overbearing monitoring*". However, there was no evidence to support that description. There was certainly no evidence about the way in which others were treated. There was no further evidence to link this action by Mr Healy with the Claimant's African Caribbean origins. Even if Mr Healy had asked where the Claimant was and sought to obtain some information from him, the Claimant did not suggest that he was not at work on the date on which this enquiry was made. It did not appear therefore to be an act by Mr Healy which could amount to harassment of the Claimant. There was just the one occasion on which such an enquiry was made and it appeared to the Tribunal that it certainly could not amount to harassment.

115. In all the circumstances therefore, the Tribunal considered that the Claimant had failed to establish that there were facts from which the Tribunal could conclude that

Mr Healy had treated him less favourably than he treated or would treat others, or that any of Mr Healy's actions were connected to or influenced by the Claimant's race. Therefore, the complaints of direct race discrimination and harassment in issue (i) were not well founded and were dismissed.

Issue (d)

116. By this direct race discrimination allegation, the Claimant complained that on 3 July 2017, Mr Healy effectively accepted the account of a member of the public who complained about the Claimant, without having asked the Claimant about it. This was a reference to the incident involving the notice of access served by the Claimant on the property owner at Ventnor Gardens.

117. The Claimant relied on Mr Ewing and Ms Sinfield as comparators. The contemporaneous evidence which was relevant to this complaint was at pages 202-7 of the bundle. The Tribunal accepted Mr Healy's evidence that he sought to resolve all complaints against all staff informally. There was certainly evidence contemporaneously to support that contention.

118. The relevant chronology in relation to this complaint was that on 3 July 2017 by an email sent at 16:09 (p207), Mr Healy told the Claimant that he had received a complaint in relation to a property in Ventnor Gardens and asked Mr Palmer to give him "*details as to your interactions with the architect and the owners of the property*".

119. Mr Palmer responded on the morning of 4 July 2017 (pp205-206) with a detailed account of his interactions. Mr Healy then wrote back to Mr Palmer asking him specifically why given the timeframe involved, Mr Palmer had not simply made arrangements for access to the premises with the owners when they offered to arrange visiting access. Mr Palmer responded by outlining the procedural steps that he had taken in relation to serving a valid notice of access. Mr Healy responded again by querying why the Claimant had not arranged to attend at a mutually agreed time.

120. This was the reason why the Claimant believed that Mr Healy had accepted the account of the member of the public against his own.

121. The Tribunal found that the detailed accounts which Mr Palmer had given to Mr Healy made it clear that Mr Palmer was not prepared to discuss anything relating to the property with the owners and their architect as long as they maintained that the notice requiring access to the premises which Mr Palmer had prepared was defective. The Claimant had then continued with his stated course of preparing another notice and delivering it to the site. He had done this on the same working day.

122. Mr Healy's point was that such a notice is only needed if the officer has to enforce access to the premises but it is not necessary if the owner and their agent agree to access being granted. In those circumstances, Mr Healy's impression was that the Claimant was being unduly officious in his dealings with the owner and the agent. He reported to Mr Palmer in the contemporaneous email correspondence that the owners had complained that they found Mr Palmer's attitude "*negative, unhelpful and rude*" (p203).

123. It appeared to the Tribunal that Mr Healy had indeed approached the matter in an open way by asking the Claimant for his account and it was Mr Palmer's own account of

his interaction with the owner and their agent which raised the issue about why the Claimant had not simply gone ahead and dealt with the matter informally and by agreement rather than looking to the letter of the law in an unnecessary and officious manner.

124. Further, Mr Healy's intervention resulted in the complaint being withdrawn or not pursued.

125. Further, the Claimant's insistence on continuing to deal with the Ventnor Gardens property by way of a fresh notice would have required the owners to be present at the property at the time specified by the notice which required access within 24 hours. This was further evidence of the unnecessarily obstructive and officious approach taken by the Claimant in relation to this property.

126. The Tribunal was not satisfied therefore, that the Claimant had established that Mr Healy accepted the account of a member of the public who complained about the Claimant without having asked the Claimant about it. The contemporaneous documentary evidence established the contrary to be the position. In those circumstances therefore, the Claimant's allegation was not made out on its facts and was dismissed.

