EMPLOYMENT TRIBUNALS

Claimant:		**Respondents:**
Mr M A Ali	**v**	Heathrow Express Operating Company Limited (1) Davinder Hare (2) Redline Assured Security Limited (3) Narinder Rai (4)

Heard at: Reading **On:** 7, 8 & 11 December 2020

Before: Employment Judge Anstis
Mr C Juden
Ms J Weaver

Appearances:
For the Claimant: Mr N Toms (counsel)
For the 1st, 2nd and 4th Respondents: Mr J French-Williams (solicitor)
For the 3rd Respondent: Mr M Williams (counsel)

JUDGMENT

1. The first and second respondents subjected the claimant to unlawful harassment related to religion or belief, and must pay £2,000 to the claimant in compensation.

2. The first and fourth respondents subjected the claimant to unlawful harassment related to religion or belief, and must pay £2,000 to the claimant in compensation.

3. The claimant's claims of race discrimination are dismissed on withdrawal.

4. The claimant's remaining claims of religion or belief discrimination are dismissed.

REASONS

A. INTRODUCTION

Introduction

1. The claimant brings complaints of race discrimination and discrimination on the basis of religion and belief. His complaints of race discrimination were withdrawn at the start of the hearing (and are dismissed on withdrawal), leaving only complaints of direct discrimination and harassment on the basis of religion or belief.

2. The claimant is a Muslim. He was an employee of the first respondent and remains employed in the same role, although now by another employer following a TUPE transfer. The second and fourth respondents are colleagues of his. The third respondent is a company engaged in (amongst other things) security testing.

3. The claimant's claims were identified in an agreed list of issues as being as follows. In each case it is said that the first respondent is (when not directly liable) vicariously liable for the detriments or harassment, and each are said to be either direct discrimination or harassment:

    a. (against the second respondent) the content of his complaint (of 4 November 2016) against the claimant,

    b. (against the fourth respondent) his comments in a meeting with the first respondent some time in 2017 (it appears the relevant date is 20 March 2017),

    c. (against the third respondent) the 'security bag incident' on 22 August 2017,

    d. (against the fourth respondent) his comments to a colleague in April 2018, and

    e. (against the first respondent) the failure to deal with his grievance submitted in April 2018.

4. The issues considered in this hearing were presented by the claimant across two claim forms. The first, lodged on 18 December 2017 after a period of early conciliation from 1 September to 15 October 2017, was in respect of the alleged detriments (or matters of harassment) set out at (a)-(c) above. The second, lodged on 28 August 2018, following a period of early conciliation from 28 June to 28 July 2017 was in respect of the alleged detriments (or matters of harassment) set out at (d) and (e) above.

5. While points (a) and (b) relate to events occurring a long time before he submitted his claims it was his case (not disputed by the respondents) that he only became aware (of at least fully aware) of the alleged detriments (or matters of harassment) later, on receipt of materials provided by the first respondent in response to a data subject access request he had made. The relevant materials were received on 31 August 2017.

The hearing

6. The hearing was originally listed to take place over five days from 7-11 December 2020. The tribunal panel assigned to the case could not sit on 9 or 10 December 2020 owing to prior commitments, but we are grateful to the parties for agreeing a timetable by which the case could be completed comfortably within three days.

7. At the outset of the hearing, Mr French-Williams applied for a witness order in respect of Geitee Janjua. She was the HR officer to whom the claimant's April 2018 grievance had been referred. She had provided a witness statement describing how she had addressed that grievance, which was plainly relevant to the question of whether any failure by the first respondent to deal with the grievance had been because of the claimant's religion. Mr French-Williams said that she had recently taken up new employment, and while he had expected her to be willing to attend tribunal she had recently said that she was too busy to do so. He applied for a witness order which was granted by the tribunal, requiring her attendance to give evidence on 11 December 2020.

