



EMPLOYMENT TRIBUNALS

Claimant

Mr A Bangura

v

Respondents

(1) Government Legal
Department
(2) Mr A Taylor

Heard at: London Central

On: 13, 16, 17, 18
& 19 May 2022

Before: Employment Judge B Beyzade
Mr W Roberts
Mr F Benson

Representation

For the Claimant: Mr T Megone, Trade Union Representative
For the Respondents: Mr M Paulin, Counsel

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The unanimous judgment of the tribunal is that:

- 1.1. The claimant's claim of direct disability discrimination is not-well founded and is dismissed;
- 1.2. The claimant's claim of direct race discrimination is not-well founded and is dismissed;
- 1.3. The claimant's claim of discrimination arising from disability is not-well founded and is dismissed;

- 1.4. The claimant's claim of harassment related to disability is not-well founded and is dismissed;
- 1.5. The claimant's claim of harassment related to race is not-well founded and is dismissed; and
- 1.6. The claimant's claim of victimisation pursuant to section 27 of the Equality Act 2010 is not-well founded and is dismissed.

REASONS

Introduction

2. The claimant presented complaints of direct disability discrimination, direct race discrimination, discrimination arising from disability, harassment related to disability, harassment related to race, and victimisation, which the respondents denied.
3. A final hearing was held between 13 and 19 May 2022 (19 May 2022 was a chambers day during which the Tribunal conducted deliberations). This was a hearing held by Cloud Video Platform ("CVP"). The Tribunal were satisfied that it was just and equitable for the final hearing to proceed by way of a CVP hearing.
4. The parties prepared and filed a Joint Index and Bundle of Documents consisting of 1394 pages ("the Joint Bundle").
5. On day three of the final hearing the claimant's representative made an application to add an email to the Joint Bundle relating to Mr P Olufeso which he says concerns Mr P Olufeso's presence during the meeting on 30 October 2018. The respondents objected to the claimant's application. We were satisfied that there would be significant prejudice to the respondents in terms of admitting this evidence. We took account of the timing and manner of the application and the lack of any good reason for the delay in

presentation of the new document. We also took account of the overriding objective (Rule 2). We refused the claimant's application to allow him to rely on the email in question.

6. During the hearing, the parties were advised that the Tribunal would investigate and record the following issues as falling to be determined, both parties being in agreement with these:

1st claim: 2202459/2019

Section 26: Harassment related to disability and/or race

1. *The Respondent accepts that the Claimant is disabled because of his dyslexia.*
2. *Did the Respondent engage in unwanted conduct as follows?*

"The Claimant complains that on 30 October 2018, he was at a meeting with Mr Price and others. The meeting was to determine issues around the future of the team, including relocation, which might have an impact of the team members' competencies, and it is alleged that Mr Price said that the Claimant's wife must have done a good job writing up his competencies, because they were better than might have been expected. It is alleged that Mr Price also said this to the claimant and mentioned his colleague, Mr Olufeso, at the same meeting. It is said that Mr Olufeso is black and has the same disability as the Claimant".
(agreed amendments underlined)

3. *Was the conduct related to the Claimant's protected characteristics or either of them?*
4. *Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?*
5. *In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.*
6. *Harassment in each case is pleaded in the alternative, and in the alternative to direct discrimination.*

Section 13: Direct discrimination because of disability and/or race

Disability

7. *Has the Respondent subjected the Claimant to the following treatment?*
 - 7.1. *"The Claimant complains that on 30 October 2018, he was at a meeting with Mr Price and others. The meeting was to determine issues around the future of the team, including relocation, which might have an impact of the team*

members' competencies, and it is alleged that Mr Price said that the Claimant's wife must have done a good job writing up his competencies, because they were better than might have been expected. It is alleged that Mr Price also said this to the claimant and mentioned his colleague, Mr Olufeso, at the same meeting. It is said that Mr Olufeso is black and has the same disability as the Claimant. [Paragraph 5, EJ Norris Order, p.46] (agreed amendments underlined)

- 7.2. *In November 2018, it is said that Mr Price threatened to confiscate the Claimant's phone, which was ringing on a regular basis during the Claimant's absence from his desk. The Claimant says that he uses his phone as a reminder tool to assist him with his dyslexia [Paragraph 8, EJ Norris Order, p.46-47] (agreed amendments underlined)*
- 7.3. *On 13 February 2019 the Claimant says that he intervened in his management capacity in a dispute between two colleagues, Mr Arampoorthy and Ms Charles. The Claimant was Ms Charles' line manager, and she was pregnant at the time. The Claimant says that Mr Price then accused him of getting involved inappropriately in a personal matter and manhandling Ms Charles. The Claimant says that the Respondent failed to conduct an immediate investigation with him being given the opportunity immediately to explain the situation [Paragraph 9, EJ Norris Order, p.47].*

Race

8. *Has the Respondent subjected the Claimant to the treatment set out in paragraph 7.3 (above)? Further, has the Respondent subject the Claimant to the following treatment?*
 - 8.1. *On 14 February 2019, the Claimant says he tried to explain what had happened the previous day and had a brief conversation with a Mr Longley; the Claimant says he asked for CCTV to be used but that was not acted on until after the Claimant had raised a grievance. The Claimant says that neither Mr Price nor Mr Longley set an investigation in motion, and they failed to act [Paragraph 10, EJ Norris Order, p.47].*
 - 8.2. *On 13 March 2019 the Claimant says he was asked by a Mr Taylor to apologise for something he hadn't done (i.e. in connection with the incident on 13 February) [Paragraph 11 EJ Norris Order, p.47].*
 - 8.3. *On or around 8 May 2019, the Claimant says that a Mr Ward was conducting an investigation and made a similar request for the Claimant to apologise, implying a presumption of guilt or an element of wrongdoing on the Claimant's behalf [paragraph 12 EJ Norris Order, p.47].*
 - 8.4. *On an unknown date, but after the incident on 13 February, the Claimant found out from Mr Arampoorthy that Ms Charles had sent Mr Arampoorthy a text in which she said Mr Price had made derogatory comments about the treatment of women by African American men. The text was shown to the Claimant. Ms Charles is quoted as having texted. "Moving on to other women already. Should have known you're just like those black Americans. Filth. That's exactly what [Mr Price] said too. He said a black American way of life that that's what you are, you are just filthy" [p.242; paragraph 13 EJ Norris Order, p.48].*

9. *If so, has the Respondent treated the Claimant as alleged less favourably than it treated or would have treated a hypothetical comparator?*
10. *If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?*
11. *If so, what is the Respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?*