127. The Claimant made a point in relation to his being investigated concerning a complaint about another property on Longbridge Road. However, this was not a matter which was canvassed by the Claimant in evidence either in his witness statement or in oral evidence. Some contemporaneous documents about it were included in the bundle (pp69-72) however there was no proper basis for the Tribunal to reach any findings of fact about it. The Claimant's case was that he was investigated but that Mr Ewing was not investigated for substantially more complaints. We did not have sufficient information about the background to the Longbridge Road issue and the complaint. Certainly, the officer who appeared to have done the investigation from the documents we had, was not Mr Healy. The development manager by the name of Dave Mansfield dealt with that matter. It also related to events which occurred in March 2014. It was not on its face a comparable situation.

128. The contemporaneous documentation referred to above which confirmed Mr Healy's approach in trying to resolve complaints from members of the public was at page 671. This was an example of a complaint which was dealt with in August 2015 and was brought against Mr Ewing. As with the Ventnor Gardens complainant, Mr Healy reassigned the work to another member of the team partly as a way of resolving the complaint (p671). Although the Claimant referred to Miss Sinfield as a comparator, there was no evidence of any criticism of her work before us.

Issues (b) & (c)

129. The Claimant complained in relation to issue (b) as an act of direct race discrimination and victimisation that Troy Healy proposed a "1-2-1" meeting with the Claimant on 5 July 2017 at short notice and without reference to the Claimant's availability, at which another manager would also be present. The Respondent said that the reason for this was in part because the Claimant had shouted at Troy Healy in the office. The Claimant accepted that there had been a disagreement but denied shouting.

130. The Claimant further alleged in relation to issue (c) that Troy Healy refused to move the time or date of the meeting on 5 July 2017. This complaint was put forward as direct race discrimination, harassment and victimisation. The comparators in relation to both the direct discrimination and victimisation allegations were Dave Ewing and Terri Sinfield.

131. It was unnecessary for the Tribunal to make any findings about whether or not the Claimant had shouted during the interaction with Mr Healy on 30 June. Suffice it to say that both parties agreed that there had indeed been a disagreement in the office. Mr Healy intended to discuss this matter with the Claimant at a 1-2-1 meeting. The relevant contemporaneous documentary evidence included a ten page email train between the Claimant and Mr Healy. The first email in the chain (p196) was from Mr Palmer to Mr Healy sent on 5 July 2017 at half past midday seeking a new time for the 1-2-1 which had already been fixed, or he had already been notified about to take place on Friday 7 July 2017 from 10:00am – 12:00pm. The correspondence rapidly deteriorated into a discussion about what time the meeting would take place and as to whether either officer could attend at the time being proposed by the other. The Claimant indicated that he could not make the time that Mr Healy proposed but did not give a reason for this. When Mr Healy asked him why 10 o'clock on Friday was not possible for him (p192), Mr Palmer responded as follows:

> "*I have various union duties to attend to due to instances of bullying and unfair working practices in the workplace on the part of managers within LDDB. Due to the fact that I am awaiting confirmation of the exact duration of the duties, I am yet to put it into my calendar.*
>
> *Why is 14:30 -16:30 on Friday not possible for you Troy?"*

132. Mr Healy responded by querying with Mr Palmer why no union duties had been requested or authorised and he asked Mr Palmer whether Steve Street (the relevant Union official) had sent him something.

133. It was not in dispute that the Claimant had union duties in respect of the GMB. There was something of a history of the Claimant raising his commitments as a reason for him not being contactable by his employers. In those situations, the employers indicated that he had not followed the appropriate procedures and therefore they had not been put on notice that the Claimant needed to spend time on union duties.

134. In response to Mr Healy's enquiry about whether the time off for union duties had been appropriately sanctioned or processed, Mr Palmer responded: "*Given that I have not ignored your question I would appreciate if you did not ignore mine"* (p191). The Tribunal considered that this was a completely inappropriate response to Mr Healy's reasonable question about whether the union duties had been duly requested or authorised.

135. It was this response that led Mr Healy to tell the Claimant that because of the way the Claimant had responded to him on 30 June 2017 and the way that the Claimant had corresponded with him on the matter of the arrangement for the 1-2-1- and in relation to the Ventnor Gardens issue, Mr Healy had decided that he would need another member of the management team with him at the proposed 1-2-1 meeting. He invited the Claimant to bring someone along with him also if he so wished.

