



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Dodzi Attoh

-v-

Grant Thornton Business Services

FINAL MERITS HEARING

(CONDUCTED AS A HYBRID HEARING BY THE CLOUD VIDEO PLATFORM)

Heard: **At Centre City Tower, Birmingham**

On: **27, 28 February, 1 – 3, 6 – 10, 13 - 15 March 2023 and
in chambers 10, 11 & 13 May 2023**

Before: **Employment Judge Perry, Dr G Hammersley & Ms R Pelter**

Appearances

For the Claimant:

In person

For the Respondent:

Mrs K Skeaping, solicitor

JUDGMENT

- 1 The claimant was not discriminated against in contravention of part 5 of the Equality Act 2010. His complaints of harassment, direct discrimination and victimisation are dismissed.
- 2 The claimant was not subjected to detriments by virtue of having made protected disclosures.
- 3 The claimant's complaints that he was constructively and unfairly dismissed and dismissed by reason of having made protected disclosures are not well-founded and are also dismissed.

REASONS

References below in circular brackets are to the first paragraph of the section of these reasons to which the cross reference refers.. Those cross references are provided for the assistance of the reader. The reader is advised that sometimes the transposition software may mean that the cross references are not properly transposed and/or an error generated. References in square brackets to



the page of the bundle, or where preceded by a document reference or the initials of a witness, that document or witness statement.

Evidence

- 1 This claim was lodged with the Tribunal on 18 November 2020 following early conciliation that started on 22 September and ended on 22 October 2020. Accordingly, given timing points are raised, we clarified at the outset that any acts that occurred before 22 June 2020 are potentially out of time.
- 2 We will refer to the complaints below by reference to their number from the list of issues using abbreviations. The complaints comprised constructive unfair dismissal (CUDL), unlawful discrimination stemming from the protected characteristic of race (Mr Attoh describes himself as Afro-Caribbean, of African descent in particular) comprising harassment (UC), direct discrimination (LFT) and victimisation (VDet) and in addition, a whistleblowing detriment (PDet) and dismissal complaint.
- 3 The claimant, Mr Attoh, was employed as an Audit Assistant Manager ¹ at the Birmingham office of the respondent, Grant Thornton (“GT”). He worked in GT’s Commercial Audit department from 16 July 2018 [100] until his resignation on 3 months notice given by email on 23 April 2020 (effective 23 July 2020 [474]).
- 4 GT is a multinational provider of audit, tax and advisory services. Mr Coates, who was at the time a Director in GT’s Birmingham Audit department and is now a Partner in the Birmingham office’s Commercial Audit department (and for the last two and a half years, Audit Quality Lead for the Birmingham office) told us that as of the date of his statement (26 July 2021) GT’s Birmingham office had in the region of 350 staff overall of which 100 or so were in the Commercial Audit department [JC/7].

¹ As part of a general reorganisation of role titles on 1 October 2019, Mr Attoh’s original job title of Executive was changed to Assistant Manager [CH/51].



- 5 Prior to his employment with GT Mr Attoh had worked in an audit role for approximately 10 years albeit that was in a far smaller organisation.
- 6 The claim was case managed by Employment Judge Dean on 15 March 2021. Mr Attoh instructed a solicitor shortly before that hearing. His solicitor was not in receipt of comprehensive instructions at that hearing and so having summarised the claim, Employment Judge Dean issued case management directions (including requiring Mr Attoh to provide full particulars of his complaints) and listed the claim for a seven day hearing commencing on 3 March 2022.
- 7 GT sought clarity of Mr Attoh's complaints and also raised and continues to pursue timing points in relation to occurring any acts occurring on or before 22 June 2020. The clarity sought was to large extent provided but there remained issues at the first final merits hearing (postponed) concerning how certain complaints were put.
- 8 Mr Attoh was legally represented until after exchange of witness statements that was for the most part done in August 2021.
- 9 The claim was listed before a full panel commencing on 3 March 2022, with a time estimate of 7 days. The was chaired by Employment Judge Meichen. An hour before the hearing was due to commence Mr Attoh made an application to postpone the hearing on medical grounds. That was refused principally because it was not supported by any medical evidence. Mr Attoh was subsequently seen by his GP and later admitted to hospital. He was discharged in the very early morning of the next day.
- 10 Notwithstanding that Mr Attoh attended the hearing. Unsurprisingly Employment Judge Meichen in his order stated that Mr Attoh was not in a good state and appeared exhausted and disorientated. Mr Attoh renewed his application to postpone on medical grounds. The Tribunal gave Mr Attoh the opportunity to rest and take the medication which he had been prescribed



(but had not had chance to pick up) so spent the remainder of the day reading. The panel indicated it would decide on the way forward the following day.

- 11 Following extensive discussions, the next day all parties effectively agreed to postpone the case because Mr Attoh's ill health and the case management issues which were outstanding meant that it would not be possible to complete the hearing within the time and the undesirability of going part heard.
- 12 The final (merits) hearing was relisted and came before this panel. In advance it was listed to be heard as a hybrid with Mr Attoh attending (for the most part) in person and GT's representatives and witnesses appearing via CVP.
- 13 A list of issues was identified at the hearing chaired by Employment Judge Meichen on 3, 4 & 7 March 2022 which we address in a few paragraphs time. Unfortunately, that order was not in the bundle before us.
- 14 We made it clear at the outset that given the lack of detail in the claim form and the need for clarification we would proceed on the basis of the issues identified and agreed before Judge Meichen. That aside there remained a lack of detail and Ms Skeaping had to repeatedly seek clarification of the claim from Mr Attoh. Those matters aside Mr Attoh repeatedly sought to raise matters that were not in the list of issues. Where he was able to point us to where those matters had been addressed in the claim form or further and better particulars we have attempted to address them below.
- 15 We had before us a bundle of 938 hard copy pages (1023 e-pages). Pages 259a-l were initially missing that was remedied. On day 9 Mr Attoh requested that an electronic version of the bundle be provided to him. By that point he had had the hard copy bundle for over twelve months including at the earlier hearing. That was addressed immediately.



- 16 A number of potential witnesses have left GT's employ. One of them; Mr Ryan Mediran (see (142)) (provided a witness statement late for which permission was granted), was not called. We indicated we would give his evidence such weight as was appropriate. Other individuals who are named below who have left GT's employ include Ms Catherine Bradley (a Manager in GT's Audit department), Mr Dan Holland (a People Advisory Adviser in GT's People and Culture team (HR)) and Har-Charan Takhar (who made complaints about Mr Attoh (Mr Mediran was her Manager (368))).
- 17 The following witnesses provided witness statements and were cross examined:-
- 17.1 Mr Attoh
- and for GT:-
- 17.2 Clare Hunter (at the time of the matters that concern us she was a manager in GT's commercial audit team in Birmingham and who was Mr Attoh's people (line) manager. She is no longer employed by GT),
- 17.3 Sarah Kubie (was a Manager in the GT's Employee Relations Adviser team at its Leeds office. That team provided the first point of contact to employees and People managers in relation to HR matters. She is no longer employed by GT),
- 17.4 Rebecca Eagle (a Partner within GT's Commercial Audit team at its Birmingham office. She was also Head of Audit for the Birmingham office between the end of 2015 and June 2019, and has sat on its Audit Leadership Team since June 2019),
- 17.5 Wilder Garcia Batres, ("Mr Garcia" as he was referred to before us, a manager in GT's audit department)
- 17.6 Phil Anton (at the time of the matters that concern us he was a manager in the Audit Department in GT's Birmingham office),



- 17.7 Andrew Turner (a Director in GT's Audit team),
- 17.8 Natalie Gladwin (at the time of the matters that concern us she was a Director in GT's Audit Department at its Birmingham office),
- 17.9 John Coates (see above),
- 17.10 Avtar Sohal, (he was a Senior Manager at the time of the matters that concern us. He became a Director in GT's Public Sector Audit Team at its Birmingham office in September 2020. He told us he is involved in various equality and diversity threads: he was part of GT's inclusion advisory board between 2021-22, that is now its ethnicity council; was a leader in its BAME ² network; and lead a lot of diversity and inclusion work in the Birmingham office and within public sector audit.)
- 17.11 Dearbhla Mohan (she is no longer employed by GT but at the time was a People Advisory Adviser (HR) - People and Culture, Leeds),
- 17.12 Dan Rosinke (a Partner and the lead of GT's Transaction Advisory Services team based at its Leeds office),
- 17.13 Cheryl Cooper (at the time she was a Senior Solicitor & Ethnicity Strand Convenor for GT and is now a Director in the Legal Department based in its London office).
- 18 Following a request to the Foreign, Commonwealth & Development Office permission was given by an email of 16 February 2022 timed at 10:40 for Mr Garcia to give evidence from the United States of America as he is resident in California. It was agreed he would be called late in the day in the UK (3pm) and early in his day (7am) to allow his evidence to be completed in one session.

² Given use of that acronym has been deprecated we use it only because it that was the term used at the time.



- 19 At the end of Day 8 Mr Turner had not completed his evidence and was given the usual oath reminder. At the start of Day 9 Mr Attoh told the Tribunal he was “mentally struggling” because he was having to relive his experience. The panel asked if he wished to see his GP or another medical practitioner. He then told us he had been suffering severe chest pain overnight and was worried that proceeding with the claim would cause irreparable damage to his health.
- 20 The panel checked if he had spoken to a GP or called 111. He told us initially he had 3 missed calls and two texts from his GP surgery. One of the calls related to the previous week and the other a few days before. He provided no good reason why he had not returned the calls before then. We enquired if there were any ongoing investigations regarding his health. He told us the last time he had seen his GP was in March 2022 (the time of the last hearing before Employment Judge Meichen). The judge expressed his surprise Mr Attoh had not contacted his GP before now and insisted he did so despite the witness being on oath. The tribunal adjourned.
- 21 On reconvening Mr Attoh told us he had contacted his surgery and the messages related to a routine medical screening relating to diabetes and he had arranged an appointment after the end of the trial. He was told to let the panel know if there were any difficulties he encountered going forward and the judge re-emphasised the importance of his health.
- 22 Mr Attoh then repeated he would struggle to proceed, that it was traumatic for him to relive the experience and he had lost both parents to heart related conditions. Ms Skeaping stated that if Mr Attoh was seeking a postponement then she would be making an application to strike out the claim. Mr Attoh then told us he did not wish to put himself in situation where his health was in an irrecoverable condition and sought to postpone. The panel asked how that would help to which he responded in another year he would be mentally ready and stated he was going to see his GP.



- 23 We reminded him given the strike out application that several of GT's witnesses no longer worked for it, the length of time since the events that concern us had occurred, that he had struggled to provide details and dates given the passage of time and whilst it was no doubt stressful for him it was also stressful for the individuals against whom these very serious allegations had been made which could be career threatening if successful.
- 24 We adjourned so he could consider how he wished to proceed, so he could call his GP and so the Tribunal could identify its availability if the case could not proceed.
- 25 On reconvening, we were informed paramedics had attended and advised that Mr Attoh attend hospital for further checks. Mr Attoh told us that he had refused to go to hospital. The Judge expressed surprise that he was not following medical advice and insisted he do so but that did not drive himself. The judge explained that if the advice was that he was not fit to attend the hearing it would be helpful to see a note from a medical practitioner indicating that was so and why that was so, when he would be fit to do so and what adjustments would be required to facilitate that. We adjourned until the next day.
- 26 The next morning Mr Attoh attended via CVP from home. He told us he left hospital at 11:19 pm the previous evening and no issues of concern had been identified. The panel indicated in the absence of the evidence we had asked him to provide the day before we were going to proceed but agreed to wait until 12:00 before restarting. On reconvening at 12:00 noon we checked with Mr Attoh, and he confirmed he was able to proceed.
- 27 During the hearing Ms Skeaping was asked to provide a schedule identifying GT's position on the various complaints and specifically the parts of the various complaints that were and were not accepted and where not accepted why not. She updated that as the hearing progressed.



28 At the claim's conclusion she further updated that schedule and provided a brief written submission which she orally elaborated upon. Mr Attoh made oral submissions.

The issues & overview

29 This claim is essentially about the actions of GT and its staff in subjecting Mr Attoh to performance management and the alleged behaviour towards him of his Line ("People") managers and others.

30 Mr Attoh's initial "*people*" manager was Mr Tom Edwards. Due to Mr Edwards impending departure Mr Paul Anton took over Mr Attoh's line management in late 2018.

31 Following Mr Attoh raising an issue with regard to Mr Anton which we will return to later (162), Mr Anton was in turn replaced as Mr Attoh's line manager by Ms Clare Hunter in May 2019. She remained as such until his employment terminated.

32 Mr Attoh had 10 years experience when he joined GT albeit with a far smaller practice and his salary was £38,000 pa. His role amongst other matters entailed undertaking in the region of 7 or 8 audits per year during which he was responsible for planning and undertaking field work at the premises of the audited businesses, which entailed supervising 2 or 3 junior colleagues and he was also required to reporting to a partner/director.

33 GT operates a system whereby the teams of staff who undertook audits varied for each audit. Similarly, whilst it was not impossible, it was not the norm for a people manager to manage one of his/her reports on an audit.

34 GT's performance system included appraisals at the end of the performance year (which ran from July to June) and a mid year review. Staff were encouraged to seek and give feedback to other staff during and following the completion of audits. Managers had regular monthly meetings and whilst the



performance of all staff was not discussed staff who were performing exceptionally or poorly were. The performance of staff was graded by managers at a yearly round table meeting in May (although that was subject to moderation and review (if required) later each year).

35 We were told that GT's routine practice was that staff performing "*below expectations*" would be placed initially on an informal performance improvement plan ("PIP"). A consequence of that was that staff would not be entitled to pay rises. If that did not achieve the desired improvement a formal plan would follow which would be treated as a formal performance management issue.

36 This claim centres on a number of themes the principal of which is that Mr Attoh viewed his performance rating as "*below expectations*" in May 2019 as unjustified. As a consequence of that rating he was placed an informal improvement plan which he asserts he attempted to appeal and at the same time he raised a grievance. He complains his grievance was not actioned and his grading appeal was unsuccessful.

37 For Mr Attoh's victimisation complaint, he relies upon two protected acts:-

38 The first was that in October 2019 he reached out to Ms Cooper to express concerns that he was subjected to conduct that he considered unfair and discriminatory because of his race:

39 GT accept that conversation took place but not that it was a protected act because there was no mention of race and thus it could not fall within s.27(2) EqA.

40 As a result of the discussion with Ms Cooper he was put in contact with Mr Avtar Sohal (see (17.10)). Mr Sohal gave up his own time to help Mr Attoh.

41 In November 2020 the informal PIP was replaced by another taking into account the outcome of Mr Attoh's grading appeal.



42 Mr Attoh raised before us a number of issues that he alleges occurred prior to and after then. We address them in turn below.

43 By 19 March 2020 Mr Attoh was told the informal PIP was to be formalised and a meeting was arranged. That eventually took place on 30 April 2020. Also, in the discussion on 19 March GT sought to enter a protected conversation with him (443). No point was made about the contents of the discussion being privileged as both parties accepted before us a protected conversation did not take place. Mr Attoh references the offer to hold such a conversation as evidence that GT wanted/was managing him out of the business,

44 On 22 April 2020 Mr Attoh raised a grievance [433-434] (which is set out in full at (479)) and an ethics complaint. The following day (23 April 2020) and before any substantive steps could be taken in that regard, he resigned on notice [452].

45 Mr Attoh was told that as many of the issues raised in the grievance duplicated those in the performance meeting he was to have it would address the matters raised in his grievance of 22 April in a 4¼ hour meeting it held with him on 30 April 2020 (511) but was asked to give detail of one complaint. At the 30 April meeting his PIP was formalised, and he was issued a written capability warning. By then he had not provided the details of that complaint and so was reminded he would need to provide the detail of that via a grievance if he wished to pursue it.

46 On 16 July 2020, a week before his employment was due to come to an end he raised a further grievance. That is set out in full below (547). That referenced that he believed his mistreatment was due to his race and so was accepted by GT to be a protected act for his victimisation complaints.

47 .



48 That grievance investigation was chaired Mr Rosinke. Mr Attoh complains about the outcome of that grievance.

49 The other main themes that Mr Attoh complained about were:-

49.1 about his treatment by a clique of staff who were friends with, and who at the behest of his line manager, Mr Anton, raised unwarranted complaints about him, and

49.2 GT's failure to

49.2.1 set goals/targets and

49.2.2 provide him adequate training on its processes and systems.

50 Various acts of those identified above were alleged to be detriments for the victimisation complaint. GT does not accept the acts relied upon as detriments occurred or that the alleged acts or omissions set out above were done because of the alleged protected acts. Further timing points are relied upon ([84-85] – [Amended response/70-76])

51 For his whistleblowing claim Mr Attoh relies upon a single protected disclosure:- on 13 February 2020 he notified GT Respondent that his log-in credentials had been breached and that a client file had been accessed and unlawfully signed off using the Claimant's credentials.

52 GT accepted that those issues were raised with it but not that it qualified for protection on the basis that the communication:-

52.1 at that time was not in the public interest: and/or

52.2 did not amount to information tending to show

52.2.1 a criminal offence had been committed: and/or



52.2.2 GT had failed or was likely to fail to comply with any legal obligation to which it was subject.

53 Again, GT denies that these events occurred as alleged or were done because of the alleged protected disclosure ([85-86] – [Amended response/77-78])

The Law

54 We sought to clarify the law being relied upon as the claim progressed and ensured this was explained to Mr Attoh. We were satisfied given his responses to these points he understood the same.

Harassment

55 Harassment is prohibited by s.40 EqA. It is defined in s. 26 Equality Act 2010 (EqA). Where relevant, it provides as follows:

“(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.

...

(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.³

³ The predecessor provisions were slightly differently worded hence s. 3A(2) of the Race Relations Act 1976 provided



(5) *The relevant protected characteristics are— age; disability; ...”*

56 The matters referred to in (1)(b)(i) and (ii) are sometimes referred to as the “*proscribed consequences*”.

57 The phrase “*related to*” has a broader meaning than the words it replaced “*grounds of*” and thus the conduct does not have to be “*because of*” the protected characteristic.

58 When assessing the effect of a remark, the context in which it is given is always highly material and whether conduct is “*related to*” a disability has to be judged by assessing the evidence as a whole⁴. A humorous remark between friends may have a very different effect than exactly the same words spoken vindictively by a hostile speaker⁵. It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. Whilst:

“22. ... not every racially slanted adverse comment or conduct may constitute the violation of a person’s dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”⁶

59 Elias LJ in [Grant v HM Land Registry](#) reinforced that point stating that:-

“47 ... Tribunals must not cheapen the significance of these words [“violating dignity”, “intimidating, hostile, degrading, humiliating, offensive”]. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”

“Conduct shall be regarded as having the effect specified in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.”

⁴ [Hartley v Foreign and Commonwealth Office Services](#) UKEAT/0033/15

⁵ [Grant v HM Land Registry](#) [2011] IRLR 748 CA [13]

⁶ [Richmond Pharmacology v Dhaliwal](#)[2009] UKEAT 0458/08, [2009] ICR 724



60 It will also be relevant to deciding whether the response of the alleged victim is reasonable :-

“9. Whether [the conduct] has that effect is a matter of fact is to be judged by a Tribunal ... objectively. In determining that, the subjective perception of the Claimant is relevant, as are the other circumstances of the case. But, as was pointed out in Dhaliwal it should be reasonable that the actual effect upon the Claimant has occurred.”⁷

Direct discrimination

61 Direct discrimination (like all other forms of discrimination other than harassment) is prohibited by s.39 EqA. Section 13 EqA provides that direct discrimination occurs where because, of a protected characteristic, a person is treated less favourably than another person has been or would be treated. That involves a comparison and for that comparison there must be no material difference in the circumstances of the case (save for the protected characteristic)⁸. *Would treat* allows for a hypothetical comparator in addition to an actual comparator.

62 Thus, it is not sufficient for a claimant to have a protected characteristic and to be treated less favourably; for a respondent to be guilty of direct discrimination the less favourable treatment must be done ‘*because of*’ the protected characteristic. The protected characteristic also need not be the sole or even principal reason for the treatment so long as it has a significant influence (that is *one which is more than trivial*) on the reason for the treatment⁹.

63 This is not a case where the difference in treatment cannot be disassociated from a protected characteristic¹⁰ so the question we have to address is consciously or unconsciously, was the discriminator’s reason for acting as

⁷ [Betsi Cadwaladr University Health Board v Hughes](#) [2014] UKEAT/0179/13

⁸ s.23 EqA

⁹ [Nagarajan v London Regional Transport](#) 1999 IRLR 572 HL as applied in [Igen v Wong](#) [2005] IRLR 258 at [37]

¹⁰ An example is [Nagarajan](#) (see above)



they did? ¹¹ Unlike causation, which is a legal conclusion, the reason why a person acted as s/he did is a subjective question and one of fact ¹².