8. On 8 December 2020 Mr French-Williams said that he now understood that Ms Janjua was concerned about travelling to the tribunal during the Covid-19 pandemic, but was willing to attend by CVP. He made an application for her to give evidence by CVP. This was not opposed by the other parties, and in view of her evidence being limited to a very discrete point in the case we agreed to take her evidence by CVP. Accordingly the witness order was varied to require her attendance by CVP rather than in person.

9. Having completed initial discussions, the tribunal heard evidence from the claimant and from Mr Liaqat Ali (his trade union representative) on Monday 7 December 2020. That concluded the evidence for the claimant. On Tuesday 8 December 2020 the tribunal heard evidence from the second and fourth respondent, and from Spencer Adaway, who had dealt with one of the claimant's grievances on behalf of the first respondent. This evidence concluded by lunchtime, but the remaining two witnesses were not available so the hearing adjourned to resume on Friday 11 December 2020. On Friday 11 December the tribunal heard evidence from Ms Janjua (by CVP) and from Mr Rutherford, a director of the third respondent. Each representative submitted written submissions and had the opportunity for a brief oral reply to the other parties' submissions. Submissions were concluded by 13:00 and the tribunal was able to give an oral judgment and reasons later in the day on Friday 11 December 2020. At the end of the hearing, the claimant requested these written reasons, which for the sake of convenience we have included with the subsequent judgment, rather than setting them out separately.

Time points

10. We have mentioned that the claimant did not become aware of some of these issues until 31 August 2017. In his submissions, Mr French-Williams says that the claimant was aware of the basis of the grievance raised by the second respondent at the time it was made, so that any claim in relation to that is out of time. We accept he was aware of the fact of the grievance, but this is a claim in relation to the terms of the grievance which he did not become aware of until 31 August 2017. In such circumstances (and where the respondents have not suggested that they have been prejudiced by the delay) we have no hesitation in extending time on a just and equitable basis. That applies all the more in relation to the comments made by the fourth respondent during the investigation, which the claimant only became aware of in 31 August 2017. To the extent necessary we extend time in respect of each of the claimant's claims.

B. THE FACTS

Introduction and background

11. With two exceptions, the facts that the claimant relies upon are not in dispute. Points (a)-(c) are the subject of agreed documentation or agreed facts. On point (d) the factual dispute is whether that conversation occurred, and on point (e) the factual dispute is what steps were taken in relation to the grievance.

12. The claimant's witness statement contains criticism of the first respondent's actions, response, or lack of response to a number of additional incidents which are not issues for us to determine in this claim. These appear at most to be background information from which the claimant wishes us to draw inferences as to later actions (or inaction) by the first respondent, in particular in relation to issue (e). As set out below we have not found it necessary to form a view on those, and in these findings we confine ourselves to the issues we have to determine.

13. In the time we are concerned with the claimant was first a duty station manager and later a trainee train driver employed by the first respondent. Mr Liaqat Ali was employed by the first respondent and was the claimant's trade union representative. The second and fourth respondents were employed by the first respondent as, respectively, a duty station manager and train driver. The fourth respondent was also a trade union representative at the relevant time, and (in his capacity as a fellow employee, rather than a trade union representative) accompanied the second respondent in grievance or disciplinary hearings. The second and fourth respondent are Sikhs. The claimant was known by the first name "Anis" within the first respondent, and the fourth respondent was known as "Nins".

a. The November 2016 grievance against the claimant

14. On 4 November 2016 the second respondent was subject to an interview in respect of a grievance that had been raised against him. We do not need to refer to the detail of that grievance, but note that it was strenuously denied by the second respondent, and that he considered the claimant had been responsible for this grievance being raised against him. Although the claimant was not the individual who had raised the grievance, the second respondent considered that the claimant had (maliciously) prompted the individual who complained to raise a grievance against him (the second respondent).