Section 15: Discrimination arising from disability

12. *The allegation of unfavourable treatment as "something arising in consequence of the Claimant's disability" falling within section 39 Equality Act is Mr Price threatening to confiscate the Claimant's phone. No comparator is needed. This is pleaded in the alternative to the direct discrimination and harassment complaints.*
13. *Does the Claimant prove that the Respondent treated the Claimant as set out in paragraph 7.2 above?*
14. *Did the Respondent treat the Claimant as aforesaid because of the "something arising" in consequence of the disability (dyslexia), namely the Claimant's need to use his phone to set reminders?*
15. *Does the Respondent show that the treatment was a proportionate means of achieving a legitimate aim? The Respondent avers that the legitimate aim is to enable all staff to work in an open-plan office environment with limited disruptions. If the Claimant was not using his mobile telephone for the purpose for which he said he needed it in the office (to set reminders), it was proportionate for the Respondent to inform him that he would no longer be able to use it at work if he continued to leave it on his desk to ring repeatedly and disturb colleagues (paragraph 40, p.62 Amended Response).*

Section 27: Victimisation

16. *Has the Claimant carried out a protected act or acts? The Claimant relies on the following acts:*
 - a. *The Claimant says that he made an allegation on 30 October 2018 to Mr Price and the rest of the team that there had been a lack of promotion and development opportunities for minority staff. He relies on this as a protected act. The Respondent does not accept that the Claimant did a protected act [paragraph 6, EJ Norris Order]*
 - b. *On or around 7 November 2018 (the Claimant is to confirm the date), the Claimant says he sent an email to Mr Price complaining of unconscious bias. He says this was a further protected act. The Respondent does not accept it as a protected act [EJ Norris Order, paragraph 7, p.46].*
17. *If there was a protected act, has the Respondent carried out any of the treatment set out in paragraphs 7.3; 8.1; 8.2 (above)?*

Time/limitation issues

18. *The claim form was presented on 28 June 2019 with the Claimant entering EC on 2 May 2019. Accordingly, any act or omissions which took place before 3 February 2019 is potentially out of time, so that the tribunal may not have jurisdiction.*

19. *Does the Claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?*

20. *Was any complaint presented within such other period as the employment Tribunal considers just and equitable?*

2nd claim: 2205599/2020

Protected act

21. *The Claimant avers that his first ET1 was a protected act. The Respondent agrees that the Claimant filing his ET1 was a protected act.*

Section 13 Direct disability discrimination and section 15 discrimination allegation of unfavourable treatment as "something arising in consequence of the Claimant's disability

22. *The Claimant relies on paragraphs 3 to 9 of his Claim Statement [pp.B17-18].*

Direct disability discrimination

23. *Has the Respondent treated the Claimant as alleged? Has the Respondent treated the Claimant less favourably than it treated or would have treated a hypothetical comparator?*

24. *If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?*

25. *If so, what is the Respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?*

Section 15 unfavourable treatment because of something arising in consequence of the Claimant's disability

26. *Has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the Respondent treated the Claimant unfavourably because of something arising in consequence of the Claimant's disability?*

27. *Does the Respondent show that the treatment was a proportionate means of achieving a legitimate aim? The Respondent avers that, in relation to Ashok Taylor's evidence at paragraph 9 of his second witness statement, to the extent that the Respondent instructed the Claimant that public funds could not be utilised for the transportation of personal items (paragraph 9 of the Claimant's case), the Respondent's legitimate aim was to uphold civil service values of honesty, integrity and openness.*

Section 27: Victimisation

28. *Did the Respondent subject the Claimant to any of the treatment set out at paragraphs 3 to 9 of his particulars of claim because of the protected act of filing the first ET claim?*

Time/Limitation issues

29. *The Claimant's second claim was submitted on 24 August 2020, and the EC certificate issued on 20 July 2020. Any claim before 21 April 2020 is therefore potentially out of time.*

30. *Does the Claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?*

31. *Was any complaint presented within such other period as the employment Tribunal considers just and equitable?*

Remedy

32. *If the Claimant is successful in any aspect of his claim, what is the appropriate award for injury to feelings?*

33. *What recommendations should the Tribunal make, if any? The claimant is seeking the following recommendations:*

i. Apology and Management Accountability

ii. Individual Reasonable Adjustment Agreement ensuring implementation and monitoring of reasonable adjustments for the Claimant with a view to day to day support and development to be overseen by HR and line management;

iii. Urgent Review of GLD Policies in relation to public sector equality duty particularly with regard to dignity at work, dispute resolution, recruitment, training and development to be commenced within 28 days; and

iv. Mandatory Equality training underpinning management and general effectiveness training across GLD to be applied to all staff and regularly evaluated.

7. It was agreed that the Tribunal will investigate and determine matters relating to both liability and remedy at the final hearing. Parties agreed to work to a timetable on the first day of the hearing.

8. The Tribunal were also provided with a copy of a Cast List and a Chronology (this was prepared by the respondents' representative and the claimant's representative commented on their content and confirmed that they were content with the accuracy of the matters contained therein).

9. The claimant gave evidence at the hearing on his own behalf and provided a written witness statement. Mr J Ward (Deputy Legal Advisor for DEFRA Legal Advisors), Mr N Price (Deputy Director of Operations), Mr A Taylor (Business Manager for the DWP Legal Advisors), and Mr J Longley (Senior Executive Office Manager in Facilities Management in Operations, Grade 7) gave evidence on behalf of the respondents, all of whom had produced written witness statements.

10. The claimant was represented by his Trade Union Representative whereas the respondents were represented by counsel, and both representatives provided oral submissions on the fourth day of the hearing. Copies of the

case law relied on in the parties' submissions were provided on the final day of the hearing.

Findings of Fact

11. On the documents and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the list of issues -

Background

12. The claimant started working for the first respondent on 26 November 2001.
13. The Government Legal Department is responsible for providing legal services to the government including representation in Court and Tribunal proceedings.
14. When the claimant started his employment with the first respondent, he was employed as an SGB, and he subsequently became an Administration Officer. In around 2015/2016 the claimant was promoted to the post of Executive Officer ("EO"). He was further promoted to the role of Temporary Higher Executive Officer in December 2021.
15. The claimant's duties included facilities management.
16. The claimant describes his race as Black African American.
17. The claimant has suffered from dyslexia for a number of years (including but not limited to during all material times in relation to which his claims relate). This included significant difficulties in terms of writing, reading, short term memory and task management, and caused a stammer.
18. The first respondent was aware of the claimant's disability since 2014. He had received coaching and support in relation to this from the first respondent since 2014. The first respondent made a number of reasonable adjustments to assist him to carry out his role including but not limited to

providing him with a mobile telephone for the purposes of time management and task management, and IT equipment.

19. The claimant challenged his performance reviews on three occasions. He had successfully overturned his scores.

30 October 2018 meeting

20. On 30 October 2018, a meeting took place during which Mr Price and the claimant were present, among other colleagues. This was an EO Grade meeting and although Mr Price would not normally attend these, he had been in attendance during that meeting because of the upcoming premises move.

21. Mr Price was reviewing competencies and providing comments. He said to the claimant that his wife must have done a good job writing up his competencies because they were better than expected.

22. The claimant said there were limited promotion and development opportunities for long standing junior staff. Mr Price accepted that there were limited opportunities within the first respondent for the types of jobs they (junior, non-legal staff) were undertaking and that the claimant or other colleagues may need to move out of their employment with the first respondent because of this.