64 The one (subjective) question the tribunal must not concern itself with is “*if the discriminator treated the complainant less favourably on racial grounds, why did he do so?*” That question is irrelevant ¹³. Discrimination is not negated by the discriminator’s motive or intention or reason or purpose (the words are interchangeable in this context) in treating another person less favourably on racial grounds.

“... Parliament did not consider that an intention to discriminate on racial grounds was a necessary component of either direct or indirect discrimination. One can act in a discriminatory manner without meaning to do so or realising that one is.” ¹⁴

Victimisation

65 Section 27 EqA provides:

“(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;

¹¹ An example is that of the shop keeper given by Lord Phillips in *Governing Body of JFS [2010] 2 AC 728* at [21] “A fat black man goes into a shop to make a purchase. The shop-keeper says ‘I do not serve people like you’. To appraise his conduct it is necessary to know what was the fact that determined his refusal. Was it the fact that the man was fat or the fact that he was black? In the former case the ground of his refusal was not racial; in the latter it was. The reason why the particular fact triggered his reaction is not relevant to the question of the ground upon which he discriminated.”

¹² *Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48* at [29]

¹³ *R. v Birmingham City Council, ex p. Equal Opportunities Commission [1989] AC 1155*, see Lord Goff at p. 1194.

¹⁴ As Lady Hale put it in *JFS* at [57]



(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.*

...”

66 We return to s.27(2) below.

67 Detriment has been given a wide meaning by the courts¹⁵ and is assessed objectively, namely, how it would have been perceived by a reasonable litigant¹⁶. In making that assessment we must bear in mind that an unjustified sense of grievance cannot constitute detriment¹⁷, and whilst it is not a defence per se that the employer behaved honestly and reasonably, save in the most unusual circumstances, it will not be objectively reasonable for an employee to view distress and worry caused by honest and reasonable conduct of the employer as a detriment¹⁸. A person may be treated less favourably and yet suffer no detriment.

The burden of proof

68 Direct evidence of discrimination is rare. Section 136 EqA provides that if there are facts from which the court could decide, in the absence of any other explanation, that there has been a contravention of the act the tribunal must hold that the contravention occurred unless the alleged perpetrator shows that the contravention did not occur.

¹⁵ Lord Hoffman in *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830 at [53]. Brandon LJ in *Ministry of Defence v Jeremiah* [1979] IRLR 436 CA, a case involving the interpretation of the 1975 Sex Discrimination Act, stated “... I do not regard the expression 'subjecting to any other detriment', as used in s.6(2)(b), as meaning anything more than 'putting under a disadvantage' ” and went on to say that was a question of fact for the Tribunal. adopted and approved by the HL in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 which in turn referred often to another HL decision in *Chief Constable of West Yorkshire Police v Khan* (as above).

¹⁶ *Ministry of Defence v Jeremiah* (as above) [31] per Brightman LJ approved in *Chief Constable of West Yorkshire Police v Khan* (as above)

¹⁷ *Shamoon v Chief Constable of Royal Ulster Constabulary* (as above) per Lord Hope [35].

¹⁸ *Pothecary Witham Weld (a firm) & Anor v. Bullimore & Anor* [2010] IRLR 572, [2010] ICR 1008, [2010] UKEAT 0158/09 at [19(3)] applying *Derbyshire v. St. Helens Metropolitan Borough Council* [2001] ICR 841



- 69 The ET has to consider all the primary facts to see if a *prima facie* case of discrimination has been established by the claimant ¹⁹. Save in one respect the total picture has to be looked at ²⁰. It is only the explanation which cannot be considered at the first stage of the analysis.
- 70 A difference in treatment alone is not sufficient to establish that discrimination could have occurred and the burden of proof passes to a Respondent, similarly unreasonable conduct without more is not enough either.
- 71 Where facts are proved from which inferences of less favourable treatment can be drawn, then the burden of proof moves to the respondent and it is then for the respondent to prove on the balance of probabilities that it did not commit or are not to be treated as having committed the alleged discriminatory act or that treatment was in no sense whatsoever on the ground of protected characteristic ²¹. That requires a consideration of the subjective reasons which cause the employer to act as it did ²²:-

“At the second stage, the ET must ‘assess not merely whether the [Respondent] has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities’.” ²³

- 72 The appellate courts have made clear that the burden of proof is a tool to be used in a case where a tribunal cannot make clear findings about the reason

¹⁹ [Ayodele v Citylink Ltd](#) [2017] EWCA Civ 1913 per Singh LJ [67]

²⁰ see [Hewage](#) at [31], and [Laing v Manchester City Council](#) [2006] ICR 1519 at [56 to 59]. “Typically this will involve identifying an actual comparator treated differently or, in the absence of such a comparator, a hypothetical one who would have been treated more favourably. That involves a consideration of all material facts (as opposed to any explanation).” per Elias P in [Laing](#) at [65]. Discrimination complaints “rarely deal with facts which exist in a vacuum and to understand them, a Tribunal has to place them in the context revealed by the whole of the evidence. ... one cannot understand a scene in act III of a play without first having understood what has happened in acts I and II ... since these both provide the context for and cast light on the overall picture.” (see [Kansal v Tullett Prebon Plc](#) UKEAT/0147/16 at [31] where Langstaff J also referred to [Qureshi v Victoria University of Manchester](#) [2001] ICR 863 and [X v Y](#) [2013] a decision of the EAT (UKEAT/0322/12/GE)

²¹ [Ayodele v Citylink Ltd & Another](#) [2017] EWCA Civ 1913.

²² see [Shamoon v Chief Constable of the Royal Ulster Constabulary](#) [2003] ICR 337, 341, para. 7, per Lord Nicholls.

²³ see the [Igen](#) guidance at Annex paragraph 12 and [Laing](#) [51]



for impugned treatment. If the tribunal is in a position to make positive findings on the evidence one way or the other that is an end to the matter ²⁴.

“32. ... 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. ...”

- 73 The protected characteristic need not be the sole or even principal reason for the treatment so long as it has more than a trivial influence on it ²⁵. That said, it is unusual to find evidence of discrimination and accordingly it is for the Tribunal to draw appropriate inferences from primary facts.
- 74 Discrimination complaints *“rarely deal with facts which exist in a vacuum. To understand them, a Tribunal has to place them in the context revealed by the whole of the evidence. It might be said, for instance, that one cannot understand a scene in act III of a play without first having understood what has happened in acts I and II and, it may be, having understood what happens in later scenes too, since these both provide the context for and cast light on the overall picture.”* ²⁶. Thus, when considering whether a protected characteristic was a ground for less favourable treatment, the total picture has to be looked at and where there are allegations of discrimination over a substantial period of time, a fragmented approach looking at the individual incidents in isolation should be avoided as it omits a consideration of the wider picture ²⁷.
- 75 The Tribunal can also consider the relevant codes of practice and draw inferences from non-compliance with them.

²⁴ Lord Hope in *Hewage v Grampian Health Board* [2012] UK SC 37 (approving *Underhill P* as he then was in *Martin v Devonshires Solicitors* [2011] ICR 352 (EAT)).

²⁵ *Nagarajan* as applied in *Igen v Wong* at [37]

²⁶ see *Kansal v Tullett Prebon Plc* UKEAT/0147/16 at [31] where Langstaff J also referred to *Qureshi v Victoria University of Manchester* [2001] ICR 863 and *X v Y* [2013] a decision of the EAT (UKEAT/0322/12/GE

²⁷ *London Borough of Ealing v Rihal* [2004] IRLR 642 CA applied in *Laing* [59] and endorsed in *Madarassy v Nomura International* [2007] IRLR 246 also CA.



Timing

76 Section 123 EqA provides so far as is relevant:-

“(1) ... Proceedings on a complaint within section 120 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.

...

(3) For the purposes of this section—

(a) conduct extending over a period 28 is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”

77 The Court of Appeal gave guidance on the exercise of the just and equitable discretion in [Abertawe Bro Morgannwg University Local Health Board v Morgan](#) [2018] EWCA Civ 640 per Leggatt LJ

“18. ... it is plain from the language used (“such other period as the employment tribunal thinks just and equitable”) that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 29, the

²⁸ The wording differs to that in s.76(1)(b) SDA 1975 “...any act extending over a period shall be treated as ...”

²⁹ [British Coal v Keeble](#) [1997] IRLR 336



Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account³⁰. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under section 7(5) of the Human Rights Act 1998³¹.

19. That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay³² and (b) whether the delay has prejudiced the respondent³³ (for example, by preventing or inhibiting it from investigating the claim while matters were fresh). ”

78 Thus, the exercise of the broad discretion involves a multi-factorial approach taking into account all of the circumstances of the case³⁴ in which no single factor is determinative³⁵. In addition to the length and reason for delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the merits and balance of prejudice, other factors which may be relevant are the extent to which the respondent has cooperated with any request for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action and the steps

³⁰ [London Borough of Southwark v Afolabi](#) [2003] EWCA Civ 15; [2003] ICR 800 at [33]. That principle was more recently reinforced in a different context in [Neary v St Albans School](#) [2010] IRLR 124, (CA) per Smith LJ where, it was held that where a line of EAT authority requiring a Tribunal to consider the then factors in CPR 3.9(1), to decide whether or not to grant relief from sanction following non-compliance with an unless order, was incorrect.

³¹ [Dunn v Parole Board](#) [2008] EWCA Civ 374; [2009] 1 WLR 728 at [30-32, 43, 48] and [Rabone v Pennine Care NHS Trust](#) [2012] UKSC 2; [2012] 2 AC 72, at [75]

³² A failure to provide a good excuse for the delay in bringing the relevant claim will not inevitably result in an extension of time being refused, the tribunal must weigh in the balance the prejudice and potential merit of the claim ([Rathakrishnan v Pizza Express \(Restaurants\) Ltd](#) UKEAT/0073/15 per HHJ Peter Clark disapproved the reasoning of the then President of the EAT Mr Justice Langstaff in [Habinteg Housing Association Limited v Holleran](#) UKEAT/0274/14 (which was at odds with two EAT decisions, [Pathan v South London Islamic Centre](#) UKEAT/0312/13 HHJ Shanks presiding at [17 to 18], and [Szmidt v AC Produce Imports Limited](#) UKEAT/0291/14 HHJ Peter Clark presiding at [4 to 6] and neither of which appear to have been cited to the President in [Habinteg](#)). Authority for the need to consider the merits and the balance of hardship dates back to [Dale v British Coal Corporation](#) [1992] WL 12678386.

³³ See also [Hale v Brighton and Sussex University Hospitals NHS Trust](#) [2017] UKEAT/0342/16 at [49] where the current president of the EAT Mr Justice Choudhury (albeit prior to his appointment as president) approved the reasoning in [Bahous v Pizza Express Restaurant Ltd](#) UKEAT/0029/11 at [19-21] that the question of the balance of prejudice is a material factor and the merits should not be treated as a separate consideration but as part of that prejudice balancing exercise. Concluding the Tribunal's failure to take this into account was an error of law, see [Baynton v South West Trains Ltd](#) [2005] UKEAT/0848/04, HHJ Burke QC presiding (see particularly [59]).

³⁴ [Hutchison v Westward Television Ltd](#) [1977] IRLR 69

³⁵ see also [Rathakrishnan v Pizza Express \(Restaurants\) Ltd](#) UKEAT/0073/15 per HHJ Peter Clark



taken by the claimant to obtain appropriate legal advice once the possibility of taking action is known.

Unfair dismissal

79 Mr Attoh was continuously employed by GT for 2 years so subject to timing points had the right to bring a claim of unfair dismissal ³⁶. That includes the situation known as ‘*constructive dismissal*’ namely:-

“(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.” ³⁷

80 In cases such as this where GT denies that Mr Attoh was entitled to treat himself as constructively dismissed it is for the employee to show he was entitled to do so. The way that question is assessed is by the Tribunal:-

“[61]... looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract.” ³⁸

81 This is sometimes referred to as a ‘*fundamental*’ breach and the classic authorities identify four conditions that must usually be met ³⁹:

81.1 there must be a breach of contract by the employer, unreasonableness is not enough. This may be either an actual or an anticipatory breach and/or of an express or implied term;

³⁶ s. 94 Employment Rights Act 1996 (ERA)

³⁷ s.95(1) ERA

³⁸ What constitutes a repudiatory breach in the commercial as opposed to employment arena was considered in [Eminence Property Developments Ltd. v Heaney](#) [2010] EWCA Civ 1168, where Etherton LJ restated the view of Lord Wilberforce in [Woodar Investment Development Ltd v Wimpey Construction UK Ltd](#) [1980] 1 WLR 277 HL which in turn approves the view of Lord Denning in [Federal Commerce & Navigation Co Ltd v Molena Alpha Inc \(The Nanfri\)](#) [1978] QB 949 (CA), [1979] AC 757 (HL) at CA [979F] as to the legal test for repudiatory conduct. See also [Tullett Prebon Plc v BGC Brokers LP](#) [2011] IRLR 420 in the words of Langstaff P in [Bethnal Green v Dippenaar](#) UKEAT/0064/15 [22]

³⁹ paraphrasing the summary by Simler P in [Conry v Worcestershire Hospital Acute NHS Trust](#) [2017] UKEAT 0093/17 in turn stems from the classic guidance given by Lord Denning MR in [Western Excavating \(ECC\) Ltd v Sharp](#) [1978] 1 QB 761.



- 81.2 the breach must be sufficiently serious (repudiatory) to justify the employee resigning, or it must be the last in a series of incidents which justify resignation;
- 81.3 the employee must leave in response to the breach and not for some other unconnected reason;
- 81.4 the employee must not delay too long in terminating the contract in response to the employer's breach otherwise he may be deemed to have waived the breach or agreed to vary the contract.⁴⁰
- 82 Whilst a fundamental breach is not judged by using reasonableness or the range of reasonable responses test. "... *reasonableness is one of the tools in the employment tribunal's factual analysis kit for deciding whether there has been a fundamental breach.*" but "... *it cannot be a legal requirement.*"
- 83 Not every breach of contract which will justify the employee resigning and claiming that s/he has been dismissed⁴¹. Mr Attoh appears to rely upon the term implied into all contracts of employment that employers (and employees) will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties⁴². This is known sometimes as the 'Malik' term⁴³. Any breach of that term will amount to a fundamental breach because the very essence of the breach is that it is calculated or likely to destroy or seriously damage the relationship.
- 84 In [Kaur v Leeds Teaching Hospitals NHS Trust](#)⁴⁴ the Court of Appeal suggested in cases where a course of conduct is relied upon it is normally sufficient for a tribunal to ask itself the following questions:

⁴⁰ [Conry v Worcestershire Hospital Acute NHS Trust](#) [2017] UKEAT 0093/17 per Simler P at [17-18]

⁴¹ In [Frenkel Topping Limited v King](#) UKEAT/0106/15 Langstaff P emphasised the importance of the stringency of the test [12-15]

⁴² see [Courtauld's Northern Textiles Ltd v Andrew](#) [1979] IRLR 84

⁴³ [Malik v Bank of Credit and Commerce International SA](#) [1997] IRLR 426

⁴⁴ [Kaur v Leeds Teaching Hospitals NHS Trust](#) [2019] ICR 1, [2018] EWCA Civ 978 per Underhill LJ at [55]



“(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation ?

(2) Has he or she affirmed the contract since that act ?

(3) If not, was that act (or omission) by itself a repudiatory breach of contract?

(4) If not, was it nevertheless a part (applying the approach explained in Omilaju⁴⁵) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) [6] breach of the Malik term ? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para. 45 above.)

(5) Did the employee resign in response (or partly in response) to that breach?”

85 The reference to the course of conduct which viewed cumulatively, amounted to a repudiatory breach is commonly known as the “*final*” or “*last straw*” and is addressed at length in Omilaju and approved in Kaur (see [37-43] of the latter).

86 As stated in Omilaju and Kaur the final straw does not have to be of the same character as the earlier acts on which the employee relies; it’s essential quality is that, when taken in conjunction with the earlier acts it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant and it may not always be unreasonable, still less blameworthy. If it does not contribute to the breach, there is no need to examine the earlier history. Kaur explains the two theoretically distinct legal reasons why that is:-

“45. ...The first is where the legal significance of the final act in the series is that the employer's conduct had not previously crossed the Malik threshold: in such a case the breaking of the camel's back [4] consists in the repudiation of the contract. In the second situation, the employer's conduct has already crossed that threshold at an earlier stage, but the employee has soldiered on until the later act which triggers his resignation: in this case, by contrast, the breaking of the

⁴⁵ [Waltham Forest v Omilaju](#) [2005] IRLR 35 at [14-22]



camel's back consists in the employee's decision to accept, the legal significance of the last straw being that it revives his or her right to do so. ... If the tribunal considers the employer's conduct as a whole to have been repudiatory and the final act to have been part of that conduct (applying the Omilaju test), it should not normally matter whether it had crossed the Malik threshold at some earlier stage: even if it had, and the employee affirmed the contract by not resigning at that point, the effect of the final act is to revive his or her right to do so."

- 87 GT does not advance a potentially fair reasons for dismissal so Mr Attoh's claim will succeed if he can show he was entitled to treat himself as constructively dismissed and the question of fairness of the dismissal (s.98(4)) will not arise.

Protected disclosures.

- 88 To qualify for protection as a "**whistleblower**" a **worker** (that term includes employees) is required to make a "**protected disclosure**". In order to be protected the disclosure must be a "**qualifying disclosure**", namely:-

*"... any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of [what we will refer to for ease as the "states of affairs" listed in subsections (a)-(f)] ..."*⁴⁶

- 89 Two relevant states of affairs are argued here:-

(a) a criminal offence had been, was being or was likely to be committed and

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

- 90 No point is taken in relation to worker status, with regards to the various conditions set out in ss.43C to 43H ERA (as amended)⁴⁷ or on the basis the

⁴⁶ s. 43B(1) ERA

⁴⁷ For disclosures made prior to 25 June 2013 it was a requirement of both s. 43C and 43G that the disclosure should have been made in "**good faith**". That requirement was removed by s. 24(6) Enterprise and Regulatory Reform Act 2013, but the definition of "qualifying disclosure" in s. 43B was amended to include that the disclosure should be made "*in the public interest*". The question of good faith remains relevant to remedy.



alleged disclosures otherwise qualify, for protection that they were made in the public interest.

- 91 Thus, if the disclosure **“qualifies”** for protection it will be **“protected”**.
- 92 In order for a disclosure to qualifying for protection facts (information) must be relayed, as opposed to an allegation being made ⁴⁸, an opinion or state of mind expressed ⁴⁹ or a position stated for the purpose of negotiation ⁵⁰. Thus, the words, **“The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around,”** relay information whereas **“You are not complying with health and safety requirements”** is the making of an allegation and is not relaying information ⁵¹.
- 93 Employment Tribunals have to take care to ensure they do not fall into the trap of thinking that an alleged disclosure has to be either allegation or information, when reality and experience teaches that it might well be both; they are often intertwined ⁵². The question is whether the statement or disclosure in question has **“a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in the subsection”**. This “will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case” ⁵³. A bare statement such as a wholly unparticularised assertion that the employer has infringed health and safety law will plainly not suffice; by contrast, one which also explains the basis for this assertion is likely to do so ⁵⁴.
- 94 In addition to identifying the date and content of each disclosure, the claimant will ordinarily be expected to identify each alleged failure to comply with a

⁴⁸ [Cavendish Munro v Geduld](#) [2010] IRLR 38, UKEAT/0195/09 [24]

⁴⁹ [Goode v Marks and Spencer](#) UKEAT/442/09 [36]

⁵⁰ see [Cavendish Munro](#). This approach was also applied in [Goode, Norbrook Laboratories v Shaw](#) UKEAT/0150/13 and [Millbank Financial Services v Crawford](#) [2014] IRLR 18 EAT.

⁵¹ see Lady Slade in [Cavendish Munro](#) where she explains the rationale for this and contrasts the statutory words in Part IVA ERA and the provisions in the Sex Discrimination Act 1975 and Race Relations Act 1976

⁵² Langstaff P (EAT) in [Kilraine v London Borough of Wandsworth](#) UKEAT/0260/15

⁵³ Sales LJ (CA) in [Kilraine v London Borough of Wandsworth](#) [2018] EWCA Civ 1436 at [35 & 36]

⁵⁴ [Jesudason v Alder Hey Children's NHS Foundation Trust](#) [2020] EWCA Civ 73 [20]



legal requirement or health and safety matter (as the case may be), the basis on which it is alleged each disclosure is qualifying and protected and save in obvious cases, the source of the obligation by reference for example to a statute or regulation⁵⁵. Each of the complaints should be looked at individually rather than collectively to see whether it identifies (not necessarily in strict legal language) the breach of obligation on which the employee relies.

56

95 As to any of the alleged failures, the burden is upon the claimant to establish on the balance of probabilities that his/her employer was in fact and as a matter of law, under a legal (or other relevant) obligation and the information disclosed tends to show that that person has failed, is failing or is likely to fail to comply with that obligation⁵⁷.

96 It is also a necessary ingredient of a “*qualifying disclosure*” that a Claimant has a reasonable belief that the state of affairs exists. The EAT summarised the approach thus⁵⁸:-

“(2)... the first question for the ET to consider is whether the worker actually believed that the information he was disclosing tended to show the state of affairs in question. The second question for the ET to consider is whether, objectively, that belief was reasonable (see Babula⁵⁹ at paragraph 81).