15. On 4 November 2016 the second respondent wrote the following, by way of a grievance to the first respondent against the claimant:

> *"To whom it may concern*
>
> *This is a formal complaint about Anis Ali.*
>
> *Anis is a Muslim. He wears a Sikh Kara. One of the 5 Ks.*
>
> *Sikhs have been attacked by Mongols (who claimed to be Muslim) since Sikhism started. Since then a small groups of men who claim to be Muslim have wore the 5 K's to attract Sikh girls and raped them. Look at the grooming cases recently in the north of England in the last few years where white girls were being groomed and raped. This has been happening to Sikh girls since Sikhism started. Anis has been asked no only be myself but by other Sikhs why he wears a Kara. Each time he laughs and says it a fashion item. Anis has been asked by myself and other Sikhs to remove it, to which he has laughed and refused.*
>
> *How would you feel if you saw a person of another religion is disrespecting a religious item of yours on a daily, weekly, monthly basis?*
>
> *Attached copy of the 5ks and a article about ISIS being compared to the moguls …"*

16. As the grievance indicated, it was accompanied by a BBC article on "The Five Ks" of Sikhism. No objection is made to that article. It is also accompanied by a website printout from "Sikh Sangat News" entitled "Brutality of ISIS is the copy of what Mughals did with Sikhs of Punjab". Unfortunately the printout of the article we have is almost illegible, but the headline itself and subheadings such as "Mass torture and persecution of Sikhs" and "Torture on Sikh Women & Kids" seem to give a flavour of what it contains: criticism of the ill-treatment of Sikhs and possibly others by Muslims or those who claim to be Muslim dating from the time of the Mughals through to ISIS in the modern era. The printout includes "comments" on the article which include abuse directed at Islam as a religion and at Muslims in general.

17. In cross-examination, the second respondent said that the printout had been included to demonstrate why the claimant wearing a Kara may be offensive to Sikhs. However, on further questioning he accepted that:

    a. there was nothing in the printout that related in any way to wearing a Kara,

    b. that, on reflection and with the benefit of hindsight, that he could see why the claimant, as a Muslim, found the printout offensive, and

    c. that the article was wrong and that he was wrong to have submitted it with his grievance.

18. While the second respondent accepted that his evidence of Muslims having worn the Kara to groom Sikh girls was 'weak' he said that this was something he had heard of first-hand through voluntary work with the British Organisation of Sikh Students. We note that there was no evidence before us that this had occurred, and the second respondent did not include any evidence with his grievance showing that this occurred. Instead, he presented a printout that he accepted Muslims may find offensive.

19. The claimant was not aware of the terms of the grievance until it was produced to him on 31 August 2017 following his subject access request.

20. The grievance was considered by a member of the first respondent's HR team, who conducted a full investigation. Having done so, she concluded that no action would be taken in respect of the grievance. We do not have to consider her actions in this claim, although the matters which make up issue (b) arose during the course of her investigation, and we also note that during her investigation the second respondent accepted that he had been aware of the claimant wearing a Kara since at least January 2016.

b. The fourth respondent's comments on 20 March 2017

21. During the course of the investigation, the investigator interviewed the fourth respondent about the claimant wearing the Kara. Her notes of that interview (which are not in dispute) record the fourth respondent as saying, when asked about the claimant wearing the Kara:

    "I felt offended. He's Muslim, not Sikh."

    When the fourth respondent is asked whether there is anything else he wants to add at the end of the meeting, the notes record the following:

    "Nins giving background of current issues with Muslim individuals wearing this symbol to seduce Sikh girls to groom them. Anis is in a position of seniority and it made me ask myself a question why is he wearing this."

22. During cross-examination, the fourth respondent said that the reason why he felt offended was because the claimant had told him that he (the claimant) regarded his Kara as simply being a piece of jewellery, rather than (as the note may have suggested) because he (the claimant) was a Muslim and was wearing a Kara.