136. The Claimant's response to that was to challenge the characterisation of the meeting as a 1-2-1 meeting and to indicate that he was forced to reschedule the meeting so that he could have the appropriate representation. He indicated that he believed that the proposed meeting time on Friday 7 July was not reasonable as he was required for union duties and that Mr Healy had not even attempted to confirm his reason for rejecting the Claimant's offer of having the meeting from 14:30-16:30. He asked for the meeting to be rescheduled to the following Tuesday or Wednesday afternoon when Mr Street would be available and confirmed that he would not be attending the meeting on 7 July. Mr Healy's response was to inform the Claimant that the meeting was a scheduled 1-2-1 and therefore the Claimant would be expected to attend unless it was agreed otherwise by Mr Healy. He also reminded the Claimant that he could bring either a trade union colleague or work colleague for support.

137. The Claimant engaged in a further challenge to the characterisation of the meeting as a 1-2-1 because he stated that it could not "*include 3 people*".

138. In his oral evidence, the Claimant agreed that when the meeting was first proposed, he was available to attend on Friday 7 July at 10:00am as Mr Healy had proposed.

139. We found that Mr Healy did indeed propose a 1-2-1 meeting with the Claimant on 5 July to take place on 7 July at 10:00am. The Tribunal did not consider that this was notice which was unduly short. A 1-2-1 is a standard method by which managers have conversations with the staff that they manage. There was no reference on the Claimant's part to any procedural protocol which would have required any particular notice to be given to an employee in respect of a 1-2-1 meeting.

140. Further, as the Claimant accepted in evidence, he was indeed available and as he acknowledged in the correspondence referred to above, there was nothing in his calendar showing that he had any other commitments at the time that Mr Healy proposed. Finally, the one aspect of issue (b) which was factually correct was that another manager would also be present. The Tribunal considered that the contemporaneous email correspondence and the evidence which was agreed between the parties, confirmed that Mr Healy proposed that another manager be present because of the difficulties he had encountered with the Claimant up to that point including his perception that the Claimant had shouted at him in an open meeting when discussing the matter. It appeared to the Tribunal to be sensible that a manager in those circumstances should seek to have a third party present.

141. What the evidence however did not suggest, was that Mr Healy had proposed this meeting because the Claimant had given a statement to Miss Harrington about Mr Ewing. There was no evidence before the Tribunal which would lead the Tribunal to find that Mr Healy knew that the Claimant had given the evidence to Miss Harrington let alone what he had stated in relation to Mr Ewing. This was also not put to Mr Healy by the Claimant. The victimisation complaint therefore could not succeed because there was no evidence that Mr Healy knew about the protected act having been done, or had any suspicion about it.

142. Further, there was nothing in relation to the facts that we found or indeed which were alleged against Mr Healy which would lead the Tribunal to find that the reason for Mr Healy proposing the 1-2-1 meeting with the Claimant on 5 July for 7 July and with another manager also being present, was in any way related to or connected to the

Claimant being African Caribbean. The Tribunal noted that in the contemporaneous emails, Mr Healy had referred not just to the incident on 30 June but also the correspondence already referred to above in relation to Ventnor Gardens and the correspondence about arranging the meeting on 7 July 2017. The Tribunal considered that these matters, the documentary trail of the email chains raised issues about the Claimant's responses to his manager which appeared to be inappropriate and worthy of further discussion in a 1-2-1.

143. The essence of *Issue (c)* was said to be that Mr Healy refused to move the time or date of the meeting. This was said to be victimisation and race harassment. Also, the correspondence between the Claimant and Mr Healy led to Mr Healy questioning why the Claimant was putting forward union activities on Friday as a reason for not being able to attend at 10 0'clock and whether the time for the activities had been authorised (p187). The Claimant continued to maintain that Mr Healy was being obstructive in terms of the Claimant's union duties and also that he refused to attend a meeting without appropriate representation.

144. Mr Palmer forwarded the email trail referred to above between himself and Mr Healy about the proposed 1-2-1 meeting to Sharon Harrington and Michelle Priest of HR on 6 July 2017. He sent it to them as evidence to support his belief that Mr Healy seemed to be targeting him ever since he gave evidence at the investigatory hearing. This was a reference to 28 June 2017.