*(3) If these two tests are satisfied, it does not matter whether the worker was right in his belief. **A mistaken belief can still be a reasonable belief.***

(4) Whether the worker himself believes that the state of affairs existed may be an important tool for the ET in deciding whether he had a reasonable belief that the disclosure tended to show a relevant failure. Whether and to what extent this is the case will depend on the

⁵⁵ [Blackbay Ventures v Gahir](#) [2014] ICR 747 (EAT) [98] & [Eiger Securities v Korshunova](#) [2017] IRLR 115 (EAT)

⁵⁶ [Fincham v HM Prison Service](#) UKEAT/0991/01

⁵⁷ [Korashi v Abertawe Bro Morgannwg University Local Health Board](#) [2012] IRLR 4 EAT at [24]

⁵⁸ [Soh v Imperial College](#) UKEAT/0350/14 [42] approving the approach in [Darnton v University of Surrey](#) [2002] UKEAT 882/01, [2003] IRLR 133

⁵⁹ [Babula v Waltham Forest College](#) [2007] ICR 1026 CA [82]



circumstances. In Darnton⁶⁰ HHJ Serota QC explained the position in the following way:

‘29. ... It is extremely difficult to see how a worker can reasonably believe that an allegation tends to show that there has been a relevant failure if he knew or believed that the factual basis was false, unless there may somehow have been an honest mistake on his part. The relevance and extent of the employment tribunal’s enquiry into the factual accuracy of the disclosure will, therefore, necessarily depend on the circumstances of each case. In many cases, it will be an important tool to decide whether the worker held the reasonable belief that is required by s.43B(1).’ “

[our emphasis]

- 97 The rationale that underlies our **emphasis** in (3) is that the policy of the legislation is to encourage responsible whistle-blowing⁶¹.
- 98 While “*belief*” alone requires a subjective consideration of what was in the mind of the discloser, “*reasonable belief*” involves an objective test⁶² and its application to the personal circumstances of the discloser, which are likely to include his/her knowledge of the employer’s organisation as a well-informed insider and having regard to his/her qualifications. Thus, the reasonable belief of an experienced surgeon may be entirely different view to that of a layperson⁶³.
- 99 The use of the word “**and**” requires the worker to reasonably believe the disclosure is in the public interest **and** to reasonably believe the disclosure tends to show one of the *states of affairs* (the criteria in s.43B(1)(a)-(f)).
- 100 There is thus not only a two stage test in relation to the state of affairs issue but also to the public interest question:-

⁶⁰ (above)

⁶¹ [Babula](#) (above) at [80]

⁶² [Babula](#) (above) at [82]

⁶³ [Korashi](#) (above)



100.1 Did the worker believe, at the time that he was making it, that the disclosure was in the public interest and

100.2 if so, that belief was reasonable ⁶⁴.

101 The Court of Appeal eschewed attempting to provide any general gloss on the phrase "in the public interest" noting as Parliament had chosen not to define it "*the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression*". It reminded us that whilst the necessary belief is that the disclosure is in the public interest, that does not have to be the worker's predominant motive in making it. The reasons why the worker believes that to be so are not of the essence. The Court of Appeal also noted as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; the CA declined to endorse either the "range of reasonable responses" approach or "Wednesbury" test instead issuing a reminder that whilst it is legitimate for the tribunal to form its own view on that question as part of its thinking (acknowledging that is often difficult to avoid) but that view is not determinative and Tribunals should be careful not to substitute its view for that of the maker. ⁶⁵

Dismissal/Detriment cases contrasted.

102 In detriment cases the test to be applied differs to that in unfair dismissal. In detriment claims statutory protection will:-

"[45] ... be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. If Parliament had wanted the test ... in s.47B to be the same as for unfair dismissal, it could have precisely the same language, but it did not." ⁶⁶

⁶⁴ *Chesterton Global Ltd (t/a Chestertons) v Nurmohamed* [2017] EWCA Civ 979

⁶⁵ *Nurmohamed* (above)

⁶⁶ Both Elias LJ in the Court of Appeal in *Fecitt v NHS Manchester* [2012] IRLR 64 (CA)



Legal principles raised by the parties

- 103 Mr Attoh did not refer us to any authorities of statutory provisions.
- 104 Ms Skeaping referred us to the following legal principles:-
- 104.1 Has the Claimant suffered a detriment as a consequence of making a protected disclosure:- *Shamoon -v- Chief Constable of Ulster Constabulary* [2003] IRLR 285.
- 104.2 The protected act must be the real reason for the detriment:- *Chief Constable of Greater Manchester Police -v- Bailey* [2017] EWCA CIV 425
- 104.3 *Is it a protected act in accordance with Section 27 (2) of the Equality Act 2010?* - *Beneviste -v- Kingston University* UKEAT/0393/05, *Durrani -v- London Borough of Ealing* UKEAT/0454/12, *Fullah -v- Medical Research Council* UKEAT/0586/12.
- 104.4 Constructive dismissal – the employer must not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee (*Malik -v- BCCI* [1998] AC 20 followed by EAT in *Sharfudeen -v- TJ Morris* UKEAT/0272/16/LA)
- 104.5 Constructive dismissal – *Western Excavating -v- Sharp* [1978] QB 761
- 104.6 The 5 questions for the ET to consider in a constructive dismissal claim:- *Kaur -v- Leeds Teaching Hospitals NHS (Trust)* [2018] EWCA CIV 978
- 105 Save for the following points and those mentioned below we do not propose to recite the law here.
- 105.1 As to *Beneviste* see in particular paragraphs 14 and 29 respectively as to the difference between victimisation in common parlance and in the



law and what is required for a protected act. Whilst this relates to the pre EqA legislation the rationales behind it still hold.

105.2 In Durrani amongst other matters the Claimant appealed on the basis that he had referred often during his employment to having been discriminated against and said he had suffered detriment as a result of doing so. Since, however, he had not used the word "discriminated" in any sense other than that he had been unfairly treated, never linked it to race or another characteristic protected by the 1976 or 2010 Acts, and when given the opportunity to say it was on the ground of race effectively explained it was not, there was no complaint which could be understood as one of race discrimination and hence the EAT held his claim for victimisation had rightly been dismissed.

105.3 Essentially GT argues that during the course of his employment Mr Attoh reacted negatively to adverse feedback and instead of addressing the substance attacked the maker. That is a meaning of the phrase "**Ad hominem**" used in Fullah by the EAT.

Our Findings

We make the following primary findings of fact on the balance of probabilities and from the information before us. It is not our role to attempt to resolve every disputed issue that has emerged during this hearing. What follow are our findings relevant to the principal issues in the claim.

106 Having given an overview of the position above we address the issues in sequence where it is possible to do so.

Performance Targets & Training

107 These are two linked complaints:-

107.1 Mr Anton not discussing, not agreeing performance targets with Mr Attoh (UC1/LFT1 & CUDL1) in December 2018.



107.2 GT not providing Mr Attoh with training on their internal systems despite him requesting this on numerous occasions. The dates Mr Attoh gives were 17 May 2019 (raised to PA), 30 May 2019 (raised to CH), 2 July 2019 (raised to CH) and 18 September 2019 (an email to HR).

PERFORMANCE TARGETS (UC/LFT/CUDL1)

108 Mr Attoh's complaint in this regard is that he was not set performance targets by Mr Anton in December 2018 when Mr Anton took over from Mr Tom Edwards as his line manager. Accordingly, he suggests he did not know of the performance requirements by which he was subsequently judged and therefore could not achieve them. Secondly, GT did not provide training on the tools he was required to use. Mr Anton said this:-

"11. When Tom Edwards left the Respondent, I became the Claimant's People Manager. Every employee of the same grade has almost identical goals, in addition to any individual goals that have been agreed. I had assumed that the Claimant's goals were the same as the other Audit Executives when the Claimant came to me to be his People Manager as Tom Edwards had not told me otherwise. The onus is on the employee to set their goals in order to help shape their career path. The Claimant did not request any goals or objectives from me at this time.

12. The Claimant also did not request any additional training from me at this point."

109 Firstly, GT asserts that it has a system of "standard pillars" by which all staff are judged, and that insofar as specific objectives were to be set for staff, that was undertaken in October each year. Thus, absent specific training requirements having been identified, generic objectives were set for all staff. GT states that it was incumbent on staff (and their managers) to identify any particular training needs or objectives by way of career progression (or otherwise) they wished to undertake.

110 Mr Anton also gave evidence that in his experience only about 10% of those he people managed would have objectives set over and above the default



ones and that generally these are set at the instigation of the individual themselves rather than by him as their People Manager. We accept based on the other evidence we heard from GT's witnesses that goals being set over and above GT's standard pillars was unusual.

- 111 GT thus argues that by the time Mr Anton took over as Mr Attoh's People Manager in December 2018 the targets and objectives should have been set and as such it was not a task for Mr Anton to do that at that time. Secondly, it suggests Mr Anton was unaware that no objectives had been set. This was unchallenged. In the detail he provided of his complaints Mr Attoh made no complaint about performance targets or training until 17 May 2019 when his performance was raised by Mr Anton. It is noteworthy from both perspectives that was 6 months or so after Mr Attoh had completed his probationary period.
- 112 As the outcome to Mr Attoh's subsequent appeal against his performance rating identified (see (268)) it was an individual's own responsibility to agree and submit goals that were aligned to the firm's strategic priorities — growth, culture and quality by the end of September each year at the latest although they could be revised at any time throughout the year. Whilst GT accepts this should have been addressed by Mr Edwards even before us Mr Attoh did not identify the goals he suggests should have been set or by which he was being judged that he was unaware of and none so far as we can tell were set other than those in the PIPs that followed (which he disputes were valid).
- 113 We find that GT did not normally set goals over and above its *standard pillars* for staff and thus Mr Attoh was treated no differently to any other new joiner in that regard. We find that was not done to him because of or for a reason related to his race but because that was not GT's practice. Nor as we identify below did it judge him other than by the standards it would expect from any of its staff.
- 114 We heard Mr Anton became a people Manager in September 2018 and so was only recently in that role when he became Mr Attoh's people manager.



Thus, he took over mid-year and may have wrongly assumed any targets had been set. GT again accepts in the outcome to Mr Attoh's subsequent appeal against his performance rating (see (268)) that should have been done by Mr Anton and it was not.

- 115 Given his inexperience we cannot say that would have been done by Mr Anton or that Mr Anton treated Mr Attoh any differently to any other report whom he took over at that point. That aside we positively find that that was in no sense connected to race and instead was due to a combination of the limited use of specific goal/targets by GT and Mr Anton's inexperience. That is reinforced by the absence of any tangible evidence of facts from which inferences can be drawn specifically against Mr Anton that predates him taking line management responsibility for Mr Attoh and our findings below as to facts subsequently.

TRAINING (UC/LFT/CUDL8, VDET2 & PDET10)

- 116 The way this claim is put is that despite training requests from Mr Attoh were over the period 17 May 2019 to 18 September 2019 GT did not provide Mr Attoh with training on its internal systems despite those requests.
- 117 Mr Anton's evidence was that the first time Mr Attoh requested any training from him was on 17 May 2019, specifically that Mr Attoh needed training on IDEA, Mercury Audit Tool and Appian. By that time Mr Anton told us [PA/30] Mr Attoh was almost a year into his employment with GT and he was requesting training on *"systems that he should have been using on an almost daily business when completing audits. Had he not felt that he was competent in using the systems, I would have expected that he would have raised this earlier with me, or with Tom Edwards."*
- 118 Thus, this complaint predates both Protected Acts for victimisation (the first of these was Mr Attoh reaching out to Ms Cooper in October 2019) and the sole protected disclosure 13 February 2020 and thus neither of those complaints can succeed. The fact they were argued until the issue was pointed out by



the Judge reinforces our concern as to the preparedness of Mr Attoh to link matters to events when there was no evidential basis for him to do so and indeed where had the evidence been viewed objectively indicated otherwise.

119 As to training it was not disputed that GT operated on an online training portal which staff could access and use to book themselves onto courses. In addition, it operated a bricks and mortar training college. Subject to seeking line manager consent we find GT's approach to training was that the emphasis was on the individual concerned to identify any training needs (albeit in conjunction with feedback from and discussions with his/her people manager). This was consistent with allowing staff to identify areas for development they were interested in, also because as professionals and ongoing training was part of their professional duties and thus their responsibility. That individual responsibility formed part of a wider emphasis we find GT placed on proactivity and personal responsibility rather than being told what to do or how to do it and reflected the attitude and approach of individuals GT wished to employ.

120 We therefore find that if Mr Attoh had felt he had been struggling or that training was an issue for him before that point he should have raised that need when he identified it. GT viewed identifying training needs as an individual's responsibility. In any event Mr Attoh was in a professional role where he was expected to ask. He did not.

121 His account in relation to Mr Mediran (see (142)) suggests either he incorrectly dates that discussion he had with Mr Mediran or that he was struggling yet did nothing to raise it as an issue having identified it.

122 By the time Ms Hunter became Mr Attoh's people manager Mr Attoh had raised an issue about training and performance targets. She told us that based on his training record she considered he had received the training a colleague of his experience would have ordinarily been given for new starter to his role and the rest he would be expected to pick up over time in the role



(we address her account in detail at (206) and Mr Sohal lists that at [AS/42]). That aside she acknowledged and set about addressing both issues head on. It will become clear from our findings below that we find the way she dealt with matters was exemplary. Even at a basic level, she unlike Mr Edwards, Mr Anton and others, minuted meetings.

- 123 She suggested courses he could attend and when Mr Attoh did not take steps to arrange them arranged them herself on his behalf. When he sought to attend an induction training course ordinarily reserved for trainees and not 10 year qualified joiners such as Mr Attoh, that was granted (see (343)). That was a degree of paternalism that went beyond what we find was the ethos of GT and is to her immense credit. In complaining he should have been permitted to attend such courses he was seeking more favourable treatment than a 10 (or by that point 11) year qualified member of staff not less.
- 124 Mr Coates who had interviewed Mr Attoh prior to him being offer a job by GT told us Mr Attoh's CV had stated he had excellent Microsoft office skills, yet one of the courses Mr Attoh went on following Ms Hunter's involvement was an Excel training course. Excel is a basic accountancy programme that forms part of the Microsoft office suite. Mr Coates told us those deficits were not limited to Excel.
- 125 Hence, when asked why he was permitted to pass his probation if there were performance issues GT's witnesses told us that Mr Attoh's initial performance had been acceptable given he was unfamiliar with GT's practices, methodologies and computer systems but as time went on he had not progressed and picked up procedures as he would normally have been expected to do for someone of his experience. That is reinforced by what Mr Anton said having identified some areas of weakness on Mr Attoh's part on the first audit file they worked on :-

"9. ... I gave the Claimant the benefit of the doubt and simply requested that he seek exposure to the areas where we felt he was lacking in the



Respondent's audit methodology, particularly around revenue testing. At the time, both Andrew Turner, Director, and I offered our support to the Claimant to assist in any areas of the audit methodology with which he was unsure. He did not take me up on this.

- 126 On 18 September 2019 Mr Attoh accepted to Ms Kubie (see (252)) that Ms Hunter had put in place tools to upskill him [240].
- 127 When we drilled down into the alleged training deficits Mr Attoh compared himself to staff who had been with the firm since training (he was 10 years qualified) and/or staff who had recently joined/trainees. The appropriate comparator in any such exercise was an experienced member of staff with 10 years experience as he was. GT was entitled to treat him as such, and it did so. As his training record demonstrated GT provided him with the training and opportunities to train that it would only have expected to ordinarily provide a new qualified member of staff. Further, when it subsequently identified deficits it sought to address them.
- 128 Whilst Mr Attoh raised issues with the IT systems GT operated, GT acknowledged they were complex and at various points had arranged courses. However, those systems changed over time and were made user friendly. Thus, we were told and accept the main way of learning those systems was to use them. We find again he was treated no differently to any other member of staff in that regard.
- 129 That is embodied in what happened in practice. Mr Attoh passed his probation. That emphasises that no significant deficiencies were identified at that point. We find that GT had allowed a period for him to "bed in" and get up to speed with its practices and IT systems and there was no issue in that regard. The issue that subsequently arose is that having been given that time to bed in and come up to speed he had not learn the systems and come up to speed with the way GT did things. Essentially he was not progressing as expected and picking up the way GT did things.



130 Those matters embody the difference between expectations of Mr Attoh and GT. Mr Attoh expected things to be done for him. GT that he be proactive.

131 As to the nature of the training Mr Attoh did not address before us what training courses he was not sent on and how they would have addressed the main deficiencies that GT identified. Instead, he chose to point to various courses colleagues had been on that he had not (see (127)) again without addressing how they would have addressed the deficiencies identified. We drew from the feedback he received from GT two common themes;

131.1 a lack of planning leading to jobs overrunning and

131.2 complaints about lack of note taking and communication generally (in essence reports did not know what they tasks they were assigned, and managers did not know how matters were progressing).

132 We find the feedback Ms Hunter endeavoured to give attempted to address those deficiencies (and others). Of r the reasons we will go onto by not accepting he had deficiencies Mr Attoh did not engage with the process.

133 Those were merely two common themes and there were a number of other issues identified in the feedback. One that flowed from the communication/management issue concerned Mr Attoh's judgment and was identified by Mr Coates. He had been in charge of three of the audits on which Mr Attoh had worked (two of them being a year apart for the same client) The issues Mr Coates identified related to delegating complex work to reports and undertaking what Mr Coates considered less risky work himself [JC/11]). Mr Coates also addressed the training issue we reference at (124).

134 We refer to this example because it also demonstrates a wider issue regarding the conflict in views/styles between GT and Mr Attoh. In cross examination Mr Attoh continued to dispute that Mr Coates was wrong about the way he, Mr Attoh, had delegated work. Mr Coates as a senior manager and several tiers above Mr Attoh in the management chain provided a cogent



explanation concerning how Mr Attoh's approach involved greater risk to the business and why Mr Attoh should have assigned what Mr Coates considered less risky roles to more junior members of staff . Both may have been permissible views, we are not experts, but this demonstrates that having been given feedback on the way GT wanted something to be done instead of accepting it Mr Attoh argued the point with a senior who potentially had a better view and oversight of the relative risks. Mr Attoh continued to do so before us.

135 At a wider level before us Mr Attoh repeatedly referred us to and accepted the positives in feedback but rejected the negatives – he viewed these as development points and refused to accept that these meant he was failing. By not accepting them and taking them on board he was not addressing them and developing as GT expected.

136 Accordingly, we find that Mr Attoh was given the same training a 10 year qualified member of staff would have been given and race played no part in any training decisions.

The behaviour of Mr Anton's "clique" including Ms Bradley, Ms Eagle & Mr Turner

137 This comprises several complaints and various other issues. At its heart Mr Attoh suggested that Mr Anton took against Mr Attoh, that a number of Mr Anton's colleagues supported Mr Anton in doing so and collectively they gave Mr Attoh negative feedback that resulted in his *below expectations* performance rating.

138 Mr Attoh listed a number of reasons why Mr Anton took against him:-

138.1 In around October 2018, when Mr Attoh was working at an on site (Anisa) on Mr Anton's first day on site (Mr Anton was the assignment manager) Mr Anton questioned why the two audit executives on the job including Mr Attoh did not come to welcome him when he arrived at the



car park, stating that could affect performance grading. Mr Attoh stated he did not know whether Mr Anton was joking when he made the comment, so he ignored it [BA/6]. Orally he expanded on that allegation stating it occurred again during the Brigam audit.

138.2 When working with Mr Anton in February 2019, Mr Anton had asked a question to an audit team about what plans they had for holidays. When Mr Attoh explained he was planning a holiday to Mauritius, Mr Anton suggested GT was paying him too much. Mr Attoh stated he found this mistreatment distasteful and unfair.

138.3 Also in February 2019, when Mr Anton had said that another audit team were working 15 hours a day on the audit and that staff were expected to work long hours Mr Attoh questioned how working 15 hours a day would not affect audit quality. Mr Attoh states Mr Anton appeared not to have taken his comment well and from that point, he noticed a change in Mr Anton's attitude towards him. [BA/15].

139 In cross examination Mr Attoh confirmed they were the reasons Mr Anton took against him and specifically that race was not the reason.

140 Despite having come to that view Mr Attoh made no complaint about Mr Anton until after he was told of his below expectations performance grading by Mr Anton.

141 Mr Anton having come to the view he allegedly came to, GT question how given Mr Attoh argued they were the reasons Mr Anton took against him and they were not related to race (or his subsequent protected acts or protected disclosures) he continued to argue they were. GT argues that view is reinforced by race not being raised specifically as an issue until 19 March 2020 despite him raising concerns with Ms Cooper, Mr Coates and Mr Sohal amongst others before that about those matters.