23. When asked what his answer would have been to the question he posed ("*why is he wearing this*") the fourth respondent said that he was wearing it to "*elicit a reaction from the Sikh community* [working for the first respondent]". He also said that "*there is history surrounding our faiths*" (that is, Sikhism and Islam) and referenced the "Mace report" which he said documented "*50 years of targeted abuse by Muslims grooming Sikh girls*", and an "Inside Out" programme about Muslims grooming Sikh girls. He said both showed that Muslims had in those cases been passing themselves off as Sikhs by wearing a bandana and Kara. Neither the Mace report nor the programme were in evidence before us. He said that a Sikh woman employed by the first respondent had described the claimant as touching her Kara in a way that made her feel uncomfortable (there is an interview to that effect in the notes made when investigating the second respondent's grievance). He called this a "*micro-aggression from a position of authority*" on the part of the claimant.

c. The security bag incident

24. The third respondent has a contract with Heathrow Airport for various security-related services including security testing. The scope of this contract extends to the stations operated by the first respondent on the estate of Heathrow Airport.

25. This security testing includes deploying suspect packages in order to test whether those packages are treated appropriately by the relevant staff. We heard that this involves deployment of packages according to particular methods and standards designed to make them unambiguously suspicious, rather than items that may legitimately have been left behind by passengers.

26. The claimant does not make any complaint of this method of security testing, which is accepted by all parties to be appropriate in the interests of security at the airport. The detriment he alleges relates to the specific design of one particular test.

27. On 22 August 2017 the third respondent's staff concealed a carrier bag at one of the first respondent's stations on the Heathrow airport estate. This was open at the top, and contained a cardboard box and some electric cabling. At the top of the bag, so as to be visible on close inspection, was a piece of paper with the words "Allahu Akbar" written in Arabic. The claimant tells us that the proper translation of this is "Allah is Greater". It is not in dispute that this is an important and significant phrase for Muslims, which may be used many times a day by Muslims in the context of religious

devotion. It was properly accepted by Mr Toms, and we also find that, regrettably, this is a phrase that has been used in connection with terrorist attacks in 2017 and beyond.

28. The claimant was not on duty that day and the bag was found by a colleague. The claimant accepts that the third respondent could not have known whether he was or was not on duty that day. It cannot be said that the exercise was one particularly directed at the claimant. He learned of it only after the event when an email was circulated showing the outcome of the test (and including photographs of the bag and note) at the end of the day.

29. Mr Rutherford said in his witness evidence that:

> *"The only purpose of the note is to ensure that the package looked obviously suspicious and was added by the Covert Team Leader to reflect just one of the current threats that were present in the UK at the time.*
>
> *… We would often use English words and text that is designed to raise suspicion too, e.g. "Animal Testing must STOP now" or "No Third Runway"."*

30. We accept this evidence.

d. The fourth respondent's comments to a colleague in April 2018

31. In the claimant's further particulars, this detriment is described as follows:

> *"At some time in April 2018 the fourth respondent spoke to a colleague about the claimant. During that conversation the fourth respondent stated that he was aware of the claimant's wrongdoing, that the claimant is a Muslim and that he is still wearing the Kara and using it to sleep around with white girls."*

32. Although not clear from that description, it is now clear that the person the fourth respondent is alleged to have said this to is Liaqat Ali, who says the following in his witness statement:

> *"The claimant contacted me in early April 2018 to complain about inappropriate comments that the fourth respondent had made in a WhatsApp group chat.*
>
> *As a result I spoke to the fourth respondent, I explained the claimant's concerns with the comments that he had made … What made it worse that it was broadcasted to a very large group of train drivers …*
>
> *The fourth respondent said during the telephone conversation, that he is aware of many wrong doings of the claimant; he also said that*

> *the claimant is a Muslim and was still wearing the Kara … and using it to sleep around with white girls …*
>
> *I advised the best course of action was for the fourth respondent to apologise to the claimant."*