23. A subsequent meeting was held thereafter when Mr Price had apologised to the claimant and said he had not intended to patronise him and explained that what he was trying to do was to motivate him to look wider than his employment with the first respondent.

November 2018

24. During early November 2018, the claimant had left his mobile telephone on his desk and was working away from his workstation. His mobile telephone was linked to his landline so when his landline rang, his mobile telephone would ring at the same time, and he also received audible reminder alarms.

The office in which the claimant's workstation was located was partially open plan.

25. Mr Price confronted the claimant about this on his return to his workstation. He was annoyed and angry and he told the claimant that his telephone was distracting. Mr Price said to the claimant "*if your phone rings again, I will take it away from you.*" This occurred in front of other staff.
26. Mr Price said these words out of frustration as a result of the disturbance being caused and the claimant subsequently ensured he adjusted his telephone to avoid any repeat.

7 November 2018 email

27. The claimant sent an email to Mr Price on 7 November 2018 raising a number of points in relation to lack of progression for long term employees, the process for looking for other jobs, the claimant's and Mr Olufeso's competencies (including that Mr Price said that their wives had done a good job writing them), and Mr Price threatening to remove the claimant's mobile telephone from him, among some other matters.
28. He highlighted issues in relation to his dyslexia.
29. He also referred to potential conscious bias that could take place.

13 February 2019 incident

30. On 13 February 2019, the claimant intervened in his management capacity in a dispute between two colleagues, Mr Arampoorthy and Ms Charles. He had been advised about the incident by Ms Akhtar. The claimant was Ms Charles' line manager, and she was pregnant at the time. The claimant had left the basement and he had later told Mr Longley that he will return to the basement to check on the situation. Having left for a period, the claimant returned to the basement. He later spoke to Mr Price who was supporting Ms Charles.

31. Ms Charles told Mr Price that the claimant had physically restrained her from going to see Mr Arampoorthy in the basement. He asked the claimant to leave the room. This was because he was concerned that Ms Charles had accused him of manhandling her.

Events after 13 February 2019 incident

32. Mr Longley was asked by Mr Price on 14 February 2019 to commence an informal investigation. On the same day, the claimant met with Mr Longley in relation to the allegation made by Ms Charles and a request was made for CCTV evidence. The claimant went on a period of sick leave.
33. Mr Longley spoke to Mr Arampoorthy on 14 February 2019 and Ms Charles on 15 February 2019.
34. Mr Longley requested the CCTV evidence to be provided by the Civil Aviation Authority on 18 February 2019.
35. Ms Charles sent an email on 13 March 2019 making an allegation about the claimant's conduct including that the claimant pulled her arm (Ms Akhtar was accused of this in the same email), where the sleeve of her shirt ripped. She requested an apology.
36. Following receipt of this email, the claimant went to see Mr Taylor and expressed that he was very upset about the email. Mr Taylor suggested that the claimant could apologise to Ms Charles, but it was up to him, and he did not have to apologise if he did not want to.
37. The claimant sent an email to Mr Taylor on 13 March 2019 attaching his statement along with evidence he had obtained from colleagues, and he said he would not be apologising.
38. On a date after 13 February 2019, the claimant found out from Mr Arampoorthy that Ms Charles had sent Mr Arampoorthy a WhatsApp message in which she said Mr Price had made derogatory comments about the treatment of women by African American men. The text was provided to

the claimant. Ms Charles is quoted as having stated in her text message *“Moving on to other women already. Should have known you’re just like those black Americans. Filth. That’s exactly what [Mr Price] said too. He said a black American way of life that that’s what you are, you are just filthy.”*

39. The CCTV footage was provided by the Civil Aviation Authority on 18 March 2019. Mr M Wilcox and Mr Longley reviewed the CCTV footage following its receipt. Mr Longley became aware that the claimant had no intention of apologising to Ms Charles as he denied the allegations.
40. An email was sent from Mr Price to Mr Payne dated 20 March 2019 expressing that he was utterly horrified to be accused of what felt like racism and he stated that he was not racist, and he had no bias against the claimant. He also provided his account of what he said happened on 13 February 2019.
41. Mr T Megone, the claimant’s Trade Union representative sent an email to Mr N Payne (Finance and Operations Director) and Ms F Mills copying a formal complaint made to Mr Price on 27 March 2019 in relation to the handling of a recent incident and the claimant’s treatment in general. Mr Price indicated that he had referred the matter to Mr Payne to deal with. Mr Payne replied on the same day advising that he had spoken to Mr Megone and agreed an initial way forward, and he asked him to update the claimant.
42. Mr Ward took over the investigation in relation to the incident on 13 February 2019 on 29 March 2019. Mr Ward sent emails to Ms Charles on 2 April 2019, Mr Arampoorthy on 4 April 2019 and the claimant on 5 April 2019. He met with Ms Charles on 4 April 2019 who was distressed and confirmed she wanted an informal resolution.
43. He then met with Mr Arampoorthy on 10 April 2019, and he arranged a separate meeting with the claimant (who was accompanied by 2 PCS union representatives) on the same date. He arranged further meetings with Ms Charles on 15 April 2019 and the claimant and his union representative on 16 April 2019. He also viewed the CCTV footage, which showed that Ms

Charles was distressed on the day in question. He observed that the footage was silent although the body language of those who were with Ms Charles was non-threatening and at times was positively supportive.

44. During the meeting on 16 April 2019 Mr Ward invited the claimant to consider whether he would meet with Ms Charles. Mr Ward sent an email to the claimant and his union representatives on 17 April 2019 and a further email after the Easter period on 2 May 2019, for an update on how he had decided to proceed. He stated that he wanted to facilitate a discussion with Ms Charles if that were possible. He was seeking to either continue to help resolve the matter informally or to decide whether he needed to draw a line underneath what he had tried to do up to that point.
45. On 02 May 2019, the claimant started ACAS Early Conciliation in relation to his first claim. He was issued the ACAS Early Conciliation Certificate on 01 June 2019.
46. In addition, on 02 May 2019 the claimant sent an email to Mr Longley copying in his union representatives advising that Ms Charles had made serious allegations against him, that the allegations needed to be withdrawn with an apology or the incident that took place needed to be investigated properly. He also said he wanted to pursue a formal complaint against Mr Price.
47. Mr Ward replied to the claimant by email dated 08 May 2019 advising that the claimant was trying to deal with a difficult management situation, that it would be good to have some dialogue to move things forward, and that all managers had to keep reflecting on what they could have done differently in terms of when difficult situations arose. He stated:
“Would you be willing to have a calm 'no blame/no fault' conversation with Helena during which you and she could both listen to how the incident situation has made each of you feel? This would not be about either you or she apologising, but just opening the dialogue by hearing the other side, if you like.”