- 142 Nor does Mr Attoh address how he suggested Mr Anton's behaviour was connected to his race. Where that appears to stem from can be discerned from conversations Mr Attoh had with Mr Mediran, Ms Poora Sira (see (199)) and others. We address them next.
- 143 Mr Attoh states [DA/4] that he had a conversation with Mr Mediran in mid to late August 2018, where having commented about Mr Attoh's lack of training on GT's Voyager software, Mr Mediran went on to mention that when he started with his colleagues a few years earlier, they had a week's training but even then they struggled using the software. Mr Mediran further mentioned that when he commenced employment, there were 7 other people who started at the same time as him from the Philippines (Mr Attoh states: Mr Mediran was from an ethnic minority background) and that Mr Mediran e was the only one out of the 8 ethnic minority joiners left, because Grant Thornton used the capability policy to manage out those from minority ethnic groups in the department. Mr Attoh stated Mr Mediran warned him to be careful. Mr Attoh told us around this time he was aware that another employee of Afro-Caribbean descent was on a performance improvement plan.
- 144 GT sought and obtained permission to rely on a witness statement lodged late from Mr Mediran. He was not called and thus we give it little or no weight.
- 145 Mr Mediran told us he was originally from the Philippines, and contrary to what Mr Attoh suggested told us that when he joined GT's Commercial Audit team in Birmingham, he was made to feel very welcome and included. At the time he made his statement Mr Mediran had worked for GT for nearly 6 years and really enjoyed working at GT.
- 146 Mr Mediran accepted that he struggled in his first six months with GT as there was a big adjustment from where he had previously worked in Gibraltar to working in the UK, including the methodology used being different, as well as certain practices and processes. As a result, Mr Mediran stated he was placed on an informal PIP. He subsequently moved from a performance rating



of 'Below Expectations' to 'Performing Well' and then 'Performing Strongly'. At the time of his statement, he was a manager within the Commercial Audit team at GT's London office

147 Mr Mediran accepted he had a conversation with Mr Attoh but it was Mr Attoh who had stated that he had received no training on the Voyager system, but Mr Mediran could not recall when that was. He told us a lot of people struggled on the Voyager system at first as it can be quite a complicated system but using the system was the best way to get used to it as you learn from doing. Mr Mediran stated that he coached Mr Attoh several times on the use of Voyager and helped him to explore more the functionality of the system.

148 Mr Mediran accepted he told Mr Attoh that he was one of eight or nine, individuals from the Philippines, and that others had left, but denied that he told Mr Attoh that GT had managed the others out of the business through Capability Procedures. He told us that it was his understanding that almost all of the others who had transferred from the Philippines around the same time as he joined, had voluntarily resigned; one remained in employment (eventually leaving in 2020); and one individual was dismissed due to his performance. This was the only person from this particular group who had been dismissed due to their Capability and this occurred in 2016.

149 Despite not having identified the individuals concerned in his witness statement Mr Attoh suggested to Ms Hunter and other witnesses that at the time he worked in GT's Birmingham commercial audit department five of seven named individuals of his race left (including him on both counts).

150 Ms Hunter accepted the individuals concerned had left but did not know the dates that they left. It was also accepted by GT that some were placed on PIPs but Mr Attoh not having identified those individuals previously GT objected to the circumstances and dates of their departure being raised. Whilst Mr Attoh argued that were of *his race* he did not identify the races of



those individuals. Based on how he relayed what Mr Mediran had said it appeared some may have been from the Philippines. Nor was it clear whether their circumstances were materially the same as his and nor was the wider picture as to numbers placed on PIPs/those who were dismissed as opposed to those who left of their own volition argued.

- 151 As to the warning to 'be careful' or any variation of this Mr Mediran stated this was simply not true and points to his progression with GT.
- 152 GT accepted the Voyager system was originally a complex system but was substantially revised over time but that the best way of learning how to use it was from doing. Had the Voyager system been an issue for Mr Attoh as he suggests we find he should have sought to address it with his managers at the time and he did not. The first time he alleges he did so as per the detail given in the list of issues was on 17 May 2019. That in itself calls into doubt at least the date Mr Attoh gives for that conversation.
- 153 The way the allegation concerning race was raised in the grievance considered by Mr Rosinke was that "... *statistically, most people (over 70%) of my race who were in my department of the office or who joined whilst I have been here in the past 2 years have left some through similar performance management out agendas ... Over 70% within 2 years for a particular race group smacks of something sinister to say the least.*". We address this at (547) and the outcome at (573).
- 154 We should say at this point that GT also argues that by Mr Attoh not providing the detail of many of the allegations and him not identifying with clarity who the comparators were said to be and what was said or done at the time despite repeated requests to do it made it impossible to investigate these matters. Further it argues his failure to do so then or in detail now cast doubt on his account.



- 155 A further issue casting doubt on the reason Mr Attoh alleges for his treatment being race on the basis of Mr Attoh's own account was that within his witness statement Mr Attoh identified that Mr Anton had a reputation in the office referencing a comment of Mr Turner:- *"in around October 2018 when I once sat on a desk ... [Mr Turner] asked me if I was not afraid to be sitting on Mr Anton's seat. Mr Turner pointed to a paper that looked like a certificate awarded to Mr Anton for being the scariest person in the office."* He suggested Mr Turner was reserving a seat for him and at times he had been asked to move desks. When asked Mr Turner had no recollection of the scariest person award, accepted he could have possibly been reserving a seat and if he had asked Mr Attoh to move he would have explained why and done so politely.
- 156 We address a further example concerning Mr Anton's reputation albeit that was not argued as a complaint of discrimination before us at (230). Mr Attoh did not explain if he had that reputation generally how that his alleged treatment of Mr Attoh was linked to his race.
- 157 GT also argue that Mr Attoh has made a connection between the various individuals he complains about where there is no basis for it. In evidence Mr Attoh relayed how the people he complains about socialised and played golf together. Mr Sohal told us [AS/9] there were, a few cliques in the team of people who had qualified at the same time and had progressed through the business together that meant the demographic of managers was similar in terms of age and experience. Indeed, Mr Anton accepted he socialised outside work with Mr Turner and Mr Allen.
- 158 Apart from that general assumption that Mr Attoh made he did not identify for the most part how he knew there was a close friendship between the various individuals or set out any basis for that. Mr Attoh gives some detail in relation to others such as that concerning Mr Turner that we address at (230). Ms



Eagle for one specifically denied she had ever socialised with Mr Anton or his alleged group of friends other than at work events.

- 159 Mr Attoh was challenged why Ms Eagle, a senior partner in an international accountancy practice, would retaliate against him because he told Ms Hunter that Mr Anton had failed to provide goals and ask Mr Coates for a new people manager. He responded that anyone who knew about the office set up knew Messrs Anton and Turner were close to Ms Eagle. He continued by relaying how in relation to the example we refer to above (138.3) the long hours that Mr Anton was working closely with Ms Eagle on that job and thus suggested Mr Anton could have relayed concerns to her. He accepted that was an assumption he made.
- 160 On a similar theme Mr Attoh argued because he had reported Mr Anton to Mr Coates, Mr Coates had relayed that to all the partners and Ms Gladwin. When that was put to Mr Coates he did not recall that specifically but accepted he may have spoken to her at a directors meeting and that sort of thing happened regularly.
- 161 Whilst that did involve speculation on Mr Attoh's part we accept that positive and negative performance by their reports was discussed by managers. GT accepted that was the case; it was part of their annual review process. However, that aside on Mr Attoh's own case his complaints about Mr Anton were not raised by him until after he had been told of his own performance issues in May 2020 and so they could not have been the basis for his treatment. Even if they were, on Mr Attoh's own case the reasons he gave for Mr Anton taking against him were not race related, his explanations for the reputation Mr Anton had in the office were not race related and as we will turn to next any concerns Mr Anton had about Mr Attoh's performance were shared by other managers and warranted. We address the specific complaints against individuals below.



THE EVENTS OF 17 MAY 2019

162 This comprises 3 specific complaints:-

162.1 Unfair criticism from Ms Bradley (UC/LFT/CUDL2),

162.2 Mr Anton being hostile and aggressive towards Mr Attoh on 17 May 2019 (UC/LFT/CUDL3) and

162.3 Mr Anton giving Mr Attoh a negative performance rating for his work on 17 May 2019 (UC/LFT/CUDL4).

163 The way Mr Attoh describes those events in his witness statement is as follows:-

“19. On 14 May 2019, I got a call from Mr Anton, who requested a meeting with me in the Birmingham office on 17 May 2019.

20. On 17 May 2019, a few hours before the scheduled meeting with Mr Anton, I received negative feedback from a colleague (Catherine Bradley) in relation to work I completed under her supervision. These criticisms included (1) not auditing a number of balances; (2) rewording the accrued income because the workpaper was not updated properly; (3) the top consolidation not being done correctly (and the consolidations in general not being done on time); (4) intercompany had not been eliminated properly; (5) Ms Bradley needing to review the file to list what needed to be done so to assist me with what was outstanding but that I either failed to do the items on that list or failed to complete the items in a timely manner; and (6) not all the adjustments were communicated to the client [149-150]. I felt these criticisms were unfair because (1) the balances referred to were assigned to a colleague and so were not my responsibility; (2) the accrued income was done by a colleague and so was not my responsibility (Bradley Shoemith⁶⁷); (3) the consolidation was delayed because the client sent the team late adjustments which had to be audited separately before the work was done; (4) all adjustments were communicated to the client, and (5) I sent an outstanding request list in time to ensure that all that was required was in hand prior to the client’s Financial Controller leaving. Ms Bradley’s feedback concerned Peak Gen, and the client contact was Mr Brown. Mr Brown’s feedback to me was extremely positive and none of these criticisms were made (see paragraph 16) [147-148]. Ms Bradley never attempted to discuss the

⁶⁷ See (173)



feedback with me (i.e. discuss the feedback with a view to any inaccuracies or disagreements being addressed). Grant Thornton's assertion ... [was] this feedback was (1) standard; and (2) not malicious. It is customary for feedback to be discussed before it is actually given. The absence of this discussion shows that the feedback was malicious in nature.

*21. On 17 May 2019, I had the scheduled meeting with Mr Anton. Mr Anton **aggressively stated that my performance was at 'the very bottom of the spectrum'**, and that I would be put on an informal performance improvement plan. Mr Anton failed to explain what the specific issues were, and could not point to any evidence to substantiate his (1) comments about my performance; and (2) his decision to put me on an informal performance improvement plan. The only thing Mr Anton pointed to was Catherine Bradley's negative feedback, which he never to my knowledge investigated. If he did investigate Ms Bradley's feedback, then he would have realised that the negative feedback was inaccurate and unfair.*

22. On 17 May 2019, after the meeting with Mr Anton I went to see John Coates (Director) (Mr Coates). I expressed my concerns at the hostile and aggressive treatment I had been subjected to by Mr Anton in the earlier meeting. I told Mr Coates that I had lost trust and confidence with Mr Anton. Mr Coates agreed that there was a breach of trust, and said that he would change my line manager."

(Our emphasis)

164 Before we proceed we need to record that sometime in the week following that meeting it was not in dispute that Mr Attoh spoke to Mr Coates and asked for his people manager to be changed from Mr Anton. In his witness statement Mr Coates said :-

"21. In or around May 2019, and given what I considered to be our open and positive relationship, the Claimant came to me and explained that he was having challenges with Phil Anton, then Manager, who was his People Manager. As an organisation, we believe that it is of paramount importance to have a good relationship with your People Manager given the expected level of interaction and support this role provides to our people. As such, it is usual that where there are challenges in the relationship between an individual and their People Manager, as can sometimes be the case, then the most appropriate course of action is often to just change the individual's People Manager to another appropriate individual in the department. This is done with everyone's consent so all parties are comfortable with the amended



arrangements. In this instance, this is the advice that I provided to both the Claimant and Phil Anton, with no blame or recrimination on either party.”

165 As a result Mr Coates approached Ms Hunter to be Mr Attoh’s new People Manager and she agreed. She emailed Mr Attoh on 24 May [159] essentially to inform of that that and to check he was agreeable. We return to that at (204) but before we do so refer to other complaints concerning the behaviour of Mr Anton toward Mr Attoh.

166 The sole comment that supports the allegation of Mr Anton being hostile and aggressive towards Mr Attoh is that which we emphasise above. No detail is given how that was alleged to be conveyed in a hostile or aggressive manner in Mr Attoh’s witness statement nor if and when he challenged Mr Anton about this. Mr Anton denied in cross examination that he behaved in that way but told us [PA/25] that Mr Attoh was not open to receiving any constructive feedback, so it was a difficult conversation to have. We find this incident did not happen in the way Mr Attoh perceived it.

167 Mr Coates’s account what Mr Attoh told him was there was a personality clash and nothing more. No detail was after all given of what the hostile treatment was. Had Mr Attoh raised those points with Mr Coates we find based on the way Mr Coates responded to the concern Mr Attoh later raised about Mr Garcia that Mr Coates would have addressed that as a bullying and harassment complaint and he did not.

168 It is understandable that as a professional who had been practising for over a decade that it was difficult for Mr Attoh to hear and accept that feedback but GT is a global business and was a very different to the practice in which Mr Attoh had previously worked. Accordingly it had very different expectations.

169 For the reasons we give below and based on the evidence before us we find Mr Attoh throughout was simply not prepared to accept any form of criticism and was unable to accept that might be the objective view of a colleague.



Despite the weight of feedback we had before us supporting that that was so, Mr Attoh continued to challenge that he was performing below expectations. Instead he looked at the positive feedback he received and in our judgment closed his mind to what he described as development points. He appeared to be unable to process or accept any information that was contrary to his own perception and when negative feedback was given instead of taking it on board and seeking to address it, he personalised it. When that became a common theme he viewed it as a conspiracy rather than a commonality of view.

- 170 We find that at the time Mr Attoh was upset that his performance had been called into question and thus could not work with Mr Anton any more but not that this was harassment or otherwise. We find that was because Mr Attoh reacted negatively to any adverse comments made about him and sometimes anticipated these and sought to address them beforehand when seeking feedback. We find it was only later that he came to view the way Mr Anton had behaved toward him as harassment when he had ruminated on that.
- 171 One such instance was that of Mr Garcia. Whilst Mr Attoh subsequently and justifiably complained about Mr Garcia's conduct he sought to call into doubt feedback Mr Garcia had given before the complaint made by Mr Attoh about Mr Garcia. Whilst we treat the feedback with care for the reasons we give below concerning the complaints Mr Attoh raises concerning Mr Garcia (see (362 and 402)), Mr Garcia's feedback identified both positives and negatives, where Mr Attoh needed to improve and details how he could do that (see (405 & 406)). It was thoughtful and detailed feedback.
- 172 Ms Hunter had also provided to Mr Attoh some feedback on 14 January 2019 [136-137] in relation to an audit they had worked on in August/September 2018. Mr Attoh made no objection to her appointment as his people manager a few months later so we assume he had no issue relating to the objectivity of her comments. Having identified positive aspects and that he might like to



seek out that type of client going forward Ms Hunter stated that some parts of the audit took longer to complete than she might have expected given it was a simple one but acknowledged this was one of the first jobs that he had done at GT and therefore you were still learning how to use GT's Voyager system and its methodology. She suggested several tips going forward.

- 173 On 8 May, Bradley Shoemsmith an audit associate provided feedback following a request from Mr Attoh on 7 May [144]. He had worked on two audits with Mr Attoh, Brigam and Peak Gen. With regards to areas of improvement, Mr Shoemsmith identified that he felt Mr Attoh could improve communication with the team and that discussions around progress were limited. He suggested Mr Attoh set up a Workplan relating to whom sections of the file were allocated and ask for updates at the end of each day. He went on to say that throughout the bookings he felt as if Mr Attoh had left a lot of the outstanding work to him (albeit acknowledging that may not have actually been the case) but due to the lack of updates and progress discussions he was unaware of what Mr Attoh was working on and therefore it felt as if he was taking the bulk of the work to be completed. He went on to say that consistent communication and catch ups would have resolved this. Mr Shoemsmith acknowledged there were issues with the job but stated *"I didn't feel like you took control of the situation. ... you especially needed to come up with a clear plan of how we needed to adapt and work efficiently in order to get work over the line. Overall, both audits had their challenges and I feel that better organisation and communication would resolve the issues ..."* [142-143]
- 174 Mr Dom Bolton, a placement student, responding to the same request for feedback from Mr Attoh as Mr Shoemsmith, identified similar issues with regards to the allocation of work at the outset and communication regarding the work to be undertaken [146].
- 175 As to Ms Bradley's feedback she was a manager. Again Mr Attoh suggests her feedback was solicited by Mr Anton. In his claim form [14] he put this very



bluntly:- her feedback was “... *contrived, malicious, and purposely timed to align with Phil Anton’s narratives about my job performance and provide talking points for the meeting with Phil Anton, which was rescheduled until after the aforementioned email from Catherine Bradley.*”

- 176 Her feedback was dated 17 May [149-150] and followed a request from Mr Attoh on 7 May [151-152] in which again he had identified positives and some of the problems faced. When responding she accepted this was the first time that he had performed such a large group audit and that he built a good client relationship and was approachable to both her and the team.
- 177 As to negatives she identified that a number of balances that were material hadn't been audited and that all work done had not been documented. Whilst she too accepted he was still learning GT's methodology she felt that some things had to be explained to him a number of times and it took a number of attempts to get the output to the high standard she expected; as a result things took longer than expected. She identified that she had to do work that the in charge (Mr Attoh) would normally be responsible for. Likewise for other work. She stated so he could focus on the audit work, she took control of the 'stats', he had not undertaken consolidations in time (which lead to a delay in the consolidated accounts going out to the client), that certain adjustments weren't done correctly and that took extra time on her part to ensure everything had gone through correctly.
- 178 To ensure she and Mr Coates were comfortable that everything had been audited and documented, she also had to spend time going through the file on a number of occasions to list-out what needed to be done to assist him with what was outstanding, the outstanding items weren't completed in a timely manner, a number of items weren't completed at all and review notes were not answered soon after they were raised and only then following reminders. She acknowledged that “LEAP” was a fairly new tool for everyone and that she spent some time going through this and “Appian” with him yet the



changes weren't put through again resulting in her having to find time to sort this out on the basis that "***ultimately the file could not be signed off the way it was***". She then made a number of suggestions to help him improve. She stated she had talked through some of the above with him but was happy to discuss in more detail if needs be.

- 179 Mr Coates told us he was also involved on that audit and he told us Ms Bradley's feedback was fair. He after all was the individual who when Mr Attoh went to when he sought to move people manager and who was also involved in the complaint about Mr Garcia. He was thus someone whom Mr Attoh at least at the point of the discussion concerning moving people managers that Mr Attoh had confidence in. We accept his account. Mr Coates also identified issues with regard to Mr Attoh not identifying risks that we address above (133).
- 180 Ms Hunter told us [CH/35-37] she had been party to the round table department Managers meeting in May 2019 where all employees were discussed. She told us it was the practice and that Managers who had worked with reports provided their comments on their performance so that the People Manager had a well-rounded view before collectively deciding on a performance rating. As we state above she had managed Mr Attoh on an audit before this and was also privy to the feedback given about Mr Attoh at the manager's meetings. She considered that to be mostly fair but at times, feedback given could have been worded more clearly so that he completely understood the sentiment of what was being said was legitimate.
- 181 She stated there was, generally, a consistent theme coming out of the feedback in relation to development points and Mr Attoh just did not have enough self-awareness as to how he was performing compared to either other Executives in the team, or the level generally expected of him. She felt that he was not self-reflecting on his work as staff were encouraged to do but was pre-empting what Managers said and making excuses in advance of the



feedback being given. She told us the Manager would then reply and Mr Attoh would disagree entirely with what was being said. Tellingly she said this
“Ordinarily, employees accept the constructive criticism they receive from management, but the Claimant did not see it in the supportive way that it was intended and instead, would push back and cause the matter to be drawn out over a series of email exchanges.”

182 We find the criticism Mr Anton and Ms Bradley gave Mr Attoh reflected the view of managers. The below expectations performance rating was a view Mr Anton, Ms Bradley and GT was entitled to come to. That is demonstrated by numerous but non exhaustive list of examples we give above. As Ms Hunter stated Mr Attoh unlike colleagues did not accept that in the way it was intended as constructive criticism and sometimes sought to pre-empt it. Whilst no doubt unwanted nor has Mr Attoh showed that either viewed objectively it created the consequences required to constitute harassment or shown this was given in any sense related to race.

MS EAGLE (UC/LFT6)

183 The complaint about Ms Eagle concerns her confronting Mr Attoh in an aggressive and intimidating manner on or about 8 July 2019. In his witness statement Mr Attoh said this:-

“36. On around 08 July 2019, I was alone in the kitchen when Becky Eagle (a Partner) (Ms Eagle) confronted me in an aggressive and intimidating manner. She stood right in my face, staring at me in what was clearly an angry expression without uttering a word. I found this conduct very intimidating. ...”

184 This cannot be argued as a victimisation or protected disclosure complaint as it predates the protected acts and protected disclosure.