33. The reference to a WhatsApp chat is to a dispute that arose between the fourth respondent and the claimant in discussions on a WhatsApp group that the fourth respondent had set up for the first respondent's train drivers. We do not need to go into the rights and wrongs of that, but it is clear that there was a dispute, with the fourth respondent saying (in the group chat):

> *"Anis, never accuse me not caring about our fellow grades, I was striking for them way before you ever joined this company. I suggest* [unclear] *before accusing others of abandoning or shafting their fellow colleagues, your reputation proceeds you! No need to reply!"*

The claimant later replied:

> *"I am disappointed that as a rep you have made such comments about my integrity. Can you back your comments with evidence as you have now made it a personal matter …"*

34. Liaqat Ali explained during his evidence that both he and the fourth respondent were representatives of the same trade union, so he was eager for the matter to be resolved informally, without being taken any further, by an apology from the fourth respondent.

35. In his witness statement, the fourth respondent, while recalling the WhatsApp dispute, denied that he had said the words attributed to him in relation to the reason why the claimant was wearing a Kara. On learning at the hearing that it was Liaqat Ali who he was said to have said this to, he repeated his denials of having said this, saying that he would not have referred to "white girls" when he had previously been on record as complaining of the claimant's actions in regards to Sikh girls.

36. We prefer the evidence of Liaqat Ali to that of the fourth respondent. Liaqat Ali has given a convincing account of the surrounding circumstances and the reason why the fourth respondent was aggrieved at the claimant. Liaqat Ali appears to have nothing to gain by lying about the conversation. We also note that the comments attributed to the fourth respondent are very similar to those that had previously been documented and that he admitted to. The fourth respondent was apparently so concerned as to the claimant's motives that he repeated in his oral evidence various complaints about the claimant's behaviour and conduct in relation to female Sikh colleagues. The difference that the fourth respondent relies on is that he is on record as having referred to "Sikh girls", rather than "white girls". We recognise the distinction that the fourth respondent seeks to make, but also note that in his original complaint the second respondent refers indiscriminately to the misconduct of Muslim

men towards both Sikh and white women. The concerns that both he and the fourth respondent were expressing were not limited to the position of Sikh women and girls. We accept that the fourth respondent made the comments attributed to him by Liaqat Ali.

e. The failure to deal with his grievance submitted in April 2018

37. During the period we are concerned with the claimant was both the instigator of and the subject of a number of grievances. With Liaqat Ali's attempts at peace-making having failed, the claimant wrote to a member of the first respondent's HR team on 11 April 2018 raising "*a formal grievance for bullying and harassment and discriminatory behaviour*". The grievance was against the behaviour of two colleagues, one of whom was the fourth respondent. In respect of the fourth respondent, the claimant raised the comments that he had made in the WhatsApp group, and continued:

> *"I am aware that Nins is not happy of my wearing a bangle (Kara) and has expressed his ill feeling and anger towards me in* [the interview documented above] *…*
>
> *I believe that Nin's behaviour is discriminatory towards me as there are other colleagues at work who wears the same bangle (Kara) at work, but I am being singled out because of my race and religion because no other colleagues in that forum was treated the way I was by Nins."*

38. That HR representative forwarded the email to Geitee Janjua the same day, saying "*Please find attached grievance stage 1 from Anis. I will formally acknowledge this, we would need to allocate a hearing manager.*" Gietee Janjua replied:

> *"Jeez … let me have a think about who can hear this as most managers have been involved in all his other cases."*

39. It is not in dispute that the claimant heard nothing more about this grievance, and it is also not in dispute that this grievance prompted none of the formalities that may usually be expected in respect of such a grievance, such as an investigation meeting.