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48. The claimant sent a response on the same day advising that he would consider Mr Ward's suggestion and that it looked like he would need to pursue a formal grievance.
49. Mr Megone sent an email on 09 May 2019 advising that the claimant was still considering having a meeting with Mr Ward and that the claimant's proposed grievance was not about Ms Charles's conduct but about the way in which the specific incident was handled by Mr Price. He advised he will be progressing this with Mr Payne. Mr Ward advised on the same day that a 'no blame/no fault' discussion could take place.
50. The claimant advised Mr Ward by email on 10 May 2019 that he did not envisage any further progress without the allegation against him being withdrawn. However, by the time Mr Ward had put the claimant's suggestion to Ms Charles she went on sick leave and subsequently she started her maternity leave. Mr Ward confirmed to the claimant on 14 June 2019 that he did not believe there was a case to answer in terms of the claimant's involvement in relation to the events that took place on 13 February 2019.
51. The claimant submitted a grievance to the first respondent on 13 May 2019 complaining that Mr Price and the first respondent had breached their statutory duties under the Equality Act 2010 and subjected him to disability and race discrimination within the working environment. He complained of discrimination, harassment, unfair treatment, and he referred to the first respondent's values and objectives.
52. An email was sent from Mr Ward to Ms S Murray, BEIS Legal Director (Energy & Climate Change) on 17 June 2019 setting out his conclusion, observations, and recommendations in relation to Mr Ward's investigation of the incident of 13 February 2019. He observed that on 13 February 2019 the claimant and Ms Akhtar were acting in a positively supportive manner towards Ms Charles.
53. The claimant presented his first claim to the Tribunal on 28 June 2019.

54. Having conducted a thorough investigation, Ms Murray sent an email to the claimant dated 2 August 2019 enclosing a copy of her grievance outcome letter. The claimant's grievance was not upheld and the reasons for this were stated in the outcome letter.
 55. Ms Murray sent an email to Mr Price on 2 August 2019 advising him that the grievance process had been concluded and setting out other matters that were raised with her during the grievance process which were to be discussed between Mr Price and his line manager.
 56. The claimant's union representative sent a letter to Mr Payne dated 09 August 2019 appealing against the grievance outcome.
 57. On 10 September 2019, the claimant was sent a letter from Mr S Harker, Director Employment Group advising him that there was no basis for overturning the original decision and setting out his reasons.
- Request for claimant's appraisal markings*
58. On 2 October 2019 Mr Taylor sent an email to the claimant requesting the mid-year appraisal markings for all the staff that he managed. He said that as discussed with the claimant yesterday he needed this information by the end of the day.
 59. During the previous week, Mr Taylor had been asked by his line manager, Mr Longley, to collate and provide him with the mid-year appraisal markings for all his staff. Mr Longley's countersigning officer, Mr Price, wanted to ensure that the directorate was one of the first to meet the annual appraisal deadlines.
 60. The claimant replied on 02 October 2019 advising that no deadline had been agreed and it would not be possible for him to provide the information in that timeframe.
 61. Mr Taylor replied on 03 October 2019 advising that he had informed the claimant the previous week that Mr Price provided a deadline of 4 October

2019 for submission of mid-year appraisal markings. He stated that fresh objectives were not agreed and that he simply assisted the claimant to rewrite them as the ones he had prepared lacked quality control.

Access to spreadsheet – 18 and 19 November 2019

62. On 2 October 2019 Mr Taylor sent an email to the claimant complaining that the claimant had made changes to the staff rota without informing him. He said the dates at the bottom of the rota had been messed up.
63. The claimant replied on 3 October 2019 advising that Mr Taylor was not around at the time, and he needed to ensure that the objectives for the following day were met.
64. On 18 November 2019, the claimant complained to Mr Taylor by email that he was unable to make any changes on the staff rota, as it was password protected and he requested the password. At the time, the claimant could view the rota, but he did not have the administrative privileges to make any changes to it.
65. Mr Taylor advised the claimant by email dated 21 November 2019 that he was happy to provide him with the password once he had trained him in terms of the new file, he had created to avoid the recurrent errors and formulae being overwritten and sheets having confusing labels.
66. On the same day, the claimant advised Mr Taylor by email that he was not sure what he needed to be trained on, that the issue was different styles and preferences, and he did not feel that the training on how to use Excel was necessary. He, however, asked to be advised when it would happen so he could fulfil his objective without having to ask Mr Taylor to input the data for him.
67. He was required to email Mr Taylor any changes he wanted to be made until he undertook the necessary training.

68. On 22 November 2019, the claimant sent an email to Mr Taylor raising communication issues he had with him. Mr Taylor replied on the same day advising that he could not understand what the issue was, and that as his senior he did not need his permission as he had not changed anyone's objectives. He told him that if he had a personal problem with him, he should act professionally and book a meeting. He also told him to check his telephone and he stated, "*But as USUAL you never answer your calls and never bother to return calls most of the times!*"
69. He sent a further email to Mr Taylor on 30 January 2020 reminding him that he required the password for the staff rota.
70. On the following day, the claimant sent an email to Mr Longley copying the relevant correspondences to him and advising that he could not amend the weekly rota.
71. Mr Longley replied on 10 February 2020 advising that Mr Taylor had told him why he had taken back control of the rota and that he needed to raise this matter with Mr Taylor on his return from leave including querying his issues in relation to training.

Communications with the first respondent's supplier

72. In early March 2020, the claimant had placed an order with the supplier, Banner, for sanitiser and anti-bacterial wipes. Mr Taylor noted that these had not been received, so he asked the claimant to contact the supplier to find out what had happened to the order.
73. On 12 March 2020, the claimant sent an email to Banner UK asking for confirmation or feedback on their order. He provided the order details. He did not copy in Mr Taylor to that email.
74. He followed up by way of a further email sent to Banner UK on 23 March 2020, which was copied to Mr Taylor.

75. Banner UK replied on 23 March 2020 asking what information the claimant needed.
76. Mr Taylor replied to the claimant and he accidentally 'replied to all' on the same day advising that the claimant should reply to this message and specify exactly what it is that he wanted the supplier to provide information about.
77. The claimant replied to his email copying in the supplier together with Mr Longley and Mr Wilcox advising that he did not feel the message was necessary. Mr Taylor stated in reply that the supplier did not understand what he meant, and he said, "*Get your communications right and we won't have this issue.*"
78. Following a further email received from the claimant on the same day, Mr Taylor replied on 24 March 2020 advising that he had mistakenly pressed the 'reply all button' and that it was not deliberate. He pointed out that the claimant had also done the same in terms of his reply.

Communications on 24 March 2020

79. Mr Taylor sent an email to the claimant on 24 March 2020 in which he referred to their conversation the previous week about updating the lockers on Service Now by batch process. The claimant replied that day advising the work had been completed and will be forwarded to ICT. He said he did not recall being given a deadline.
80. Mr Taylor replied on the same day requesting that the claimant documented by email their conversations in future and that he will be happy to confirm them in terms of correctness. This was to avoid a repeat of the claimant not recalling key instructions.
81. The claimant responded on that day advising that he disagreed that this would avoid a repeat of his not recalling key instructions and that this was not the first time this had happened.