185 Ms Eagle told us that as she only spent on average one day per week at that time in the office (the rest of her time being spent on site) the chances of her coming into contact with Mr Attoh were very slim but she accepts there may



have been occasions where she was in the kitchen area at the same time as Mr Attoh. That aside she flatly denied this allegation.

186 We are left with deciding whose account we believe. We summarise a host of issues concerning the weight we should attach to Mr Attoh's account below but in this instance the factor that was most telling in balancing whose version we should attach greater weight to is that the first time Mr Attoh made any formal mention of this to GT was in his claim form (and even there makes no direct reference to it being related to race (albeit he did state it was a brazen attempt to bully him)). In his claim form [14] and witness statement he refers to having mentioned it to a colleague Anoop Bilkhu. In his witness statement he suggests Mr Bilkhu advised him to avoid working on Ms Eagle's assignments as it appeared Ms Eagle disliked him. No statement was provided from Mr Bilkhu nor evidence to support this.

187 Whilst Mr Attoh does not refer in his witness statement to having mentioned this to Mr Sohal (292) when he spoke to him in the aftermath of having reached out to Ms Cooper (279). In cross examination he corrected this. That was yet another change to his account. Despite that change Mr Sohal told us Mr Attoh had mentioned it to him but not until sometime between January – March 2020. Mr Sohal states that not a great deal of information on this issue was provided by Mr Attoh at the time and that there was no evidence pointing to race discrimination.

188 In his witness statement [AS/23] Mr Sohal told us Mr Attoh had said that a Partner in the team had been staring at him, or had looked at him in a strange way and they then had a discussion about cultural awareness and if it could have been related to British mannerisms. In cross examination he confirmed this was Ms Eagle

189 If that was so given Mr Attoh's interactions with Mr Sohal started on or about 5 November 2020 [DA/62] Mr Attoh would have had an ample opportunity to



mention it at around that time. He did not. In contrast he did mention concerns about Mr Anton, Mr Turner and “those affiliated with them” [DA/62].

190 Nor did Mr Attoh say in his witness statement he mentioned it when he met with Ms Cooper (late October 2019 [DA/58]) or on 29 October 2019 when he met Ms Natalie Gladwin (see (321) who at the time of the matters that concern us she was a Director in the GT’s Audit Department at its Birmingham office) [DA/61]) and he accepted he did not mention it to Ms Hunter or Mr Coates. In contrast Mr Attoh stated he raised with Ms Hunter various other issues, and with Mr Coates concerns re Mr Anton and subsequently Mr Garcia, Ms Cooper his performance grading and the conduct of Mr Anton, Mr Sam Allen and Mr Andrew Turner [DA/58] and with Ms Gladwin the conduct of Mr Anton, Mr Turner and Mr Allen [DA/61].

191 Given the complaints Mr Attoh did make around that time we find it inconceivable he would not have also raised Ms Eagle’s conduct had she behaved in the way alleged. We find on balance he did not.

ANDREW TURNER (UC/LFT/CUDL12 &VDET4)

192 This complaint concerns the behaviour of Mr Turner, a director, toward Mr Attoh. The detail in Mr Attoh’s witness statement was:-

“68. In around November 2019, Mr Turner repeatedly approached my workstation, standing very close to me whilst I was seated with an angry and stern look on his face. I found this behaviour hostile and threatening. Mr Turner subjected me to this behaviour on at least four occasions from October to December 2019. I did not report this behaviour because I was losing confidence in Grant Thornton and felt as if they would brush the incident under the carpet. I noticed that Mr Turner’s behaviour towards me got worse after my meeting with Ms Gladwin on 29 October 2019.”

193 Whilst GT’s representatives suggested Mr Attoh did not raise this directly with Mr Anton whilst we find he did raise that, based on the way the sole question (plus follow ups) on that issue was put, was that it related to one instance



only. That is in the context of approximately 90 minutes of questions to Mr Turner.

194 Mr Turner not only stated the incident(s) never happened but categorically denied that he would act like that. He went on to say that if he had an issue with Mr Attoh, which he expressly denied, he would have discussed it with him and that he had no reason to be hostile to Mr Attoh.

195 Mr Attoh then suggested in a follow up question that those events had only happened after he had raised an issue about Mr Anton. Again, whilst Mr Turner accepted he was aware Mr Attoh had changed people managers, he was not aware that a formal complaint had been made against Mr Anton and had no reason to want to defend Mr Anton.

196 The principal difficulties with the way the allegations of race discrimination were put against Mr Turner was that if the suggestion was that Mr Turner's behaviour was related to Mr Attoh's race that was not put to Mr Turner. Further, the way matters were put to Mr Turner was that his behaviour was in response not to Mr Attoh's race but in response to the complaint against Mr Anton. Finally, Mr Turner having denied he was aware of a complaint against Mr Anton by Mr Attoh, Mr Turner was not challenged how he was aware of that complaint as the basis for him behaving that way.

197 Whilst Mr Sohal accepted Mr Attoh had raised the issue of Mr Turner standing at his desk he told us he queried with Mr Attoh, if this could be a question of perception and asked for details of this and other incidents. Mr Attoh did not challenge Mr Sohal when this was given Mr Attoh in his witness statement said this was in November. For reasons we will give below we find that is not the case. Had Mr Attoh raise that then we find Mr Sohal would have indicated that to Ms Cooper and given Mr Attoh was copied in on what Mr Sohal had reported what he had said to Mr Sohal Mr Attoh would have corrected that omission.



- 198 We heard in relation to Ms Eagle that Mr Attoh spoke to Mr Sohal about that only in January or February 2020. That was more than 6 months after that alleged incident. We find it was likely that the incidents concerning Mr Turner were raised by Mr Attoh at the same time as Ms Eagle.
- 199 The first time we were taken to an allegation or reference by Mr Attoh in the documents to intimidation by Mr Turner was his email dated 26 May 2020 [500]. That email references Mr Attoh having spoken to a senior manager Pooja Sira and Ms Hunter. Mr Attoh's witness statement only references him speaking to Ms Sira about that and dates this again to November 2019. He states Ms Sira reported it to Ms Hunter and Ms Sira had told him that GT *"tended to treat ethnic minorities this way and that she did not intend to stay any longer because of this racism."* Mr Attoh alleged Ms Sira left GT because of racism. Mr Attoh told us that was in January 2020. It was not in dispute she left GT.
- 200 Mr Attoh was asked how he knew Ms Sira had reported that to Ms Hunter. He told us Ms Sira had said she was going to Ms Hunter and he saw them go into a meeting. He accepted Ms Sira had not specifically told him she had relayed that to Ms Hunter. The panel put that point to Ms Hunter. She denied that Ms Sira had told her about the allegations concerning Mr Turner.
- 201 Given Mr Attoh had raised a variety of issues by then with Ms Cooper, Ms Sira, Ms Hunter and Mr Coates and he had spoken with Mr Sohal and at least during the later part of the period concerning Mr Turner had spoken to Ms Gladwin we find had he considered that Mr Turner had behaved in the way he is now alleging at the time, given the seriousness of the other complaints Mr Attoh suggests he was raising at the time would have raised the issues concerning Mr Turner and he did not. Given he alleged Ms Sira had directly referenced that GT's behaviour was racially motivated and she had left GT on Mr Attoh's account by January 2020, had he felt that race was the reason



underlying his treatment again he would have mentioned that at the time and he did not.

- 202 Similar issues arise in relation to the first protected act; Mr Turner was not asked if he was aware of the discussion Mr Attoh had with Ms Cooper. The incidents predate the second protected act (the grievance of 16 July 2020) and the protected disclosure and so cannot have been caused by them. We find given his denial and the lack of evidence pointing to him being so aware we find he was not aware of that discussion.
- 203 Mr Sohal stated much of what underlay this complaint is about perception. Had Mr Attoh complained about those events at the time they could have been investigated. They are now stale. His failure to do so in the context of the other complaints he was making leads us to conclude he did not perceive them at the time in the way that he now does. The vagueness of his account does not assist. The vigorous denial by Mr Turner, the absence of a cogent rationale why he would behave in the way alleged, our doubts elsewhere as to the breadth and depth of Mr Attoh's account and the weight we give to the account of Ms Hunter and Mr Sohal amongst others leads us to conclude these events did not happen as is alleged and even if they in no sense were they connected to Mr Attoh's race, the protected acts or the protected disclosure.

Events after Ms Hunter became Mr Attoh's people manager

- 204 As we say above in May 2019 Ms Hunter was approached by Mr Coates to be Mr Attoh's new People Manager. She emailed Mr Attoh on 24 May [159] essentially to inform him of that and to check he was agreeable.
- 205 Prior to this she had given Mr Attoh two pieces of feedback; on 14 January [136-137] & 20 May 2019 [154-156]. The feedback she gave was of high quality, it addressed not only what Mr Attoh was doing well but where he was not doing so well, what he needed to do to improve and how to do so.



206 Ms Hunter and Mr Attoh held their first meeting on 30 May 2019. Ms Hunter made contemporaneous notes [160] and said this about the meeting and the following events. It is worthwhile setting out what she said about this and the events that followed in her witness statement as it is relevant to what was raised by Mr Attoh about a number of issues including the PIP, training and goal setting and the way she approached matters:-

“13. ... The Claimant explained to me the history he had with People Managers which had led him to me and we moved on to discuss the Claimant’s feedback for the year to date: whilst there were some clear strengths, there were valid developmental points too. The Claimant did not feel that all of his strengths were accurately captured in the feedback and that points regarding his areas of improvement were either less valid or factually incorrect.

14. We also discussed the support which the Claimant might require in order to work on the developmental points that had been raised. The Claimant raised that he did not feel he had received detailed training on all of the Respondent’s systems, so I asked him to make a list of the systems which he felt he would benefit from additional training on and we would discuss it again when we met the following month.

15. I provided the Claimant with an overview of the performance management system and the recent Manager meeting that had taken place in May 2019, explaining that the Claimant had been rated as ‘Below Expectations’ and that my suggestion was for the Claimant to go onto a PIP. I explained to the Claimant what a PIP was and how it would work, i.e. we would set achievable goals to work on the development points that had been identified and could document the Claimant’s progress against the goals.

16. The Claimant was not happy with the idea of a PIP or his performance rating as he had not been issued with targets previously, so was unsure what he has been assessed against in order to receive his performance rating.

17. When the Claimant joined the Respondent, Tom Edwards should have guided him through a process to set initial goals but unfortunately this did not happen. Following this, there appears to have been some confusion as Phil Anton did not realise that no goals had been set. The Claimant had a point to a certain extent, in that the initial goals weren’t set. However, the feedback that was received was based on competencies rather than goals and identified there were areas of improvement that would not necessarily be expected in someone of his



level and with his experience. Further, there is also a responsibility on the Claimant's part as he could have been pro-active in setting his own goals.

18. I met with the Claimant again on 24 June 2019 (notes of this meeting are at page 175 of the Bundle).

19. The Claimant had undertaken training on the Respondent's systems during his induction, as well as undertaking standard technical training on a monthly basis, however, at our previous meeting on 30 May 2019, he raised with me some training concerns as he felt there were some gaps in his knowledge on specific systems. I had asked the Claimant to put together a list of these systems and he had done so, so I confirmed that I would see what we could do about training and would revert back to him on this.

20. Additionally, I made the Claimant aware that he could request up to two personal training days over the course of the year, where he would be given time away from client work to complete this and any other training. The Claimant should have been advised of these days during his induction, however, I did not complete his induction so cannot say whether he was or not. However, the Claimant did not seem to fully understand the process when I made him aware of it.

21. The following day, 25 June 2019, I emailed the Claimant explaining that I had followed up on our discussion regarding training and reiterated that he could receive two personal training days per year (page 178 of the Bundle). These days were not automatically allocated because they were by request only, so the Claimant would need to book these himself, however, I did arrange for him to take a personal training day on 12 August 2019 and suggested that he book the second day for later in the year. I also set out a number of options for online training for Appian, and explained that I would run through Mercury Audit/One Place with him as there was no formal training on this.

22. The next day, I received communication back in relation to IDEA training, so I sent a further email to the Claimant confirming that there were no IDEA training sessions organised at that time, but that I had been provided with a user guide, which I attached to the email as I thought it might be helpful for him to at least review the user guide in the absence of any more formal training (page 176 of the Bundle).

23. On 2 July 2019 I had a further discussion with the Claimant in which we discussed his PIP and goals. We talked through the areas of development and agreed that there were three main areas that the



Claimant ought to improve on. These were Quality of audit deliverables; Audit quality; and Team management and communication.

24. The Claimant raised that he had not had Voyager training, so I agreed that I would look into this for him so that training could be carried out. Voyager is a piece of software that is used to complete audit work; it is an electronic audit file.

25. The Claimant later stated that others had five days' worth of Voyager training and he had not received this. Whilst this was technically correct, it was not relevant because the software of Voyager had changed and no longer required five days of training. Anyone that has had five days of training on the Voyager software had done so before the system was simplified.

26. I emailed the Claimant later the same day as I had looked into what training was available on Voyager and set out the three modules that I thought would be most useful for the Claimant, including the links to these so that the Claimant could access them easily. I suggested that the Claimant may have wanted to work through them on one of his personal training days and that if there was any further training that wasn't covered, he should arrange some time with me to discuss them (pages 190-191 of the Bundle).

27. I am not sure whether the Claimant did any of this suggested training but I do not believe that he did based on his training record (pages 131-133 of the Bundle).

***28. I had encouraged the Claimant to go away and write the goals for the PIP himself because I wanted him to take ownership of them and feel like they were his goals rather than something that I was imposing on him.** The Claimant had a first attempt at the wording and later sent this to me.*

29. Also on 2 July 2019 I had a meeting with the Claimant and Catherine Bradley. This came about because the Claimant had a long booking on the Peak Gen audit that Catherine Bradley was managing. Feedback that had been provided by Catherine Bradley had generated into a long email argument so I intervened in an attempt to mediate the differing opinions on this. I arranged for half an hour to talk it through.

30. Catherine Bradley felt that the Claimant's performance was not up to the expected standards and the Claimant disagreed. Despite my best efforts at intervention, this was ultimately left in an 'agree to disagree' situation. Catherine Bradley left the Respondent on 25 September 2019 and I do not believe that the Claimant worked with her again between July and 25 September 2019.



31. On 5 July 2019, I produced a typed PIP based on the goals the Claimant had drafted, which included the development areas and goals that we had discussed and agreed in our meeting on 2 July 2019 (pages 227-228 of the Bundle). I detailed the three areas of development and specified the agreed actions which would address the development area and what the measure of success would be. The Claimant was sent a copy of these the same day.”

[Our emphasis]

- 207 Whilst Mr Attoh disputes aspects of those meetings given Ms Hunter’s wider account is supported in the documents and aspects are unchallenged and our concerns expressed elsewhere as to the breadth and depth of Mr Attoh’s account we prefer her account to his. We find she identified where she saw issues with Mr Attoh’s previous managers and sought to address this. Similarly where she found deficiencies on his part she identified what he needed to improve, how he could achieve this and how this would be monitored. She identified where training was required. We find Ms Hunter was a manager of the highest quality and the way she went about those matters embodied her skills more generally. Similarly the high quality of the feedback she gave.
- 208 We see in the section we emphasise how she sought to get him to engage with the process (see [CH/28]).
- 209 She explained to him GT’s in house training regime and how he could arrange training. When he failed to address that she went so far as to arrange training for him.
- 210 We find those matters, and in particular the training issues demonstrates the disjunct between the expectations of GT (which required its staff to be proactive with regards to their career goals and training) and Mr Attoh whose view was that this was GT’s role (a paternalistic mindset). It was unclear if Mr Attoh had ever identified that difference in mindset. We find on balance he had not because he viewed events as discriminatory. Given we find that mindset was applied to all staff in order to succeed he would have needed to



have argued that as indirectly discriminatory. We would then have had to consider if that could be justified. That is not the way Mr Attoh sought to characterise the complaints and nor did he appear to have considered the justification issue.

THE FIRST INFORMAL PIP

- 211 On 5 July Mr Attoh was informed he was being placed on an informal PIP. That was scheduled to last until 1 November 2019 [227-228]. For reasons we will go onto address (275) the informal PIP was replaced by another that lasted from 11 November 2019 to 27 March 2020 [283-284]. On 7 May 2020 he was placed on a formal PIP that was initially scheduled to last from 11 May 2020 to 15 June 2020 [510-514] (see (513)) although that was later extended (see (529)).
- 212 In the year end performance review Ms Hunter prepared [184-189] she summarised the development areas as-
- *“Quality of audit deliverables - specifically. preparing first drafts of audit deliverables to a good standard of quality. ensuring that all relevant points from the audit are captured, and controlling the financial statement preparation process with CAST, performing first review of the financial statements on jobs where this is applicable.*
 - *Audit quality - preparing audit workpapers which are ISA compliant and easy to follow, demonstrating an understanding of the business, requirements of the audit test and GT audit methodology.*
 - *Team management and communication - maintain oversight of the audit team while on site, providing the job manager with timely updates of issues identified, as well as keeping track of the progress of the team, agreeing up front what work needs to be done by who and when, and monitoring progress via regular catch-ups while on site.”*
- 213 We find based on the feedback including her own she was entitled to come to the view she came to, that Mr Attoh was performing below expectations and to place him on an informal PIP.



MR ATTOH RECEIVING UNFAIR CRITICISM OF HIS WORK FROM MR ANTON (UC7/LFT7/CUDL7)

- 214 In addition to the complaint identified in the heading above before us Mr Attoh complained that the feedback had been delayed. The basis for that appeared to be that it was not until 17 July 2019 Mr Anton eventually emailed Mr Attoh with feedback on an audit he had assisted on (“the Brigam audit”) [194-195].
- 215 We were given conflicting information when the fieldwork for that audit had taken place but we find based on the weight of evidence before us that that was sometime in early 2019. In the email in which he provided the written feedback complained about Mr Anton indicated that he had provided the feedback verbally to Mr Attoh on 17 May 2019 at the meeting they had (see (172)).
- 216 Mr Attoh referred [DA/26] to approaching Mr Coates as a result of Mr Anton refusing to provide any feedback on the Brigam audit on [158, 160, 172 and 175]. Mr Attoh did not date that discussion to other than May 2019. Of the requests for feedback from Mr Anton that Mr Attoh referenced in [DA/22] the only one that predates the discussion they had on 17 May was that of 7 May [172]. That was only 10 days before their meeting on 17 May. We note that at that point Mr Anton was Mr Attoh’s people manager and thus would be responsible for addressing any feedback.
- 217 Thus whilst Mr Attoh suggested Mr Anton had not initially discussed the feedback with him and that it was only following Mr Coates’ intervention it had been discussed, Mr Anton’s note indicates it was discussed at the meeting that took place on 17 May. Whilst Mr Attoh complains about the feedback of others and Mr Anton’s manner denied he received feedback from Mr Anton personally. In his witness statement [DA/22] Mr Attoh made clear it was only after the meeting with Mr Anton on 17 May that he went to see Mr Coates. Whilst Mr Attoh stated Mr Anton had failed to provide detail, he accepted he had seen Ms Bradley’s feedback and Mr Anton had discussed that with him.



That was very detailed. We find Mr Attoh's assertion in that regard of that meeting is simply not tenable and we find he was given verbal feedback at the meeting on 17 May but that the written feedback was only provided on 17 July.

218 It is not in dispute that Mr Anton's assessment was that Mr Attoh was "*this is below the level expected of an executive*". Mr Attoh responded to Mr Anton on 20 July 2019 stating he found that the feedback was "*quite harsh and unfair*" and "*it will be interesting to know how feedback was offered to others on this same job including the completion team. it will be a travesty and smack of something sinister in my view if your feedback to others on this job is different after the amount of support I offered both the on-site and completion teams*" [193]. Mr Attoh set out the basis for that said this in his witness statement:-

"38. ... When I reviewed the feedback I realised that the criticism was unfair because there were multiple factual inaccuracies. Mr Anton's feedback was not discussed with me and it took Mr Coates' intervention for Mr Anton to provide the feedback. I disagreed with the feedback. Mr Anton mentioned that the deadline for the work to be finalised was March 2019. This was not stated in the audit plan nor communicated in any way to the audit team. The Grant Thornton country subject matter expert did not travel to China to review the China subsidiary audit file until after 11 April 2019. This March 2019 deadline seemed arbitrary, and I think it was made up retrospectively by Mr Anton to penalise me. Due to my influence, the audit was completed and filed on time. I believe that it was due to my experience and professionalism that we got this audit done to the extent that there was a point when Mr Anton asked that all the team channel their client requests through me due to my ability to manage a fragile client relationship well. I mentioned that I thought his conclusions were quite harsh and unfair and that I was happy for his feedback to be independently reviewed by HR [193]. I felt that Mr Anton's feedback was a way of him targeting me. I deny paragraph 52.g of the amended grounds of response (and other paragraphs where the same point is made) where Grant Thornton say that the feedback was not unfair and that it was 'a genuine piece of constructive feedback'. The above stated explanations as to why the feedback was unfair, is evidence of the feedback not being constructive and I therefore believe the feedback was malicious."