40. Geitee Janjua explains in her witness statement what she did in response to the grievance:

> *"I spoke with Kirsty Sando (Head of Drivers) who at the time line managed both the claimant and the fourth respondent and asked her whether she thought the matter was capable of being resolved informally, or if it had already been resolved informally.*
>
> *My understanding, from my discussions with Kirsty, was that she had addressed the matter informally with the claimant and the fourth respondent. I therefore considered the matter closed …"*

C. THE LAW

41. Under section 13(1) of the Equality Act 2010:

> *"A person (A) discriminates against another (B) if, because of* [religion or belief]*, A treats B less favourably than A treats or would treat others."*

42. Under s26 of the Equality Act 2010:

> *"(1) A person (A) harasses another (B) if:*
>
> *(a) A engages in unwanted conduct related to* [religion or belief]*, and*
>
> *(b) the conduct has the purpose or effect of:*
>
> *(i) violating B's dignity, or*
>
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B …*
>
> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account:*
>
> *(a) the perception of B;*
>
> *(b) the other circumstances of the case;*
>
> *(c) whether it is reasonable for the conduct to have that effect."*

43. Under section 136 of the Equality Act 2010:

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

44. We note from Hewage v Grampian Health Board [2012] UKSC 37 (para 32) that: "*it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.*"

45. Mr Toms reminded us of s212(1) of the Equality Act 2010:

> *""detriment" does not … include conduct which amounts to harassment"*

D. DISCUSSION AND CONCLUSIONS

The claims against the second and fourth respondents

46. There may come a time when a tribunal has to consider whether it amounts to religious discrimination for those of one religion to sincerely object to anyone outside their religion associating themselves with sacred objects or symbols of their religion. This is not that case.

47. The second and fourth respondent emphasised throughout that their concerns were with a Muslim wearing a Kara, not a non-Sikh wearing a Kara. Throughout this process they have emphasised the claimant's religion as being their reason for objecting to him wearing a Kara. They have also done so in a manner which invokes the grossest stereotypes of why a Muslim may be wearing a Kara. Both have referred to incidents of abuse by Muslims who wore the Kara. The second respondent included with his grievance inflammatory material about Muslims which he accepted had nothing to do with the subject matter of his grievance.

48. We have no hesitation in finding that this was discrimination against the claimant on the basis of his religion. The only difficult point is whether their actions amounted technically to direct discrimination or harassment. They would not have raised these matters if the claimant had not been a Muslim, which suggests direct discrimination, but equally the manner in which they made their complaints plainly created a hostile and degrading environment for the claimant, and he was correct and reasonable in taking offence.

49. Mr Toms suggested to us that this would be better categorised as harassment rather than direct discrimination. The respondents' representatives agreed that whichever it was the consequences would be the same. Strictly speaking the claimant's claim against the second and fourth respondent is identified as being "*the content of the complaint*" or "*the comments*" rather than the fact that the complaints were made in the first place, so on that basis we accept Mr Toms's suggestion that this is better categorised as harassment rather than direct discrimination.

50. The first respondent accepts that if this is harassment by the second and fourth respondents it is vicariously liable for it.

The security bag incident

51. It seems to us that however we look at the security bag incident it cannot be said to be an act of direct discrimination – there was no sense in which this was directed against the claimant because of his religion. Indeed, the claimant was at most only indirectly involved in the incident.

52. We remind ourselves that harassment occurs where:

> *"(1)(a)* [A person] *engages in unwanted conduct related to a relevant protected characteristic, and*
>
> *(b) the conduct has the purpose or effect of:*
>
> *(i) violating* [the other person's] *dignity*
>
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for* [the other person]*."*

And that:

> *"(4) In deciding whether conduct has the effect referred to in subsection (b) each of the following must be taken into account:*
>
> *(a) The perception of* [the other person]
>
> *(b) The other circumstances of the case*
>
> *(c) Whether it is reasonable for the conduct to have that effect."*

53. We do not think it is disputed that this was unwanted conduct, and given the association of the relevant phrase with Islam it did relate to the claimant's religion. The claimant tells us that he considered this to violate his dignity and created a hostile etc. environment for him – but his perception is just one of the matters we have to consider. We also have to consider "*the other circumstances of the case*" and "*whether it is reasonable for the conduct to have that effect*".