82. The claimant also sent an email to Mr Longley copying the correspondences he had with Mr Taylor to him and advising that as soon as he complained about Mr Taylor's behaviour to him, he raises issues which needed to stop.
83. Mr Longley replied on 25 March 2020 querying whether the issues being raised were genuine matters that needed to be resolved. The claimant replied on the same day advising that Mr Taylor's complaint is not valid and that it was designed to harass him. He said he was fixing an issue that Mr Taylor had created, and he was just waiting for ICT to import the information on Service Now.

Complaint about items to be sent by courier - 29 May 2020

84. The claimant sent an email to Mr Taylor on 29 May 2020 advising he requested delivery to his home address (the request was made on 28 May 2020) by Temple courier service of a PC screen and chair that he intended to use for work purposes. He sent a further email that day advising that he had received the PC screen, but not the chair.
85. Mr Taylor sent an email to Mr Longley and Mr Willcox on the same day complaining about the claimant using Temple messenger service for his own personal use. He said the screen was for his personal use because as with all staff members when they moved from One Kemble Street, they bought the screens and picked them up themselves without the need to use public funds to arrange delivery. He said he took all the material he needed for his DJ business (electronic amplifiers etc.) which were personal matters delivered by Temple messenger. He also said the chair was for personal use and a request was not made for this through the appropriate channel. He commented that he was not consulted in relation to this matter as he was on leave on the day in question.
86. In any event this was not progressed, the claimant was not required to reimburse the first respondent and no action was taken against the claimant in respect thereof.

Claimant's grievance and second claim

87. The claimant raised a further grievance on 10 June 2020.
88. On 30 June 2020, the claimant started ACAS Early Conciliation in relation to his second claim. He was issued the ACAS Early Conciliation Certificate on 30 July 2020.
89. The claimant presented his second claim to the Tribunal on 24 August 2020.
90. On 25 March 2022, the claimant received an email from Ms A Taylorson, Head of Communications and Engagement informing him of her decision and providing a copy of the grievance notes and apologising for the delay.

Injury to feelings claim

91. The claimant no longer feels optimistic about the workplace or the sense that he will be treated fairly or valued. He said that this entire episode and the sense of continuing injustice has affected his health, wellbeing, reputation at work and trust in others and has been damaging to his home life because of the anxiety that he has suffered. There was no medical evidence provided by the claimant in relation to this. As noted above, the claimant was promoted to the post of Temporary Higher Executive Officer in December 2021.

Observations

92. On the documents and oral evidence presented the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the list of issues –
93. In relation to the meeting on 30 October 2018 we found that it was suggested to the claimant by Mr Price that the claimant's wife had written his competencies. The claimant had complained in these terms to Mr Price on 7 November 2018, and when Mr Price was asked about this during the investigation meeting on 14 June 2019, and he said he could not recollect whether he made the statement. He also referred to apologising at a

subsequent meeting. We noted that Mr Price's account in his witness statement (at paragraph 6) was not consistent with the documentation.

94. However, we did not accept that the claimant made an allegation to Mr Price on 30 October 2018 that there had been a lack of promotion and development opportunities for minority staff. We found that the claimant was complaining about long standing junior staff not being given promotion and development opportunities. This was consistent with Mr Price's investigation meeting notes dated 14 June 2019 and the claimant's email of 07 November 2019 in which he said he had asked why there was a lack of progress for long-term employees.
95. In relation to the incident with regards to the claimant's mobile telephone in November 2018, in terms of our findings of fact, we considered the account provided in the claimant's statement, Mr Price's statement (including the fact he had accepted that he said he would take the claimant's mobile telephone away), and the claimant's email dated 7 November 2018. We further noted that in the claimant's email of 7 November 2018 he did not say that he was concerned that Mr Price would take his mobile telephone away but rather he felt humiliated by the incident and that the issue could have been dealt with in a different way.
96. With regards to the events on 13 February 2019, we made our findings based on the investigation material including Mr Price's account at the meeting on 20 June 2019.
97. We accepted Mr Ward's evidence that he did not request the claimant to apologise on or around 08 May 2019. His evidence in relation to this matter was credible and consistent. We note he said in his oral evidence that he could not see why the claimant had been asked to apologise previously.
98. We were not satisfied on the balance of probabilities that Mr Price made the comment ascribed to him at paragraph 13 of Employment Judge Norris's Case Management Summary dated 9 December 2019. Ms Charles did not provide a statement. She had made allegations against the claimant which

were ultimately dismissed. We considered the WhatsApp message relied on by the claimant as a whole together with the other correspondences and the surrounding circumstances.

99. We observed that the email correspondences between Mr Taylor and the claimant demonstrated that their working relationship was strained, and they had significant communication issues. By way of example the email correspondences on 22 November 2019 revealed that Mr Taylor was frustrated at the claimant's approach to his work and the fact he never answered his telephone when he called. There were also issues in relation to the claimant's performance reviews with Mr Taylor prior to the events referred to in the claimant's second claim and he had successfully appealed against his performance reviews in the past.
100. In addition, the claimant was clearly not keen to undertake the training on the changes to the staff rota spreadsheet, even though we found it would have been helpful if he did this.
101. We considered that Mr Taylor's request on 24 March 2020 that the claimant emailed him key instructions so that he could check these for accuracy was a further demonstration that the working relationship had been damaged.
102. The Tribunal made its essential findings of fact on the balance of probabilities. Where there was a conflict of evidence, based on the above findings of fact and observations, in general, the Tribunal preferred the respondents' evidence (including evidence from the respondents' witnesses, particularly in relation to evidence that was supported by contemporaneous correspondences and file notes).

Relevant law

103. To those facts, the Tribunal applied the law –

Race and/or disability discrimination

104. The claimant makes claims alleging discrimination on the grounds of protected characteristics under the provisions of the Equality Act 2010 (“the EqA”). The claimant complains that the respondents have contravened provisions of part 5 (work) of the EqA. The claimant alleges direct discrimination, discrimination arising from disability, harassment, and victimisation.
105. The protected characteristics relied upon are race and disability, as set out in sections 4 and 5 of the EqA.
106. Disability is one of the protected characteristics covered by the EqA and section 6 of the Act defines disability as a physical or mental condition which has long-term, substantial adverse effects on a person’s day-to-day living activities.

Direct race and disability discrimination

107. By section 13 of the EqA a person discriminates against another if because of a protected characteristic, in this case race and/or disability, he or she treats the employee less favourably than he or she would treat others.