- 219 Mr Anton in his written response identified positives specifically that Mr Attoh built up a good relationship with the client's finance team and ensured they met a tight deadline. As to planning Mr Anton acknowledged group instructions were to be set up under the new LEAP template and that was new but having given a good example to Mr Attoh, when the instructions were delivered to Mr Anton for review they were incomplete and the risks tailored did not match those discussed previously. As such, Mr Anton stated he had to amend them so they went out in a timely manner. Likewise Mr Anton stated the Audit Plan was still in a draft state when he reviewed it and again he had to spend time on it. Mr Anton however acknowledged that was the first time Mr Attoh had used that audit template.
- 220 Mr Anton also identified there were also a significant number of review notes regarding the risks from the planning meeting that were not appropriately tailored into the file. Again Mr Anton acknowledged that was rectified in the file by Mr Attoh but expressed concern that may have had a knock on impact on his workload at the fieldwork stage.
- 221 As to fieldwork Mr Anton again accepted that there were some challenges as a result of the departure of the client's financial controller and Mr Attoh showed a good work ethic in terms of overtime but at the end of the fieldwork there was a significant amount of work outstanding, particularly around stock which was one of the key risk areas, and the vast proportion of review notes had not been addressed within the file which resulted in him and others having to pick up this work. Again, Mr Anton acknowledged Mr Attoh's help in getting the information needed from the client ensured the client was not aware of the delays but was of the view that the work should have been completed during the time Mr Attoh was scheduled to work on the audit and that resulted in a delay in the client signing off the documents of a month and due to the delays in fieldwork being completed Mr Attoh was unable to see the job through to accounts signing.



- 222 Mr Anton told us that as the job was on-going, he decided to give feedback verbally to Mr Attoh and provide him with full written feedback once the job had completed.
- 223 What Mr Attoh did say was that he was busy around that time. The same is probably true of Mr Anton and also others. We address below Mr Sam Allen's attempts to provide verbal feedback and when he was unable to arrange a meeting with Mr Attoh he put that in writing (see (230)). To give good feedback is time consuming, particularly in written rather than oral form. We heard it was sometimes the case that others sought to give feedback orally. Whilst understandable that is of course unhelpful in the context of a PIP process and/or for the benefit of evidence satisfactory performance generally.
- 224 What was not in dispute was that the job as not completed in the allocated time and that there were areas for improvement including Mr Attoh's use of the LEAP tool.
- 225 In his email soliciting the feedback [195-196] of 7 May Mr Attoh relayed a number of problems encountered. They included amongst other matters that being new to the firm he was still learning standard documentations, he acknowledged he prepared the audit plan for review, the onsite audit came with its own unique challenges, including last minute changes, the client was not ready and he dealt with outstanding requests once he ceased to be on site and there were areas that could be improved (including the LEAP tool). We find that email was an attempt to predict and counter criticisms he expected with justifications/explanations and an implicit acknowledgement that the audit had not gone as it should. That was a common occurrence on Mr Attoh's part from the documents we were referred to.
- 226 Mr Attoh's grading was eventually reviewed by GT on appeal and upheld (see (239)). The appeal outcome (see (266)) was used to revise the objectives in his PIP and a new PIP created (see (275)). In the appeal, revised PIP and indeed in other feedback the themes identified by Mr Anton were raised



including the planning issues, overruns and identification of and management of risks were repeated. Accordingly, based on the evidence before us we find on balance Mr Anton's comments were legitimate ones.

227 Mr Attoh had already concluded by 20 July 2019 that Mr Anton was not only wrong but that potentially "*smack of something sinister*" (see (214)). We find based on the evidence before us there was simply no reasonable basis for Mr Attoh to reach such a conclusion.

228 Feedback, including negative feedback is a fundamental and inescapable part of professional life. Only a few strong minded and independent individuals are to positively embrace it but like it or not, the only way to improve is to either agree (or agree to disagree) with it but either way to take it on board and identify if changes need to be made and adapt accordingly.

229 Instead of doing that, what we find Mr Attoh did was to reject any feedback he did not agree with, provided explanations or justifications for it react negatively to and then personalise the feedback concluding it was sinister and/part of a conspiracy.

Sam Allen

230 Whilst not a complaint before us a matter that is highly relevant to the matters we refer to at (137) is Mr Attoh's "grievance" of 12 August 2019 regarding Sam Allen whom he stated was a friend of Mr Anton. The relevant section was as follows:-

"Sadly, I have had an experience where I have been hounded by an audit assistant manager just to provide me with feedback for work that I did for him for 5 days. I found it distressing that within a day he sends me 3 messages (2 emails and 1 meeting request on the same matter) in a space of less than 2 hours just so that he can give me feedback one month after my booking completed. it is as though because i had raised a concern about my previous people managers attitude towards me, I am now being targeted by his friends within the firm to just give me had feedback" [221]

231 In his witness statement Mr Attoh put it like this:-



40. On 24 July 2019, Sam Allen, a colleague and friend of Mr Anton, sent three meeting requests within one hour. I was extremely busy trying to meet an urgent deadline before the close of play that week, and therefore kept declining the meeting requests [197-198]. I asked Mr Allen if the meeting could be moved to a later date. I believe Mr Allen sent me repeated meeting requests to target me on behalf of Mr Anton.

41. On 26 July 2019, Mr Allen gave me feedback on the Victoria PLC audit I was working with him on [200]. Mr Allen was perplexed as to why the audit took the length of time it did for me to complete. It was his opinion that the audit should have been done within a week. Mr Allen unfairly concluded that I was not 'working at an Executive level' [201]. I was shocked at this unfair and incorrect feedback. When I had the mid-week catch-up with Mr Allen, he did not indicate the job was taking too long. Also the segmental reporting, final analytical review was not assigned to me when the work plan was originally circulated. Mr Allen's e-mail was quite unusual because normally the person to whom feedback was being given, would have an opportunity to comment on the intended comments of the assessor. On this occasion this practice was not followed. I believe that normal practice was not followed because Mr Allen saw me as someone who was creating trouble with his friend Mr Anton and so was targeting me on the instructions of Mr Anton."

232 These events were shortly after the commencement of the informal PIP. Ms Hunter told us that Mr Attoh had raised with her that he felt Mr Allen was harassing him and that he felt persecuted. She told us she had spoken to all of the Managers who were working with Mr Attoh and asked them to provide feedback in a timely manner and so Mr Allen was acting on her instructions. She referred us to an email from Mr Allen where he had emailed Mr Attoh asking when was a good time to give him feedback [197], having received no reply after 90 minutes or so, Mr Allen sent Mr Attoh a diary invitation suggesting a time for them to meet. Mr Attoh declined that without suggesting a rearranged time/date; 5 minutes later Sam Allen sent a further email asking if Mr Attoh would be available on the Thursday or Friday of that week [198]. Ultimately, Mr Allen provided Mr Attoh with written feedback [199-201].

233 Thus the issue we outline at (230 & 231) was thus first raised as part of Mr Attoh's subsequent grading appeal (see (251)). Ms Mohan told us [DM/34] that neither she nor Ms Delamore saw anything wrong with this approach and



they appeared to be consistent with the actions of an Assistant Manager who wished to give feedback following the completion of a job. Ms Delamore confirmed that she would have taken a similar approach.

234 GT suggests that is an example of Mr Attoh believing Mr Anton to be involved, without any basis for it. We accept Ms Hunter had requested feedback from Mr Allen and Mr Attoh's other managers as she did during the other PIPS and there is nothing to demonstrate that behaviour was in any sense influenced by Mr Anton or race. Having failed to respond to emails from Mr Allen, we find it was understandable for Mr Allen to send an invitation to a meeting. When that was rejected with no alternative or reply given it was also reasonable for Mr Allen to email again. Those stemmed from Mr Attoh failing to respond to emails/a meeting invitation with the speed GT expected. Indeed it was discourteous of Mr Attoh not to respond, merely decline the meeting invitation and without providing an explanation. In no sense objectively could that be viewed as harassment.

235 In addition to inferring harassment and that Mr Anton was involved when he was not that complaint demonstrates a lack of understanding of GT's business by Mr Attoh and that if he did not respond he would be chased.

ONGOING EVENTS

236 As time went on Ms Hunter continued to regularly meet with Mr Attoh and feed back to him. When he later improved his performance in certain areas she acknowledged this and encouraged him.

237 On 16 August 2019 there was a meeting between Ms Gladwin, who was Ms Hunter's people manager, and who also generally oversaw people matters for the Audit department, Ms Hunter and Mr Holland, a People Advisory Adviser, People and Culture (HR), because Ms Hunter had wanted to keep her up to date on matters and at which it was discussed how Ms Hunter could best support Mr Attoh. A note was taken [229].



238 Mr Attoh told us [DA/59] by October 2019 he felt the July informal PIP was going well as he had had positive feedback from managers (Anoop Bilkhu and Pooja Sira) and associates (Elly Colley). Whilst that may be so it ignored the negative feedback from others such as Mr Allen which was lodged around the same time.

APPEAL OUTCOME, “GRIEVANCE” (UC/LFT/CUDL10) & MS. KUBIE REFUSING TO INDEPENDENTLY REVIEW MR ANTON’S PERFORMANCE RATING AS PART OF THE MODERATION PROCESS (UC/LFT/CUDL9)

239 The first of these complaints concerns GT’s failure (1) to address all aspects of Mr Attoh’s appeal against the performance review and (2) to allow Mr Attoh to appeal the grievance outcome. The background to that is as follows:-

240 Ms Hunter told us that on 9 August 2019, she had a discussion with Mr Attoh as he had had asked for input into his performance rating appeal. She states she spoke to HR about the process, then spoke to him verbally and then emailed him to confirm what had been discussed [210]. She states she made clear to him that the process was that if he was not happy with his performance review rating, he could submit an appeal to the Employee Relations team outlining the reasons why he believed he had been given an incorrect rating.

241 Mr Attoh described events thus:-

46. On 11 August 2019, I lodged a grievance on the following grounds:

46.1. Appealing the performance grading that was provided by Mr Anton. I wanted the performance grading independently reviewed. I felt I had received good feedback from clients in respect of my performance and that Mr Anton was influencing others to give me bad ratings; and

46.2. The unfair treatment Mr Anton had subjected me to (i.e. Mr Anton treating me in an unfair and condescending manner).”



242 Mr Attoh's grievance was actually dated 12 August 2019 and was sent to ER.Adviser.Team@uk.gt.com [219-222]. It referenced amongst other matters the lack of goal setting by Mr Anton, lack of training on internal systems, how Mr Anton had managed his performance issues, the impact of the lack of measurable goals, the unjustified content of feedback and its contrast to other feedback, him being hounded by an assistant audit manager and complaints about the treatment he was subjected to by Mr Anton [DA/53].

243 The issue over the date of that arises because on 11 August 2019 Mr Attoh sent to himself a draft of the document [211-212]. It appears to be agreed and we find the documents make clear that he sent it to Ms Hunter for her guidance because on 12 August she emailed him [213] to say that she had just spoken to HR and :-

"... If the only desired outcome from this process is that your performance rating is independently reviewed, then it's fine to submit it like this and this will be treated as an appeal (which I think is essentially a subcategory of a grievance). if you have any other desired outcomes. then it's probably better to split the email (perhaps with subheadings) into the part which is about the performance review and the part which is about the additional grievance, so that the grievance part can be looked at separately if necessary from the performance review appeal.

Hopefully this helps but if it's not clear I'd recommend giving the ER team a call."

244 She told us [CH/46] that she contacted HR because having been emailed the draft 'grievance' it was not clear to her from reading it whether it was a grievance or a request for a review of his performance rating and thus she suggested that he clarify this.

245 Mr Attoh disregarded both aspects of that advice and neither spoke to HR nor split the complaints. Instead on Monday 12 August 2019 he forwarded the document called "Grievance" that we refer to above [219-222].

246 On 13 August there was an exchange of emails between Ms Kubie (an Employee Relations Adviser team at GT's Leeds office.) and Mr Attoh [218-



219] where she copied to him GT's grievance policy and sought to explain that policy to Mr Attoh:-

"I confirm receipt of your email titled 'Grievance'. Having read your email it appears to contain information which is also related to an appeal against your Performance rating. The grievance and appeal against Performance review processes are managed through different policies. I therefore attach a copy of the grievance policy for your information. ⁶⁸

Can you let me know if you are raising a formal grievance or appealing the outcome of your performance review and also what outcome you are looking for from the process.

Please don't hesitate to give me a call if you would like to discuss further."

247 Mr Attoh replied to her the same day:-

"My email does state an appeal against the performance rating which i attached emails supporting the inaccuracies in some of the feedbacks received.

However, since bringing this up locally in our office. especially the way i was treated by my previous people manager, I feel that i am now being victimised for raising the issue as I considered the treatment meted out to me by my previous people manager to be unfair. This was also captured in my email.

As a result. I am appealing against my performance rating and raising a grievance in relation to how i was unfairly treated and how I subsequently am being targeted for raising an issue with my previous people manager thereby making the work environment difficult for me to cope with.

If this falls out of the grievance policy, then do let me know."

248 Mr Attoh told us he had been told by Hunter there was a moderation process later each year in relation to the performance grading process which might

⁶⁸ GT's grievance policy is at [88-93].



adjust his grading. He told us he asked Ms Hunter if his rating would go through:-

“43. ... a moderation process, or if there was another way I could get my rating reviewed. Ms Hunter said that over the summer a comprehensive review process would be undertaken where all overall ratings would be looked at to ensure fairness and consistency and would challenge anything that looked unusual [204]. I requested that my rating be reviewed as part of this process because my rating was grossly unfair [203]. ...”

249 Thus, there were three potential aspects to what Mr Attoh was seeking to do:-

249.1 An appeal against his performance rating,

249.2 Have his performance rating made the subject of moderation, and

249.3 Raise a grievance about his training, the lack of goal/target setting and the way he had been treated by Mr Anton and others.

Moderation

250 As to moderation we were told by various witnesses from Gt that this was a high level process essentially to ensure grading across offices and departments were consistent across the country as a whole. Thus, if a part of the business had marked harshly or generously graded then the grades in that part of the business (rather than individual gradings) might be marked up or down accordingly but that was not something Mr Attoh could seek or input into on an individual level. In the absence of tangible evidence to the contrary we find that is the way that process worked. Mr Attoh was thus treated in the same way as all other employees in the circumstances. Rather than being treated less favourably or being harassed Mr Attoh was actually seeking he be treated more favourably by seeking a different procedure be applied to him than others.



The appeal and “grievance” process

251 On 18 September 2019 Ms Kubie met with Mr Attoh in relation to his appeal against his performance rating. She prepared a note of the meeting [240-241]. She asked him what he was seeking to achieve through the process. He stated that he wanted to be treated fairly and wanted Mr Anton to stop influencing others when they were providing feedback.

252 He later accepted to Ms Kubie that Mr Anton was no longer his people manger, that Ms Hunter had put in place tools to upskill him, that she was treating him fairly and was supporting him [240]. Ms Kubie went on to tell him she would speak to Mr Holland to identify who could hear the appeal and would confirm that to him.

253 Mr Attoh was thereafter told how the process would unfold, that Ms Dearbhla Mohan & Ms Hannah Delamore (an audit manager - Leeds) would deal with it and correspondence ensued [251-256]. We were told given the nature of the complaints concerning Mr Anton and his colleagues in Birmingham that Ms Mohan and Ms Delamore were selected as they had capacity and both worked in another of GT’s offices (Leeds). We find that was GT’s rationale for selecting them and that was an appropriate course for it to take.

254 On Thursday 26 September Mr Attoh emailed Ms Mohan, Ms Delamore and Ms Kubie:-

“My concern is that I was told that there is a moderation/calibration panel that would review this in addition to the engagement lead of the office.

This is concerning if it is not presented to them as I Wish that it is so done per earlier discussions I had about my grievance.

I hope that this can be presented to them and need clarity on this and reasons why this has not yet been provided to the panel that deals with the calibration/moderation process.” [252-253]

255 On 27 September 2019 Ms Kubie responded clarifying the process:-



“To clarify, when we spoke you confirmed this is an appeal against the outcome of your performance review.

The process would normally be for your submission to be reviewed locally by your local Business lead, with support from the local People Advisory Adviser.

However as your appeal refers to the alleged behaviours of a manager in the Birmingham office the decision has been made to appoint a panel from outside of your home office.

The process does not incorporate a review under the moderation/calibration process. If this is what you understood me to mean when I said an independent review then I apologise for any confusion with my wording.

I trust I have clarified the process which is to be followed. If you have any further queries please let me know.” [251-252]

256 He replied to Ms Kubie and Ms Mohan copying in Ms Delamore and "Inbound Dovetail" (inbound@ukgrantt.mail.dovetailnow.com) an hour later [250-251] :-

“If there is a misinterpretation, then I clarify my understanding.

There are 2 tiers to my submission and from our discussions.

1. The appeal against the performance review

2. The treatment meted out to be me by my then people manager which I consider unfair and subsequently being targeted for speaking out about it/calling it out as a result of raising a matter I considered unjust in the office.

These are concerning issues for me ...”

257 Having been told these were separate processes, having been given an explanation why they were separate, that he needed to separate the complaints and what he needed to provide we find Mr Attoh knew or ought reasonably to have known the processes he needed to follow and detail he needed to give. Based on the evidence before us, we find he did not supply the information required by GT's grievance policy [89]:-

“For your grievance to be reviewed, it is important the following information is supplied:



- *your full name and department*
- *date*
- *a summary of your grievance*
- *details of any witnesses or supporting evidence*
- *details of steps you have taken to resolve this matter informally*
- *a suggested resolution.*

Where a complaint relates to bullying or harassment, the following information should be included:

- *name of the alleged person involved*
- *nature of the harassment*
- *dates and times when the incidents occurred*
- *details of the steps you have taken to resolve this matter informally*
- *witness details.”*

258 The grievance policy also provided that the grievance:-

258.1 should be sent to ER.Advlsr.Team@uk.com headed 'GRIEVANCE' and a member of the Employee Relations Adviser team will contact you to acknowledge receipt of your grievance and give guidance on next steps

258.2 must be submitted within three months of the incident(s) taking place.

259 Whilst some of those points might be perceived as matters of procedure thus procedural errors by Mr Attoh should be ignored, they go beyond that. Mr Attoh was making a complaint of bullying and harassment and had been asked to provide the details of what was said or done, by whom and when that formed the basis of that complaint. He did not. They were required so GT could investigate them and identify if the grievances were lodged in time. GT is a big organisation and fairness and good practice require such procedures



are in place. Mr Attoh was a professional man of considerable experience. He should have been able to understand and comply with the procedures he was sent and why they were in place.

260 We find GT had made plain to Mr Attoh that it was intending to treat his complaint as an appeal against his performance rating, how it would be dealt with and what he needed to supply for it to be addressed as a grievance. We find that decision was in no sense related to or because of race. Mr Attoh was not treated in the way he was because he did not follow GT'S procedures. Mr Attoh was treated no differently to any other employee would have been. He was again seeking more favourable treatment (that the procedure should not apply to him) not less.

261 Mr Attoh's response to Ms Kubie, his oral responses to questions posed and his failure to provide the detail requested lead us to conclude he had not read GT's grievance policy. Had he considered the documents he may have understood why GT was taking the approach it was. He did not, and instead only subsequently alleged this was discrimination.

262 If he had read the grievance policy he would have known he would be contacted to discuss the grievance. He was not. He would have known when he should have complained about that or appealed. Again he did not. Given his professional role and the seriousness of the allegations he was making that was not acceptable. Instead he continued to debate the issue with GT.

263 The refusal of Mr Attoh to engage with reasonable processes and his failure to provide the detail of his complaints became a common theme.

The performance grading appeal

264 GT's appeals policy [96-97] provided employees had the right to appeal decisions been made with reference to the following policies:-

- disciplinary/capability



- grievance
- flexible working
- end of fixed-term contract
- professional exams.

265 The appeals policy also provided:-

“After you have emailed your appeal, it will be forwarded for review by an independent panel. appointed by the Employee Relations Adviser team. none of whom will have been involved in the original decision or investigation.”