54. The "*other circumstances of the case*" include that, regrettably, this phrase has been used in connection with terrorist attacks, and that it was legitimate for the third respondent to reinforce the "suspicious" nature of its packages by referring to known threats and matters connected with previous terrorist incidents. We also bear in mind the unchallenged evidence of Mr Rutherford that his team did not solely use this phrase: it was used alongside with a range of other phrases that may add to the suspiciousness of a package.

55. We also have to consider whether it was reasonable for the conduct to have that effect. We conclude that in the circumstances that existed at the time it was not reasonable for the claimant to take offence at this incident. He should have understood that in adding this phrase Mr Rutherford's team were not seeking to associate Islam with terrorism – instead they were seeking to produce a suspicious item based on possible threats to the airport.

56. Bearing in mind the three factors we have to consider under s26(4) we find that this was not an act of harassment within s26(1) because the requirements of s26(1)(b) are not made out.

57. We note that following the claimant's complaint the third respondent has not used any religious phrases in its exercises, which seems to us, broadly speaking, to be a sensible precaution against further complaints being made.

58. In view of our findings that there was no harassment in the security bag incident we do not need to go on to consider the arguments from the respondents in respect of the national security exception at s192 of the Equality Act 2010 nor on questions of agency.

The grievance of April 2018

59. We accept the evidence of Gietee Janjua as to how she dealt with the grievance of April 2018. At the time, as she said in her response, there were many issues surrounding the claimant and there would have been no appetite on the part of the first respondent to extend these issues unnecessarily, regardless of whether they raised allegations of religious discrimination or not. It seems to us likely that she would have done what she said she did – sought to have an informal resolution and, on being told by Kirsty Sando that she (Kirsty Sando) considered it to have been resolved, taken it no further.

60. We consider we are in a position to make the positive findings set out above in this case, so that it is not necessary for us to consider questions of the shifting burden of proof. However, we make the following observations on that point: Mr Toms sought by reference to aspects of prior grievances to persuade us that the first respondent was shy of addressing allegations of religious discrimination, but we note that the grievance investigated by Mr Adaway contained substantial allegations of religious (and racial) discrimination, all but one of which appear to have been dealt with by Mr Adaway. We do not accept that the respondent refused to deal with his grievance on the basis of his religion or the content of the complaint.

E. REMEDY

61. There remains the question of the remedy for the discrimination. The claimant is entitled to a declaration, and no recommendations are sought. It is common ground that there is no financial loss, so we are dealing with compensation for injury to feelings only.

62. Applying the relevant presidential guidance (Employment Tribunal awards for injury to feelings and psychiatric injury following De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879), we consider that the injury to feelings caused by the discrimination we have found falls within the lower band, and in total towards the middle of the lower band. These were essentially one-off and individual instances of discrimination (one of which was repeated once). The comments were not made directly to the claimant, nor were they made in a public forum. It is clear that the claimant was

dealing with many difficult issues at the time, of which these complaints were only one. We find that the appropriate award of compensation is a total of £4,000, made up of £2,000 in respect of the incident relating to the second respondent and £2,000 in respect of the incidents relating to the fourth respondent.

63. Mr Toms sought to persuade us that this was a case which justified an award of aggravated damages, based largely on the first respondent's refusal to acknowledge that the printout submitted with the second respondent's complaint was unacceptable and the second and fourth respondent's repetition of certain allegations against the claimant during their evidence. We do not, however, consider that the respondents' actions in this case amount to the "*high handed, insulting or oppressive*" behaviour necessary to justify an award of aggravated damages, and we make no such award.

64. For the avoidance of doubt, the total amount of compensation the claimant is entitled to is £4,000 of which the first and second respondent are jointly liable to pay £2,000 and the first and fourth respondent are jointly liable to pay £2,000.

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Employment Judge Anstis
14 December 2020

Sent to the parties on: 6/1/21.....

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For the Tribunal Office

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