145. As with *Issue (b)* above, the Tribunal did not consider that the evidence supported a finding that Mr Healy refused to amend the date of the 1-2-1 because of the Claimant having given evidence to Ms Harrington on 28 June 2017. The Claimant did not dispute the account in Mr Healy's statement that the 1-2-1 had been originally proposed for 4 July 2017 with notice to the Claimant of this having been sent on 29 June 2017 (R6 para 59, pages 12-13). We found that Mr Healy had changed the date from 4 to 7 July as a result of the incident on 30 June 2017 and his desire to have another member of the management team attend. We were satisfied that the necessary causation was not established in respect of the victimisation allegation. We therefore rejected the contention that this action by Mr Healy constituted victimisation. The complaint was therefore not well founded and was dismissed.

146. We also rejected the harassment allegation in relation to *Issue (c)*. We accepted the Respondent's case about the reason for refusing to move the time and date of the meeting. It was totally unrelated to race, and was a credible exercise of management discretion.

Issue (j)

147. By this, the Claimant alleged that Troy Healy interfered with his appraisal in late August or early September 2017, adding negative comments. This was said to constitute direct race discrimination, victimisation and/or race harassment and the Claimant relied on Terri Sinfield as an actual comparator in respect of both the victimisation and direct race discrimination complaints.

148. The Tribunal accepted Mr Toy's evidence to us that the appraisal the Claimant was referring to was for the period April 2016 to March 2017. We accepted that appraisals

normally covered the preceding financial year but that in practice, the appraisals were frequently completed a few months late.

149. During that year Mr Healy had been the Claimant's manager. Mr Jones had only managed the Claimant when he covered for Mr Healy in Mr Healy's absence. The appraisal was initially done by Mr Jones, the Claimant having objected to Mr Healy carrying it out, but when it was forwarded to Mr Toy as Mr Palmer's second line manager, Mr Toy told Mr Jones that it was not appropriate for Mr Jones to have completed the appraisal without reference to Mr Healy who had been the Claimant's line manager during the appropriate timeframe. However, it was agreed by both parties that once the appraisal had been completed it could not be altered, therefore the involvement of Mr Healy did not have any impact on the content of the appraisal. Indeed, Mr Jones confirmed in his evidence that the entries which the line manager put in on page 173 had all been his own without reference to Mr Healy save that he records that he had had regard to some statistics which had been provided by Mr Healy to him. He described it as his independent assessment. It was also explained to the Tribunal, and this was not challenged, that the appraisal process involved the employee filling out all the other entries and giving a proficiency rating in respect of their own performance. However, the overall rating on the covering page (p173) was that of the line manager. Thus, the proficiency ratings which the Claimant gave himself were either 3 or 4, the majority being 4, and 4 being the top score achievable. The manager awarded an overall rating, which was 2 – improvement required, on a scale of 1 – 5, 5 being the highest score.

150. Further, Mr Jones' evidence that the rating had no impact on pay, was not disputed.

151. Thus, the contention that Mr Healy added negative comments to the appraisal was not made out as there were no such negative comments added by Mr Healy. The Claimant was unable to identify any such when he was asked during his evidence.

152. It was very likely that this exercise had been conducted in August 2017 after Mr Jones had taken over the management of the Claimant at the end of July.

153. As we concluded, the Claimant had failed to establish the primary facts alleged in *Issue (j)* namely that Mr Healy had added negative comments. To the extent that Mr Healy provided feedback in respect of the Claimant's appraisal, the Tribunal also found that this was fully in accordance with the Respondent's policy and indeed with common sense. Finally, Mr Jones in making his comments on the appraisal had identified that he was not fully able to comment on the Claimant's performance over the past year as he had only been managing the Claimant for the past month. The Tribunal therefore considered that there would have been nothing untoward in Mr Healy having input into the appraisal if we had found that he had.

154. The allegation of victimisation was therefore not made out as the Tribunal did not consider that there was any unfavourable treatment of the Claimant. It was also not disputed that Mr Healy had carried out an appraisal of Terri Sinfield's work. She was in a post which was equivalent to that of the Claimant and was line managed by Mr Healy. Therefore, the comparator did not support the Claimant's allegations of victimisation or unfavourable treatment.

155. Similarly, in respect of the harassment allegation, the Tribunal did not consider that Mr Healy performing his duties as the Claimant's manager for the period ending March

2017 could in these circumstances, amount to harassment. Finally, the Tribunal thought there was no basis whatsoever for the Claimant to suggest that his manager having input into his appraisal could have been less favourable treatment on the grounds of race.

Relevant Law

156. The applicable statutory provisions were set out in the List of Issues and did not generate any dispute on the facts of this case. It was not proportionate therefore to set them out in full in these reasons.

Employment Judge Hyde

14 December 2018