266 The appeal was addressed by Ms Mohan and Ms Delamore. Their outcome letter was dated on 7 October 2019 [262] was sent under cover of an email [270-271] that summarised the contents of the appeal report it attached [264-267] :-

There is significant evidence, with strong developmental points from a wide range of sources, including both upwards and downwards feedback, to support the below expectations rating

267 Both the email and covering letter stated *“this is the final stage of the appeal process, there is no further right of appeal”*. That was because GT’s appeal procedure provided:-

“There will be no further right to appeal as a result of this - our Internet process will have been exhausted.” [97]

268 The appeal report identified and summarised the evidence supplied by Mr Attoh before stating under the heading *“1.3 GOALS SET, AND THE PERFORMANCE REVIEW RATING”* [267]:-

- *“Only some goals for performance year 2018/2019 have been achieved. DA believes that it was his previous people managers responsibility to set goals for DA, and so this should be a mitigating factor.*



- *In the 'Performance at Grant Thornton' fact sheet, available on the intranet, it sets out that it is an individual's own responsibility to agree and submit goals that are aligned to the firm's strategic priorities — growth, culture and quality. Although there is no strict deadline on when goals should be set, they are expected to be in workday by the end of September at the latest. However, individuals, and their people managers can edit or amend goals at any time throughout the year. I do believe that DA's first people manager TE should have followed up with DA to ensure goals were submitted.*
- *When TE left the firm, DA should have met his new people manager (PA) to discuss goals and update/amend if necessary.*
- *The feedback that DA submitted has a clear pattern. There are some developmental points mentioned on a number of occasions that DA should consider."*

269 The report reached a number of conclusions [267]:-

- *"There is sufficient evidence from a range of sources to demonstrate DA's underperformance.*
- *Feedback was gathered from a wide range of sources and contained both upwards and downwards feedback. '*
- *. Development feedback was given across several months, but no improvements were demonstrated.*
- *5 main areas for development were identified:*
 - 1. Audit deliverables are not to the required standard of an Executive.*
 - 2. The number of review notes on job, and then outstanding errors that are left behind on jobs,*
 - 3. Time frames of work. DA is failed to deliver work in adequate and expected time frames.*
 - 4. Management of a team — DA has failed to adequately delegate and manage the work of others*
 - 5. DA's communication - DA has failed to keep managers on jobs updated on progress or communicate when he is struggling with work.*



- *DA has met some of his goals for 2018/2019, but there are some outstanding.*
- *DA should continue to seek regular feedback on his work.”*

270 The report went on to make a number of recommendations [267]:-

- *“The performance rating should remain as Below Expectations*
- *The main areas for development identified along with any others should be managed in an informal performance improvement plan.*
- *DA should continue to seek regular feedback, and where possible, ask managers to make comments directly against his agreed goals.*
- *DA should keep communication open and clear with his people manager in any areas in which he is struggling or with anything that he needs support with.”*

271 Mr Attoh responded on 19 October 2019 to Ms Mohan stating that he was seeking advice asked for clarification of the following:-

“1. Can you please point me to the firms policy and/or procedural document that deprives me of a right to appeal the decision

2. You have not addressed the concern I had about the treatment meted out at me for raising a grievance, is this being looked at separately as I mentioned in my earlier email to you?

Once I have responses to the above, I will be in a position to respond appropriately.”

272 Had Mr Attoh considered GT’s appeal procedure he would have known that there was no further appeal against his appeal. On 21 October Ms Mohan referred him to the appeal procedure document and where it addressed that point. With regards to his second point, she stated that if he did not feel that all of his points had been addressed, *“please let me know what you believe they were”* [270-271]. He did not.

273 Mr Attoh’s stance with regard to the appeal is duplicated in relation to the grievance outcome *“57. ... I was deeply disappointed that I did not get an opportunity to challenge the grievance outcome [270].”* Had Mr Attoh taken



on board and accepted the way GT's procedures required him to address his grievance and followed that procedure we find GT would have addressed it. He did not. This was a further example of Mr Attoh refusing to follow GT's reasonable procedures and then complaining after the event.

- 274 Given the feedback, we find GT in the grading appeal report was entitled to form the views it came to. They are consistent with the development areas identified the year end performance review Ms Hunter prepared (see (212)). They were not in any sense influenced by race but based on the evidence provided. We find Mr Attoh was not treated any differently in the grading appeal to the way any other member of staff whose feedback was materially the same as his would have been.

FOLLOWING APPEAL REPORT - PIP

- 275 On 17 October 2019 Ms Hunter had a discussion with Mr Attoh. She sent him a record of that meeting the following day [268-269]. The informal PIP he had been on over the summer was due to end on 31 October. She told us that in her view whilst there had been improvements in some areas he was still not performing at the required level and the rating appeal outcome, which had been undertaken by individuals entirely independent of the Birmingham office, had upheld the grading of "below expectations".
- 276 Given GT's policy was that anyone graded "below expectations" should be placed on a performance plan and his had not resulted in the required improvement she could have escalated that to a formal plan. She did not. Instead she decided to put in place Mr Attoh on a further informal PIP to include the five areas for development the grading appeal had identified (see (269)). She told us she felt that it would provide a great opportunity for a fresh start.
- 277 Her rationale for the basis and length of that PIP was that was set out in more detail in their subsequent meeting on 7 November [281-282] (see (343)).



278 In the interim, sometime in late October Mr Attoh reached out to Ms Cooper. She is now employed by GT as a Director in the Legal Department based in its London office, although at the time of the matters that concern us she was employed as a Senior Solicitor. She has worked for GT for 27 years. She sits on GT's Ethics and Ethnicity Boards and is the Convenor for Ethnicity and Cultural Heritage, one of GT's six Diversity and Inclusion strands. She told us the purpose of these strands is to focus specifically on the Diversity and inclusion issues separately by subject heads and 'intersectionally' where possible. We address their discussion in a few paragraphs time. On 29 October he also spoke with Ms Gladwin for reasons we will come on to. We address that at (321).

Mr Attoh reaching out to Ms Cooper (PA1)

279 In late October 2019, Mr Attoh alleges he "reached out" to Ms Cooper to express concerns that he was subjected to conduct that he considered unfair, discriminatory because of his race and that he felt victimised. Mr Attoh deals with that [DA/58]:-

*"... I expressed concerns that I was being bullied and victimised by Mr Anton. I told Ms Cooper all the misconduct I was subjected to, **including discontinuing the July 2019 informal performance improvement plan** with no apparent reason and starting a new plan. I also complained about the mistreatment from Mr Anton and his friends (Sam Allen and Andrew Turner) and the fact that this would damage my opportunity for progression within Grant Thornton.. Ms Cooper mentioned that it was not the first call she had received in that week by a person from a minority ethnic group, about how they were being treated by Grant Thornton. She stated that race discrimination at Grant Thornton was becoming of great concern to her. I said that I felt I was being discriminated against on the grounds of race and that I was being victimised for raising this matter both informally with Mr Anton and through the grievance process. Ms Cooper was receptive to my concerns and tried to facilitate a meeting between myself and David Munton (Mr Munton) to address my concerns."*

[Our emphasis]



280 GT accepts Mr Attoh did contact Ms Cooper. GT denies that he expressed concerns that he was subject to any form of discriminatory or racist conduct and as such GT does not accept that this meets the definition of a protected act under the Equality Act 2010.

281 Ms Cooper said this in her witness statement:-

“5. Around late October 2019, the Claimant called me to discuss some concerns he was having in relation to work. I believe that at the time of the call he was outdoors. He told me that he had to go to a performance review meeting and was worried because he did not think he could represent himself properly. He felt that everyone was against him and explained that his People Manager was, effectively, conspiring with others against him in relation to his performance at work and the quality of his work.

6. The Claimant informed me that there had been discussions about him that he was not involved in and so he thought that he was being excluded from conversations where he could have given his point of view.

7. I believe I asked the Claimant whether there was anyone in the office to support him and that he should ask to have someone with him in the meeting if he was worried about it.

8. I was not involved in the process that the Claimant was going through so I was not sure whether a companion at the meeting was a possibility, but it certainly would not hurt him to ask if he felt he needed one.

9. I cannot recall the Claimant expressly telling me that he felt the treatment he was perceiving was because of his race and do not recall having a discussion about race generally. I did not know the Claimant prior to this call and can only infer that he called me because I am the Convenor for Ethnicity and Cultural Heritage.”

282 It is common ground Ms Cooper contacted head of GT’s Birmingham office Mr David Munton who asked Ms Gladwin, a director in GT’s Birmingham audit team to investigate [NG/12]. Ms Gladwin was Ms Hunter’s people manager and at the time oversaw “people”(HR) matters for audit. We find she was the appropriate person to address any such issues. Given



282.1 the date Mr Attoh and Ms Gladwin discussed matters and all the evidence before us points to that stemming from Ms Cooper's involvement, and

282.2 the discontinuance of the July PIP on Mr Attoh's did not occur based on what Mr Attoh told us until a meeting on 17 October 2019 [DA/55].

we find the discussion between Mr Attoh and Ms Cooper must have taken place on or after 17 October and no later than 29 October 2019.

283 Ms Cooper also spoke to Mr Avtar Sohal (292). We will address the involvement of Ms Gladwin and Mr Sohal in turn below but suffice to say there was an exchange of emails between Ms Cooper, Mr Sohal and Mr Attoh between 5 and 11 November 2019. We find that Mr Sohal met Mr Attoh on 5 November and from November 2019 continued to provide support to Mr Attoh until Mr Attoh's formal capability meeting on 30 April 2020.

284 Whilst Mr Attoh knew no later than the end of September (well before these discussions were taking place) what the procedure to raise a grievance was (251) and should or could have known of GT's bullying and harassment and diversity policies had he familiarised himself properly with its policies he did not utilise them.

285 Ms Cooper's written and oral evidence was that whilst she could not recall Mr Attoh expressly telling her that he felt the treatment he was perceiving was because of his race or that they had a discussion about race given he contacted her because she was the Convenor for Ethnicity and Cultural Heritage she inferred that was why he had spoken to her. In cross examination he specifically accepted he made no reference to race or to the names of individuals to Ms Cooper (likewise to Mr Sohal at that point)

286 We find he did not make reference to race or to the names of individuals. Whilst he alleged he had been bullied and victimised given he changed his



account about that meeting as to whether race was mentioned we give it no weight. We find he did not.

287 As Mr Sohal stated (see (301)) even if Mr Attoh made contact with either of them that does not necessarily mean he was bringing a race complaint. As Mr Sohal suggested given Mr Attoh was seeking support during the performance management process Mr Attoh could have merely been seeking support from an ethnic minority colleague. That is supported by what Mr Sohal said was the reason why Ms Cooper had asked him to be involved (see (294)); she asked him to assist in understanding what was happening.

288 Harvey states L.3.D.(2).(b) [475] whilst:-

“It is clear that an express reference to the Equality Act is not required. Two categories of allegation falling short of an express allegation of breach of the Equality Act have been identified by the cases. First, there is the case where the complainant alleges that things have been done which would be a breach of the Act but does not say that those things are contrary to the Act: in Waters v Metropolitan Police Comr [1997] IRLR 589, [1997] ICR 1073, CA, Waite LJ said:

'The allegation relied on need not state explicitly that an act of discrimination has occurred – that is clear from the words in brackets in s 4(1)(d). All that is required is that the allegation relied on should have asserted facts capable of amounting in law to an act of discrimination by an employer within the terms of s 6(2)(b).'

Second is the case where the complainant does assert that there has been discrimination but does not say that the allegation is of discrimination in relation to one of the protected characteristics. In such cases, Langstaff P said the following in Durrani v London Borough of Ealing UKEAT/0454/2012 (10 April 2013, unreported):

“22. I would accept that it is not necessary that the complaint referred to race using that very word. But there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the Act applies.

23. The Tribunal here thus expressly recognised that the word “discrimination” was used not in the general sense familiar to Employment Tribunals of being subject to detrimental action upon the basis of a protected personal characteristic, but that of being subject to detrimental action which was simply unfair....



27. This case should not be taken as any general endorsement for the view that where an employee complains of "discrimination" he has not yet said enough to bring himself within the scope of Section 27 of the Equality Act. All is likely to depend on the circumstances, which may make it plain that although he does not use the word "race" or identify any other relevant protected characteristic, he has not made a complaint in respect of which he can be victimised. It may, and perhaps usually will, be a complaint made on such a ground. However, here, the Tribunal was entitled to reach the decision it did, since the Claimant on unchallenged evidence had been invited to say that he was alleging discrimination on the ground of race. Instead of accepting that invitation he had stated, in effect, that his complaint was rather of unfair treatment generally.' "

- 289 Thus race does not have to be expressed and can be inferred from the surrounding circumstances. This is a case where there was not only was no direct mention of race made but also the detail of the complaint was lacking (nor was either subsequently provided to Mr Sohal or Ms Gladwin). Race was not mentioned directly until 19 March 2020 (443). We give Mr Attoh's account no weight in relation to this incident because of the change in the fundamental allegation he makes. In those circumstances what Mr Attoh was doing was not for the purposes of or in connection with or making an allegation (whether or not express) that a person had contravened the Equality Act or any other of the matters in s.27(2) EqA. Accordingly, s.27(2) was not satisfied.
- 290 We find the discussion with Ms Cooper was not a protected act for the purposes of a victimisation complaint. That aside we have gone on to consider the victimisation complaints in any event.
- 291 In relation to the wider victimisation claim GT argues there was no suggestion that Ms Cooper does not say that she told Mr Muntun or others that she drew that inference. We find that Ms Cooper did not. Ms Gladwin as we find below was clear she was not told there was any racial element to Mr Attoh's claims. Thus the issue arises how in any event the protected act could have been the basis for the actions of others.

**Mr Sohal**

- 292 Mr Sohal has been employed by GT since April 2018 although he was employed by GT prior to that between 2012 and 2015. At the time of the matters that concern us he was a Senior Manager. He became a Director in GT's Public Sector Audit Team at its Birmingham office in September 2020.
- 293 As we state above he was involved in various equality and diversity threads: he was part of GT's inclusion advisory board between 2021-22, that is now its ethnicity council; was a leader in the BAME network; and lead a lot of diversity and inclusion work in the Birmingham office and within public sector audit.
- 294 He told us his involvement stemmed from a call from Ms Cooper. She told him Mr Attoh had phoned her, sounded in distress and as Mr Sohal was a local presence helping people of colour in the firm, she asked him to assist in understanding what was happening.
- 295 Mr Sohal told us that following his call with Ms Cooper, he contacted Mr Attoh and they met to discuss his concerns about the issues he felt he was facing. Mr Sohal summarised that in the email he sent to Ms Cooper. We set that out at (298). In his witness statement Mr Sohal told us he felt Mr Attoh did not understand that or the implications of this. He told us he talked through the performance process with Mr Attoh and it appeared to him that Mr Attoh thought it was worse than it actually was.
- 296 To that end and despite Mr Sohal explaining to Mr Attoh the PIP process (which we accept he did) in March 2020 Mr Sohal wrote to Ms Hunter asserting Mr Attoh still did not understand the process (432). We have no doubt accepting that that was Mr Sohal's view but if so given the opportunity for Mr Attoh to appraise himself of GT's procedure, Mr Sohal's help, the assistance he received from Ms Hunter and the fact that he was a professional man, we do not accept that he did not understand the PIP process but rather he chose not to accept and understand the PIP process



because he did not agree with the decision that led to it; that his performance was below expectations.

297 Mr Attoh dated that conversation to 5 November 2019. He told us “(among other things)” that he felt he was being managed out of the business, would not get opportunities to progress at GT if he remained and that he believed that there was a campaign of intimidation against him instigated by Mr Anton, Mr Turner and those affiliated with them.

298 That day Mr Sohal emailed Ms Cooper as follows and copied this to Mr Attoh:-

“Having caught up with Dodzi there are a few issues that have come up

1. He disagrees with the feedback that he received. which led to "underperforming" in his performance appraisal. He believes that he has a number of evidences which would address the points raised in feedback

2. As a result of underperformance. he has been put on a Performance Plan, however, the timelines have been changed, and for some reason recent feedback received has been discounted. There is a lack of clarity for him in regards to this

3. He believes that there is a campaign of workplace intimidation against with him, with unfair treatment instigated against him — which he believes has been instigated by his former people manager and Director he has worked for

As a result of these issues he believes that he is being managed of the business and will not get the opportunities to progress at GT as result if he did stay on.

He is seeking advice on how to take these issues, forward - so support on how we can help this would be appreciated?

One thing I have suggested is that I could talk to his people manager, or be there when he does meet with her next - to ensure that some of his concerns are discusses and their actions to take this forward in first instance — but again don't want to do anything which would go against any polices etc we might have regard to his” [278-9]



- 299 Just over an hour later Ms Cooper responded copying in Mr Attoh, to say that she had got some advice on how Mr Attoh should take this forward and had messaged him separately. That appears to be a reference to her call to Mr Munton. In the meantime, she indicated it would be useful if Mr Sohal could continue to provide support for Mr Attoh.
- 300 The next day Mr Attoh responded to both Ms Cooper and Mr Sohal thanking them for their support and assistance, and indicating he would try to call Ms Cooper later that day if that was suitable.
- 301 Mr Sohal told us whilst Mr Attoh felt there was a campaign of workplace intimidation against him and that GT wanted him to leave Mr Attoh provided no examples. He categorically stated Mr Attoh did not tell him at that point that he felt any behaviour was related to his race. Mr Sohal told us that whilst that may have been implied given he supports BAME colleagues not all matters that he supported on were specifically race related and sometimes a BAME employee was simply more comfortable getting support from another BAME colleague.
- 302 Had Mr Attoh directly raised the issue of race with Mr Sohal as he now suggests by virtue of the questions he posed to Mr Sohal we find he would have corrected that email. He did not. That is supported by his questions on that theme to Mr Sohal – rather than directly put that he referred to race to Mr Sohal he initially asked if that was not to be inferred *“Was it not obvious I came to you because of my race”* and then asked those questions in the negative for example *“I didn’t give examples of people treating me badly because of my race”*. Those questions were no doubt phrased in that way because Mr Attoh specifically accepted in cross examination that he made no reference to race or to the names of individuals to Ms Cooper or Mr Sohal (see (285)). Mr Sohal refuted categorically that he had said that at that point. Given the contents of their accounts we find Mr Attoh did not raise the issue that the treatment he was complaining of was related to his race.



- 303 Mr Sohal told us he and Mr Attoh would thereafter meet every two to four weeks, although this became more frequent as time went on and he spent a lot of time with Mr Attoh. He said he tried to respond quickly if Mr Attoh contacted him, to assure him that he was there to support him.
- 304 Mr Sohal told us he tried to provide critique and advice on how he thought Mr Attoh should go about things in the same way he would do so with his friends which included encouraging him to raise any issues with Ms Hunter.
- 305 Mr Sohal told us that time Mr Attoh did raise with him his concern that Mr Anton, had been coercing people into giving poor feedback on his audits. Mr Sohal stated that he tried to get Mr Attoh to consider what Mr Anton had to gain from doing this. Mr Attoh was not able to explain why.
- 306 At some point during their discussions, Mr Sohal accepted that Mr Attoh had told him that he felt the behaviour he claimed he was encountering must be due to his race. Mr Sohal told us he sought examples, but none were provided. At one point, Mr Sohal accepts Mr Attoh raised with him the complaint we address above (192) about Mr Turner staring at him (although Mr Sohal did not state he had been given Mr Turner's name). Again Mr Sohal told us that he asked why a partner would act like this on purpose, and if Mr Attoh had considered alternatives which Mr Attoh did not accept. He stated that he asked Mr Attoh if he had spoken to other individuals present to try to clarify the situation but he had not.
- 307 Mr Sohal told us that he believed that because the Commercial Audit management team were similar in age and socialised a lot together, Mr Attoh felt like an outsider and that this built in his mind leading to him believing that because he was not part of that group, they must be talking about him. The knock on effect of this was that if anyone gave him negative feedback, he instantly felt that it must be because that person had been influenced.



- 308 Mr Sohal told us he also felt that Mr Attoh's perception of events may have stemmed from having a different cultural awareness in terms of how different cultures act and/or body language used. He said whilst *"the Claimant might find something to be dismissive, it could simply have been UK mannerisms. However, I was never able to establish whether this was the case because the Claimant did not give me any examples of what he thought to be discriminatory or unfair treatment"*.
- 309 As we highlight, Mr Sohal identified issues that needed to be addressed concerning the "clique" within the audit department and Mr Rosinke later picked up on this and made recommendations concerning the same. We find Mr Sohal in raising those critical matters and because of his role as a BAME lead, was objective. He told us that his work in the various diversity strands and his support for Mr Attoh was undertaken in his own time and he therefore had to make up the time he spent doing so. Mr Sohal felt it was important he do that because told us he had been the subject of discrimination although there was no suggestion that was at GT. That is something we will return to in a few paragraphs time.
- 310 As further support for our finding that Mr Sohal was an objective and critical witness he identified issues where they existed and did not just accept but challenged both Mr Attoh's views and those of his colleagues. Mr Sohal acknowledged GT was not a perfect employer. That does not mean race was at play in relation to Mr Attoh's complaints. He took the view GT was an enlightened employer, addressed things head on and the overwhelming impression he gave was that he could find no evidence having tried to get the detail from Mr Attoh on their many discussions that his complaints were in any sense racially motivated.

Mr Attoh's behaviour

- 311 Whilst cross examining Mr Sohal, Mr Attoh posed this question *"Cherryl [Cooper] only reluctantly introduced you because she felt you were not*



interested in black people and you were more interested in people of your own heritage". The Judge having checked with Mr Attoh that his note was correct he asked Mr Attoh if he understood what he had suggested – it was clear he was suggesting Ms Cooper had contacted Mr Sohal not to assist and she knew he would not.