Discrimination arising from disability

108. The definition of discrimination arising from disability in section 15 of the EqA is as follows:-
- (1) A person (A) discriminates against a disabled person (B) if—
- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.
109. Guidance as to how to apply the test under s15 of the EqA was given in *Pnaiser v NHS England [2016] IRLR 170, EAT*: -

- a. Was there unfavourable treatment and by whom?
 - b. What caused the treatment, or what was the reason for it?
 - c. Was the cause/reason 'something' arising in consequence of the claimant's disability?
 - d. This stage of the test involves an objective question and does not depend on the thought processes of the alleged discriminator.
 - e. The knowledge requirement is as to the disability itself, not extending to the 'something' that led to unfavourable treatment.
110. The case of *A Ltd v X* [2020] ICR 199 sets out guidance for Tribunals in assessing the employer's knowledge of disability:- "In determining whether the employer had requisite knowledge for section 15(2) purposes, the following principles are uncontroversial between the parties in this appeal: (1) There need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its consequent effects which led to the unfavourable treatment, see *York City Council v Grosset* [2018] ICR 1492 CA at paragraph 39.

Harassment

111. Harassment is defined in s26 of the EqA:-
- (1) A person (A) harasses another (B) if— (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
 - (2)...
 - (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.
 - (5) The relevant protected characteristics are—
.....

Disability

Race

.....

112. In *Hartley v Foreign and Commonwealth Office* UKEAT/0033/15 (27 May 2016, *unreported*) it was held that the question whether there is harassment must be considered in the light of all the circumstances of the case. Where the claim is based on things said it is not enough only to look at what the speaker may or may not have meant by the wording.
113. However, even where certain elements of the test for harassment are met (for example, unwanted conduct and the violation of the claimant's dignity), the Tribunal must still consider the "related to" question and make clear findings as to why any conduct is related to a protected characteristic (*UNITE the Union v Nailard* [2018] IRLR 730; *Tees, Esk and Wear Valleys NHS Foundation Trust v Aslam* [2020] IRLR 495, EAT).

Victimisation

114. The test for victimisation is set out in s27 of the EqA:- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
- (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
- (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
115. It is important to distinguish between cases where the alleged detriment has a connection to the protected act but is not "because" of it from those cases where the detriment is directly because of the protected act.

116. For example, in *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, it was held that a refusal of a reference did not amount to victimisation on the basis that it was not refused because of the fact that the claimant had brought a race discrimination claim but because of the imminence of the hearing in the case and the respondent's desire to protect their position in the litigation.

Burden of proof

117. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides that 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. However, this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an Employment Tribunal.
118. This means that the burden of proving the facts referred to in s136(2) lies with the claimant. If this subsection is satisfied, however, then the burden shifts to the respondent to satisfy subsection 3.
119. In order for there to be unfavourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a detriment requires the Tribunal to determine whether "*by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work*" (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 HL).
120. It is a well-established principle that Tribunals are entitled to draw an inference of discrimination from the facts of the case. The position is set out by the Court of Appeal in *Igen v Wong* [2005] ICR 931 (as approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] IRLR 870).

Time limits for bringing a claim

121. The provisions relating to the time limits for bringing a claim under the EqA to the Employment Tribunal are set out in s123 of the EqA:- (1) Subject to section 140B [a reference to the provision extending time for ACAS Early Conciliation] proceedings on a complaint within section 120 [the section giving the power to the Tribunal to hear claims under the EqA] may not be brought after the end of— (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the Employment Tribunal thinks just and equitable.
122. The burden of proof in the exercise of the discretion lies on the claimant and past cases have made it clear that it should be the exception and not the rule, with no expectation that the Tribunal would automatically extend time (*Robertson v Bexley Community Centre [2003] IRLR 434*). This does not, however, mean that exceptional circumstances are required for the Tribunal to exercise its discretion and the test remains what the Tribunal considers to be just and equitable (*Pathan v South London Islamic Centre UKEAT/0312/13*).

Parties' Submissions

123. Parties made detailed submissions which the Tribunal found to be informative. The Tribunal considered both parties' representative's oral submissions and referred to the authority cited therein. References are made to essential aspects of the submissions and the authority relied on by the respondents' representative with reference to the issues to be determined in this judgment, although the Tribunal considered the totality of the submissions from the parties.
124. The respondents' representative referred to the case of *Igen v Wong* which is cited above.

Discussion and decision

125. On the basis of the findings made the Tribunal disposes of the issues identified at the outset of the hearing as follows –

126. The Tribunal will deal with each of the claims in turn below given the specific factual and legal issues to be determined in each claim.

S 6 Disability

127. The question of whether the claimant was disabled as defined in s6 of the EqA was not in dispute between the parties. The Tribunal, ultimately, determined that the claimant's medical condition of dyslexia (which includes the claimant's stammer condition) met the definition. We were satisfied that the claimant had a mental impairment and that this had a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. The effects of his impairment were substantial and included difficulties reading, writing, the claimant's stammer condition and short-term memory and task management.

128. The first respondent was aware of the claimant's dyslexia and its severity from at least around 2014 when the Genius reports had been prepared. The respondents did not dispute that they had knowledge of the claimant's dyslexia and indeed it was not disputed that the first respondent took steps to make reasonable adjustments for the claimant.

Time point

1st claim

129. The list of issues records that the claim form in relation to the first claim was presented on 28 June 2019 with the claimant entering early conciliation on 02 May 2019. Accordingly, any acts or omissions which took place before 3 February 2019 are potentially out of time, so that the tribunal may not have jurisdiction.

130. In light of our conclusions in relation to paragraphs 7.3 and 8.1-8.4 (please

see below) and that these were not well founded, we are unable to find that there were connected acts that were presented to the Tribunal within the statutory time limit.

131. We did not consider that it would be just and equitable to extend time based on the evidence we heard and considered. The claimant did not provide any or any adequate explanation for the delay in terms of the late presentation of the relevant acts and/or omissions in his first claim that occurred before 3 February 2019. The claimant had union representation at all material times. He was aware or ought to have been aware of any relevant time limits and to have been able to take steps to present his claims to the Tribunal within the relevant time limits. There was potential prejudice to the first respondent as some employees who were referred to in the claimant's allegations were no longer employed by them and others had to recall events from some time ago.

2nd claim

132. The list of issues records that the claimant's second claim was submitted on 24 August 2020, and the early conciliation certificate was issued on 20 July 2020. Any claim before 21 April 2020 is therefore potentially out of time.
133. In light of our conclusions in relation to paragraph 9 of the second claim and that this was not well founded, we are unable to find that there was a connected act in relation to any acts that occurred before 21 April 2020.
134. We did not consider that it would be just and equitable to extend time based on the evidence we heard and considered. The claimant did not provide any or any adequate explanation for the delay in presentation of his claim. The claimant had union representation at all material times. He had brought a claim previously in relation to which he engaged with ACAS and there would have been opportunities available to the claimant to inform himself about relevant time limits. He was aware or ought to have been aware of any relevant time limits and to have been able to take steps to present his claims to the Tribunal within the relevant time limits.

Decision – victimisation

First claim

List of issues 16a.

135. We do not accept that the claimant made a complaint during the meeting on 30 October 2018 to Mr Price and the rest of his team that there had been a lack of promotion and development for minority staff. He also did not bring proceedings or give evidence in connection with proceedings. This was not a protected act.

List of issues 16b.

136. The claimant did not refer to “unconscious bias” in this email, but he did refer to “conscious bias” although this was in a generalised context and no allegation of any breach or potential breach of the EqA was made in respect of this. We do not accept that the claimant made a complaint that the first respondent was engaging in unconscious bias on the grounds of a protected characteristic under the EqA. No reference is made to unconscious bias on the grounds of or relating to race and/or disability by the claimant in his email correspondence of that date. Accordingly, we are not satisfied that the claimant did any other thing for the purposes of or in connection with the EqA (section 27(2)(c)) or that he made an allegation that a person had contravened the EqA (s27(2)(d)). He also did not bring proceedings or give evidence in connection with proceedings. This was not a protected act.

Alleged detriments

137. Although we did not accept that the acts relied upon amounted to a protected act or protected acts, we considered whether the claimant was subjected to detriments because of any purported protected act or acts in the alternative.

Issues 7.3, 8.1 and 8.3

138. In relation to the incident on 13 February 2019, we did not accept that Mr Price had accused the claimant in the manner alleged. Neither Mr Price’s conduct nor the handling of the investigation by the first respondent

(including but not limited to obtaining CCTV evidence) occurred because of any of the alleged protected acts.

139. We did not find that the claimant was asked to apologise for something that he had not done. Our findings of fact relating to this matter are set out above. We did not find that Mr Taylor's conduct was because of any alleged protected act or acts.

Second claim

140. The Tribunal is satisfied that the bringing of the first claim under claim number 2202459/2019 was a protected act. The respondents accepted that the claimant presenting his first claim to the Tribunal amounted to a protected act. The first claim clearly referred to his discrimination claims on the grounds of race and disability brought pursuant to the EqA under various different heads of claim as identified in the list of issues.

Allegations of detriment as set out in paragraphs 3 – 9 of second claim

141. We did not accept that the events described by the claimant in paragraphs 3-9 of the second claim occurred in the manner described by him. Our findings of fact and observations in relation to each act relied on by the claimant are set out above.
142. Considering our findings of fact, we do not accept that the matters set out in paragraphs 3 to 9 of the claimant's second claim amount to a detriment.
143. We did not accept that the claimant was asked to apologise for something that he had not done as alleged by the claimant.
144. We considered the allegation in relation to paragraph 5 of the second claim. We did not find that the claimant was set unreasonable objectives and an arbitrary deadline in respect of mid-year reviews of staff he managed. The claimant was requested to provide mid-year reviews by Mr Taylor. Mr Taylor had been asked to collate these by his line manager. The claimant indicated he would not be able to provide these within a short timescale. Mr Taylor

replied advising that he needed to supply some information, albeit not to rewrite the reviews. The claimant did not reply offering any approximate scores or any alternative timescale within which the information could have been provided. No further action or follow up took place by the respondents.

145. In relation to 18 and 19 November 2019 (paragraph 6 of the second claim), Mr Taylor had made the relevant file password-protected, and he offered to provide the claimant with the password once he had trained him in terms of the new file, he had created to avoid the recurrent errors and formulae being overwritten and sheets having confusing labels. We do not accept the claimant's allegation that he was undermined or that his line management responsibilities were removed. Mr Taylor had also raised communication issues with the claimant.
146. The allegation in relation to 27 March 2020 (paragraph 7 of the second claim) involved a request by Mr Taylor relating to updating the lockers on Service Now by batch process. In response to Mr Taylor's communication, the claimant replied that day advising the work had been completed and will be forwarded to ICT and that he did not recall being given a deadline. We observed above that Mr Taylor's request for the claimant to express the instructions he had given to him in writing so that they could be checked for accuracy evidenced the fact that the employment relationship and communications between them had been damaged. We did not find that the evidence before the Tribunal supported the claimant's allegation that Mr Taylor was rude, dismissive or that his actions were designed to undermine the claimant.
147. The claimant refers to an incident on 23 March 2020 during which Mr Taylor copied in a supplier into an email (paragraph 8 of the second claim). We are satisfied that Mr Taylor copied in the supplier into the email correspondence by accident and we note that the claimant also replied to his email copying in the supplier. It was clearly reasonable given the circumstances for Mr Taylor to ask the claimant to specify exactly what it is that he wanted the supplier to provide information about. We did not accept that the emails we

have been shown evidenced that Mr Taylor had undermined, been rude or dismissive towards the claimant.

148. In relation to the allegation at paragraph 9 of the second claim, we do not accept that the events on 29 May 2020 took place as described by the claimant. Mr Taylor complained by email to Mr Longley and Mr Willcox on the same day about the claimant using Temple messenger service for his own personal use. He commented that he was not consulted as he was on leave on the day in question. In any event no further action was taken against the claimant in respect of this matter. We did not accept that the claimant was undermined or that it was unreasonable for Mr Taylor to question or complain about this matter.
149. Moreover, the Tribunal concluded that the matters set out in paragraphs 3 to 9 of the second claim did not take place because the claimant had presented the first claim to the Tribunal. There was certainly no direct evidence that the fact that the claimant had brought his first claim to the Tribunal had had any influence whatsoever on the matters he complains of in paragraphs 3 to 9 of his second claim.
150. There was also no evidence from which we considered that we could draw an inference that the protected act had any effect in terms of the claimant's alleged treatment set out in paragraphs 3 to 9 of his second claim. We have taken into account all of the relevant facts, but we consider that it was of particular significance that Mr Taylor and the claimant had a poor working relationship, there were poor communication issues and that this certainly predated the bringing of the second claim. The poor working relationship and the acts set out in paragraphs 3 to 9 of the claimant's claim were in no sense whatsoever connected with the claimant's protected act.
151. In these circumstances, the Tribunal considers that there is no link, either direct or inferential, between the protected act and the allegations made by the claimant in paragraphs 3 to 9 of the second claim.

152. The claim of victimisation is, therefore, not well-founded and is hereby dismissed.

Decision –disability and/or race related harassment

153. The first question for the Tribunal in the discrimination claim is whether these communications amount to unfavourable treatment in the sense that a reasonable worker would consider that they had been disadvantaged.

154. We accepted that Mr Price said to the claimant on 30 October 2018 that his wife must have done a good job writing up his competencies for him. We considered that this was clearly unwanted conduct from the claimant's perspective. It could also be said that a reasonable worker would consider that they were being disadvantaged in the circumstances. The claimant complained about this conduct in his email dated 7 November 2018.

155. However, we considered that the making of this comment by Mr Price was in no sense whatsoever connected with race and/or disability.

156. The reason for this comment being made at the meeting on 30 October 2018 was that Mr Price intended to converse in a jovial manner. He accepted in his statement that this was a reason why he said this to Mr Olufeso although he did not accept this was communicated to the claimant. However, considering all the circumstances, we infer that the context of any conversation with the claimant would have been in the same vein.

157. Turning to the question of whether this conduct had the purpose or effect prohibited by s26 of the EqA, we consider whilst there is evidence from the claimant that he felt humiliated, we did not consider that Mr Price's purpose in saying these words to the claimant was that prohibited under section 26 of the EqA.

158. Whilst we accept that the claimant found this communication upsetting, it must be the case that the overarching purpose of the communication was for Mr Price to assist the claimant (and others in his team – including by reviewing their competencies) then it cannot be said, considering all the

circumstances, that it was reasonable for such communications to have the prohibited effect.

Section 13: Direct discrimination because of disability and/or race

First claim

i) Disability

159. As we found above, Mr Price commented that the claimant's competencies were prepared by his wife on 30 October 2018. We did not accept that this amounted to less favourable treatment because of disability. Mr Price made this comment as a jovial comment in the context of a conversation during which he was assisting the claimant (and others on his team – for example by reviewing his competencies).
160. We also found that Mr Price threatened to confiscate the claimant's mobile telephone provided for work purposes in November 2018. We did not accept that this amounted to less favourable treatment because of disability. We found that this event occurred because Mr Price and the claimant's colleagues were disturbed by the claimant's mobile telephone ringing during his absence from his workstation.
161. We did not accept that Mr Price accused the claimant of getting involved with the incident on 13 February 2019 inappropriately or manhandling Ms Charles. Although the investigation in relation to this took quite some time, there were explanations provided by the first respondent including the meetings that took place, obtaining (from a third party) and viewing CCTV evidence and other work pressures. In any event we did not accept that this amounted to less favourable treatment because of disability, and there was no evidence of any connection between disability and the way in which the claimant says he was treated before us.
162. We found that the incidents described by the claimant at paragraphs 7.1 to 7.3 of the list of issues were in no sense whatsoever connected to disability. The claimant's claim for direct disability discrimination in relation to the claimant's first claim is not well founded and it is therefore dismissed.

ii) Race

163. We do not accept that there was any or any significant delay in terms requesting CCTV evidence. Mr Longley requested this on 18 February 2019. We also did not accept that Mr Price or Mr Longley did not set an investigation in motion and that they failed to act. In any event if there was a delay that could be said to be unreasonable, the fault lay with the Civil Aviation Authority over whose actions the first respondent has no control. This was not because of race.
164. We have set out our findings above in respect of the investigation conducted and we are satisfied that the investigation was reasonable in all the circumstances.
165. We do not accept that Mr Taylor asked the claimant to apologise for something he had not done or that Mr Ward made a similar request for the claimant to apologise. In any event looking at the context of any requests made to the claimant, these were with a view to securing an informal resolution and were not because of race.
166. We do not accept that Mr Price said the words ascribed to him in the text message from Ms Charles which is referred to in paragraph 8.4 of the list of issues.
167. We find that the incidents described by the claimant at paragraphs 8.1 to 8.3 of the list of issues were in no sense whatsoever connected to race, and that Mr Price did not make the comment attributed to him in paragraph 8.4 of the list of issues. The claimant's claim for direct race discrimination is not well founded and it is therefore dismissed.

Section 15 – discrimination arising from disability

168. We accept that Mr Price threatened to remove the claimant's mobile telephone from him.
169. The claimant avers that the "*something arising*" in consequence of the

disability (dyslexia) is the claimant's need to use his mobile telephone to set reminders.

170. The mobile telephone was not removed from the claimant and Mr Price did not attempt to remove the claimant's telephone after he said these words.
171. Mr Price said these words out of frustration because of the disturbance being caused and the claimant subsequently ensured he adjusted his telephone to avoid any repeat.
172. Accordingly, we did not accept that paragraph 7.2 of the list of issues provides the full context in terms of what happened in relation to this incident.
173. We do not find that the evidence supports the claimant's contention that he was treated in the manner alleged because of the "something arising" in consequence of his disability (dyslexia). His mobile telephone was causing disturbance. The claimant adjusted his telephone to avoid any repeat.
174. Even if we accepted the claimant's allegation at paragraphs 13 and 14 of the list of issues, we were satisfied that the first respondent's treatment would have amounted to a proportionate means of achieving a legitimate aim namely to enable all staff to work in an open-plan office environment with limited disruptions. The Tribunal were satisfied that this was Mr Price's genuine intention and that his expectations were reasonable and proportionate in the circumstances.
175. The claimant's claim for discrimination arising from disability in relation to the first claim is not well founded and it is therefore dismissed.

2nd claim

Direct disability discrimination and discrimination arising from disability

176. In relation to his second claim and his claims for direct disability discrimination and discrimination arising from disability, the claimant relies on paragraphs 3 to 9 of his Particulars of Claim.

Direct disability discrimination

177. We made findings of fact above in relation to paragraphs 3 to 9 of the claimant's claim for direct disability discrimination. We also summarised our conclusions in terms of each incident relied upon in the context of the claimant's victimisation claim in paragraphs 141 and 148 above. We did not accept that the incidents relied on by the claimant amounted to less favourable treatment because of disability.
178. Having considered all the circumstances, the claimant has not proved primary facts from which we could conclude that the alleged differences in treatment were because of disability.
179. In any event, had the claimant shown sufficient facts from which we could conclude that the alleged discrimination occurred, we were satisfied that the respondents had provided a non-discriminatory explanation in respect of each of the claimant's allegations. We refer to our findings of fact and paragraphs 141 to 148 in respect of this above.
180. We found that the incidents described by the claimant at paragraphs 3 to 9 of the claimant's second claim were in no sense whatsoever connected to disability. The claimant's claim for direct disability discrimination in relation to the claimant's second claim is not well founded and it is therefore dismissed.

Section 15 – discrimination arising from disability

181. We made findings of fact above in relation to paragraphs 3 to 9 of the claimant's claim for discrimination arising from disability. We also summarised our conclusions in terms of each incident relied upon in the context of the claimant's victimisation claim in paragraphs 141 and 148 above. We did not accept that in relation to the incidents relied on by the claimant in his second claim the claimant was subjected to discrimination arising from disability.
182. Considering all the circumstances, the claimant has not proved primary facts

from which we could conclude that the respondents treated the claimant unfavourably because of something arising in consequence of the claimant's disability.

183. In any event having carefully considered each incident upon which the claimant relies in respect of his second claim, we were satisfied that the claimant's treatment by the respondents was in no sense whatsoever connected with or arising from the claimant's disability.

184. The claimant's claim for discrimination arising from disability in relation to the second claim is not well founded and it is therefore dismissed.

Disposal

185. The claimant's claims against the first respondent and the second respondent do not succeed.

Remedy

186. We did not determine any matters relating to remedy given our conclusions on liability.

Conclusion

187. The claimant's claims for direct disability discrimination, direct race discrimination, discrimination arising from disability, harassment related to race, harassment related to disability, and victimisation are dismissed.

Employment Judge B Beyzade

Dated: 12 August 2022

Sent to the parties on:

13/08/2022

For the Tribunal Office