- 312 Mr Attoh stated "*That's my experience*". He accepted that he had not suggested that anywhere in his evidence and that Mr Sohal might find that offensive. Mr Attoh accepted that was so. He later withdrew the comment and apologised. When given opportunity to apologise to Ms Cooper who had not been present when that question was posed Mr Attoh repeated declined to do so, instead attempting to read a prepared speech on three occasions. He then later went on to repeat the allegation of racism against Mr Sohal having previously withdrawn it.
- 313 When Mr Sohal explained how he had been the subject of racist behaviour – an aggravated assault where he had been physically injured, Mr Attoh sought to trivialise that by suggesting Mr Sohal was paranoid. That was a reference to a term used in Mr Sohal's statement to Mr Rosinke [600]. The comment was made in response to a question whether Mr Sohal believed that Mr Attoh genuinely felt discriminated against or targeted. Mr Sohal replied "*he genuinely thought that DA thought he was being victimised for being different, but the issue was how much of this was actual victimisation versus DA's perception and possible paranoia and it was hard for AS to determine without any facts.*"
- 314 That was a legitimate question that had to be posed and addressed and rather than accuse Mr Attoh of paranoia as Mr Attoh clearly believed, on a fair reading we find Mr Sohal was stating he believed Mr Attoh's belief was genuine but it was not possible to say if that was so absent supporting evidence. That is yet a further example where Mr Attoh took something out of context, dwelt on it and reacted negatively to it.



- 315 Given the lengths we relay above that Mr Sohal went to, to try to help Mr Attoh which Mr Attoh acknowledged were in Mr Sohal's own time (and that he needed to make up) such comments were deeply upsetting and offensive, as Mr Attoh implicitly accepted by withdrawing them, and entirely without foundation.
- 316 They were not the only examples of what we find was frankly outrageous and unacceptable behaviour by Mr Attoh. We have already addressed his failure to contact his GP in relation to routine calls, him catastrophising them, his failing to address his medical concerns when he was given an opportunity and directed to do so thereby causing a substantial delay to the Tribunal hearing as a result.
- 317 When cross examining Mr Garcia as part of the log-in issue (see (402)), Mr Attoh alleged Mr Garcia had amended the reports before submitting them and used them to create a false basis for negative feedback. He did not address this in his witness statement even though he had made that allegation at an earlier point. When that was raised with him Mr Attoh twice suggested that the judge had not permitted him "to talk about it". When he was reminded that the Judge had specifically asked him to do just that on several occasions and he had failed to do so he sought to deny he had said that before repeatedly seeking to provide an explanation, and in doing so repeatedly having interrupted and talked over the judge. He accepted the judge had actually bent over backwards to help him and what had occurred was the opposite of what he alleged. He then apologised albeit asserting there some confusion when clearly there was none. The judge accepted apology. A break was taken and following the break he was reminded about the seriousness of making unsupported allegations.
- 318 Despite that a few minutes later when continuing to cross examine Mr Garcia Mr Attoh alleged that Mr Coates had signed off Mr Garcia's reports without considering them. Mr Attoh was reminded that again was not only an



allegation of professional misconduct but he had not made any such allegation in his witness statement. Mr Attoh accepted that he had not suggested that anywhere in his evidence and again withdrew the comment.

319 As those events occurred at the end of the day a further reminder was given at the start of the next day about unsupported serious allegations. Despite that reminder again having been given Mr Attoh later accused Ms Skeaping and her assistant solicitor of misleading the Tribunal in relation to timesheets recording of meetings. When it was explained he was essentially accusing them of professional misconduct and breach of their professional duties he again immediately apologised and withdrew the allegation.

320 That behaviour also has to be viewed in the context that Mr Attoh took issue with the slightest personal criticism and seeking to challenge that by seeking proof. In contrast Mr Attoh was prepared to make what most right minded people would accept were exceptionally serious allegations of racism and professional misconduct that could have catastrophic consequences for the careers of those concerned if upheld without any basis for them, or for that matter, any thought to the consequences.

The meeting with Ms Gladwin on 29 October 2019 (UC/LFT/CUDL11 & VDet3)

321 Despite the inference we found Ms Cooper drew that Mr Attoh had contacted her because of her role as Ethnicity Strand Convenor, Ms Gladwin made it clear that whilst she had been told Mr Attoh had expressed concerns she was not told they were related to race. Given our findings as to what occurred during their meeting we accept her evidence.

322 Mr Attoh and Ms Gladwin met on 29 October 2019 to discuss his concerns. Mr Attoh alleges she made offensive statements towards him.

323 No notes of their meeting exist. Save in one major respect their accounts fundamentally differ; they both agree the meeting lasted approximately 90 minutes rather than the scheduled 30 minutes.



324 In his witness statement Mr Attoh says this:-

*“61. On 29 October 2019, I met with Ms Gladwin, informing her that I felt victimised on the grounds of my race. In paragraph 20 of the amended grounds of response, Grant Thornton state that Ms Gladwin asked for specific examples where I was victimised but that I could not provide her with any examples. This is totally untrue, the specific examples I gave included Mr Anton’s mistreatment, Mr Allen’s mistreatment and Mr Turner’s retaliatory and intimidating behaviour towards me. I mentioned that Ms Hunter had been informed about this and she could approach Ms Hunter to verify my concerns. During the meeting Ms Gladwin was more interested in what I said to Ms Cooper in that meeting rather than attempting to resolve my concerns. Ms Gladwin referred to me as a **‘bum on seat’** and that I ‘was only in the firm because’ she was on maternity leave when I was employed. She further stated that ‘someone like you would not have been employed if I was around during your interview process’. Ms Gladwin did not expand on these derogatory statements that were directed at me, but I was very offended and disturbed by these statements. I refute Grant Thornton’s assertions in paragraph 52.k of the amended grounds of response where they deny Ms Gladwin’s above stated actions (and other paragraphs where the same point is made). I also mentioned that I did not feel safe in the office because people associated with Mr Anton (such as Mr Turner and Mr Allen) were being hostile towards me and were influencing my work feedback. I also expressed concerns over the way my performance was being reviewed since Mr Anton’s recommendations (i.e. I was concerned that there was a concerted effort from Grant Thornton to keep subjecting me to performance improvement plans) because I was receiving positive feedback from colleagues. Ms Gladwin said she would discuss these concerns with Ms Hunter.*

62. I had a catch up with Avtar Sohal (Mr Sohal) on 05 November 2020. I said (among other things) that I felt I was being managed out of business and would not get opportunities to progress at Grant Thornton if I continued working for them. I also said that I believed that there was a campaign of work intimidation against me instigated by Mr Anton, Mr Turner and those affiliated with them. I can see that Mr Sohal e-mailed Ms Cooper later that day about this discussion [279].”

[Our emphasis]

325 Ms Gladwin denies that any mention of race was made. Her account in her witness statement was thus :-



“18. At some point during our discussion, the Claimant raised that he did not feel safe in the office and that he felt there was a thin line between what he was feeling in the office and ‘physical aggression’. He also mentioned that he could not work late in the office as he felt he would have to be looking over his shoulder. This was one of the reasons why our meeting ran on longer than anticipated, because I was trying to obtain more information from the Claimant on these points given the severity of what he was raising with me.

19. Allegations like these are to be taken very seriously and I spent approximately 30 minutes talking to the Claimant about this, explaining my concern and trying to understand what he meant by these comments. Unfortunately, despite my many attempts, the Claimant did not provide me with any detail about who he believed to be threatening him, or the situations he was referring to. I expressed my concern about what he was saying and that I did not want anyone in the Respondent to feel this way, but that I could not do anything specific without any actual allegations/incidents to look into.

20. The Claimant refused to provide any names or details of incidents and I felt like we were going in circles a bit by this point. However, he did state that he wouldn’t give any specifics until the ‘right time’ when he had the ‘right platform’. I asked what the Claimant meant when he said the ‘right platform’, but he would not tell me. I offered the Claimant the opportunity for me to put him in touch with somebody outside of the Audit team to speak to if that would make him more comfortable, but he did not take me up on this offer.

21. It seemed very peculiar to me to raise such a serious issue and then not provide any detail as it meant the Respondent was completely unable to investigate what had taken place in order to prevent it from continuing, if in fact it was found that there was anything untoward taking place.

...

27. Following my discussion with the Claimant I spoke with Clare Hunter to keep her in the loop as the Claimant’s People Manager. I wanted her to be aware of what the Claimant had raised, albeit with no detail provided, so that this was on her radar too. I also spoke with Dan Holland, People Advisory Adviser in the People and Culture team, to discuss how to respond to the Claimant’s comments around not feeling safe in the office.”

326 Ms Gladwin told us that having asked Mr Attoh to provide examples of those matters and him not having done so that was the reason why no notes were



made. That does not address her failure to record what had been discussed or Mr Attoh's alleged failure to provide that detail.

327 Ms Gladwin subsequently followed up their discussion on 13 November 2019 [293-294] by emailing Mr Attoh expressing her concern that Mr Attoh had stated he did not feel safe in the Birmingham office:-

"This is an allegation that the firm takes seriously, however as discussed I will need you to provide specific examples of events or names of individuals that are causing you this distress to take this further. I have also attached copy of the grievance policy if you wish to raise this formally' Again however. you will need to provide specific facts for this to be taken further."

328 Ms Gladwin provided him with a further copy of GT's Grievance Policy as well as Occupational Health FAQs in case Mr Attoh felt Occupational Health would be of benefit for him and a wide range of support that the firm offered and also directed him to an intranet page.

329 He replied on 17 November:-

"Thanks for your email below.

I have been treated with such viciousness and cruelty that the less I speak about it, the better for my own sanity and state of mind.

I have not been treated as a colleague and it feels like I have no voice. The treatment meted out to me for raising as issue I considered unjust beggars belief.

I am on leave for the next two weeks to deal with a family related situation and not in a position to say anymore at the moment."

330 That in our view supports her account that he provided no details at the meeting. In contrast Mr Attoh told us he provided that detail. Her email, Mr Attoh's failure in his response to contradict her assertion he had no provided details or to provide that detail leads us to conclude he did not and we should prefer her account.



- 331 Mr Attoh also alleged that he told Ms Gladwin that the treatment he was complaining about was due to his race. He suggested to us Ms Goodwin should have inferred these were race issues and bullying in the audit department in Birmingham because in turn he referred this to Ms Cooper who worked in London and outside of audit. That suggestion does not address whether he actually raised the issue of race or not. Ms Goodwin clearly identified bullying was being raised but not race.
- 332 We find had he done so he would have corrected her in his response. Whilst he sought to explain that by saying he could not raise those issues that is contradicted by him feeling able to raise those issues beforehand with Ms Cooper and other issues both before and afterwards with Mr Coates (both of which were acted upon). If he felt that was so he could have raised those matters with his professional body. He did not. As we say at various points above Mr Attoh's own account was that he did not raise race specifically and that is also supported by Ms Cooper and Mr Sohal's evidence both at the time and subsequently.
- 333 The point was directly put to Mr Attoh that he did not allege race discrimination to Ms Goodwin. He accepted he did not do so directly and that should have been inferred because he had mentioned to Ms Cooper that he had been racially targeted. He was asked again and accepted he did not mention race discrimination to Ms Gladwin.
- 334 That aside he suggested Ms Goodwin should have draw an inference from his discussion with Ms Cooper is based on assumption he made as to what she had been told by Mr Munton. It was for Mr Attoh to have told her that. One of our concerns about his evidence is that Mr Attoh repeatedly made assumptions without any evidential basis for them as to discussions that had taken place or the motivation of individuals for their actions.
- 335 In addition to the way his claims were put and despite what he accepted in cross examination the way he put questions suggested he had told her. That



he persisted with attempting to make those assertions does him no credit and that and the various other points we make concerning his reliability as a witness, including his failure to raise issues at the time leads us to place little weight on his evidence when not supported elsewhere. That is reinforced by the view we came to concerning what he told us about only having concluded he was being discriminated against after the event. We accept he retrospectively reflected on matters and came to that view but based on our concerns as to Mr Attoh's recollection find that was based on him linking matters or events when there was no such incident or link to be made. The following incident is illustrative.

- 336 One of the other matters from which it is suggested race was mentioned or could be inferred was Ms Gladwin's alleged use of the *phrase 'bums on seats'* in her October meeting with Mr Attoh. In an email she sent on 13 February 2020 to all the Birmingham Commercial Audit team under the subject '*Recruitment update - Commercial in confidence*' [347]:-

"Just a plea from me - we still have vacancies open at AMIM/SM levels. and Matt has recently posted about these on LinkedIn. To boost awareness within our networks. can I ask that you all share this on your LinkedIn feeds too so that we reach a wider audience (and thank you to those who have already shared!)."

*As you will be aware. we have had vacancies open for a while now; the recruitment market is very quiet so things are unfortunately moving slowly. Matt and I receive a number of CVs each week. but I am keen that we bring in the right people and not just "**bums on seats**" so we obviously don't bring them all forward for interview. ..."*

(Our emphasis)

- 337 GT asserts that the first time that allegation was referred to was in Mr Attoh's claim form [15] and was not specifically raised as a grievance during his employment. We are mindful that could indicate that was a regular phrase she used but the lack of any contemporaneous reference to its use in the form of a complaint or otherwise, particularly in the context appertaining at the time (Mr Attoh's contact with Ms Cooper, and the involvement of Mr Sohal and Ms



Gladwin) lead us to conclude that she did not use that phrase at the time. We find it is more likely that given Mr Attoh told us he had not realised there was discrimination at the time and only came to that view later, that this was one such instance. We find that the phrase "*bum on seat*" was not said on 29 October and it was only after the receipt of the February email by him that Mr Attoh made that inference and only later imputed the email content to the earlier meeting.

338 Further had Ms Gladwin treated Mr Attoh in the way he now claims having already raised race discrimination to Ms Cooper we find he would have reverted to Ms Cooper to not only complain that had not been addressed but about Ms Gladwin's conduct also.

339 Similarly he was aware of the grievance procedure and could and should have raised Ms Goodwin's behaviour via that route. He did not.

340 With regards to Mr Sohal whom we address at (295) had Ms Goodwin's conduct been an issue we find Mr Attoh would have raised it with Mr Sohal in the same way he raised other issues. He did not. We address above where Mr Attoh accused Ms Cooper and Mr Sohal of racist behaviour before retracting this, only to make the accusation again (see (311)). Whilst he remained employed Mr Attoh relied heavily on Mr Sohal and sought that Mr Sohal accompany him to meetings and challenged this when this was refused.

341 We find the way Ms Goodwin dealt with the meeting and tried to follow up after it (sending a copy of GT's grievance procedure and inviting Mr Attoh to provide detail of his complaints) was a genuine attempt to elicit that information and support him. We find her behaviour was in no sense connected to race, she would have treated any individual in the same way. In any event we find that the disputed events did not occur as Mr Attoh alleged.



342 Mr Attoh also challenges Ms Gladwin's later involvement in other issues. He asserts she was trying to manage him out of the business. We address those matters below; the complaint about Mr Garcia at (362 and 402), GT's refusal of his request for a sabbatical at (390) and his performance management in a few paragraphs time and again at various other points including (443 & 511). In each instance we reject the assertions made by Mr Attoh.

CONTINUATION OF INFORMAL PIP IN LATE 2019 & EARLY 2020

343 On 7 November 2019 there was a further catch up between Ms Hunter and Mr Attoh [281-282]. Again, had the incidents Mr Attoh says had occurred around that time he could and we find would have raised them with Hunter. He did not. Instead in her note of the meeting that she emailed to him and copied to Dan Holland the same day merely stated:-

"You mentioned that you still have some matters which you are in the process of following up with HR and you now have a contact person who you intend to call in the near future. You will let me know if there is anything I need to follow up, especially in the weeks when you are away from work."

344 Her note of the meeting on 7 November 2019 also set out her rationale for extending the PIP:-

"... you have a significant amount of time away from work during the coming months, as a result of compassionate/unpaid leave, annual leave at Christmas and training. 12 working weeks would therefore result in the plan running from 11 November 2019 to 27 March 2020. We looked at your Retain and confirmed that this should give you the opportunity to act as overall in-charge on at least three audits; Arvin, Peak Gen and Intercity. We discussed feedback received to date and noted that there were some positives in your feedback from Avingtrans in July, which demonstrate some progress against goals. It hadn't been possible to demonstrate progress against all goals on this job because of the way it was structured, e.g. it wasn't possible for you to control the Audit Findings report because you were not the overall in-charge. I reiterated the importance of getting feedback on the other jobs you had worked on during this period — most notably Concentra and Intercity — so that we have a full picture of your performance, the aim being to show consistent progress against the goals. During the new performance plan, you should share your goals with assignment



managers and ask them to give feedback directly against each goal, so that we can make sure the feedback you are getting is specific and relevant. Agreed that the feedback didn't just have to be limited to the goals in the plan and that you could also collect feedback to demonstrate other areas of strength, an example being client relationships.”

345 Ms Hunter then sent the revised PIP to him [283-284]. It was to commence on his return to the office on 11 November 2019 and was to run for 12 weeks (not including the Christmas closure) ending on 27 March 2020. For the first six weeks of this she would meet with Mr Attoh bi-weekly to discuss feedback.

346 We find the way Ms Hunter dealt with that was again no less than exemplary. She had clearly considered the effect his time away from work in the upcoming months and the jobs he was scheduled to be working on to ensure he could demonstrate the required improvement and coached him on how he could do so.

347 Mr Attoh suggests placing him on another PIP caused him strain and that the PIPs were used by GT to push non-white members of staff out of the business.

348 Despite that assertion and the decision having been taken by Ms Hunter to place him on that further informal PIP Mr Attoh specifically confirmed before us that he was not alleging discrimination on Ms Hunter's part. Absent that he could not explain how that placing him on a PIP again could be an act of discrimination on the part of GT (or for that matter Ms Hunter).

349 Mr Sohal told us that in his time as a manager he had had to use between 5 and 10 PIPs. He told us $\frac{3}{4}$ never progressed from the informal stage but of those that became formal $\frac{2}{3}$ of them resulted in termination. Hence, 1 in 6 (16%) of the staff who he managed who were placed on PIPs had their employment terminated.

350 This issue forms part of a wider complaint about the repeated and protracted use of PIPs (UC/LFT/CUDL5 & VDet1) that we address in a few paragraphs



time. Whilst that may have caused Mt Attoh strain and Mr Attoh disagrees with the conclusion Ms Hunter came to we have found that she and GT were entitled to have reached that conclusion and steps needed to be undertaken to remedy the performance issues that underlay that. It is not acceptable for an employee who was underperforming to continue to do so without steps being taken. At that point Mr Attoh had not been employed for two years, good practice aside, had GT dismissed him at that point he would not ordinarily be entitled to claim unfair dismissal. Ms Hunter could have also sought to escalate the PIP at that point. She did not. Instead she undertook what we consider to be a more proportionate option, to extend the informal PIP.

351 As we found at (126) that Mr Attoh had told Ms Kubie in September 2019 that Ms Hunter was supporting him. We find that in the circumstances that Ms Hunter treated him in the way that she would have treated any employee. If anything we find it is more likely than not that Mr Attoh was treated more favourably than others who were underperforming. We heard that GT's general practice if an informal PIP had failed was to progress to a formal PIP. Other less skilled managers may not have addressed matters in the exemplary way we find that she did. We find that race played no part in the decision to place Mr Attoh on another PIP at that point.

352 Whilst the placing of Mr Attoh on a further informal PIP postdates Mr Attoh speaking to Ms Cooper (PA1) of the dates referred to by Mr Attoh in relation to UC/LFT/CUDL5 & VDet1 30 May 2019, 28 October 2019, 30 April 2020 he accepted that only the events of 30 April 2020 post-dated the first protected act (the discussion with Ms Cooper) and thus could have been influenced by it. Mr Attoh did not challenge or ask Ms Hunter if she was aware of the discussion with Ms Cooper. For the reasons we give below (432) we find Ms Hunter was not aware until 5 March 2020 that he had reached out to GT's BAME network, only the decision to place him on a formal PIP which we find was communicated to him on 19 March 2020 was after that date. Accordingly,



we find the earlier decisions could in no sense have been influenced by the protected act or indeed Mr Attoh's race, they were instead based on what we find were legitimate concerns GT had about Mr Attoh's performance. We address the 'formalisation' of the PIP at various points below (443 & 511 amongst others).

353 Following the meeting on 7 November 2019 Mr Attoh then had 2 weeks compassionate leave during the last 2 weeks in November.

354 In December 2019, Mr Attoh attended a four day "Confidence for In-Charges" course at GT's training centre at Bradenham. This course was ordinarily attended by Audit Trainees so experienced employees, such as Mr Attoh, would not normally be granted time off to attend this, however, Mr Attoh had expressed a strong desire to attend he was granted the time off to do so. GT points to him feeling the need to attend a course designed for trainees as further support for him not performing at the required level.

355 On 21 January 2020 Ms Hunter and Mr Attoh had another catch up. Ms Hunter emailed her note of that meeting the following Monday 27 January [331-332].

356 They had a further catch-up on Thursday 6 February 2020 during which they discussed feed back on the Peak Gen audit. Ms Hunter told us she had told Mr Attoh that he appeared to have found a strategy to manage the team better which was positive and she stated that the client relationship was excellent and he had demonstrated an ability to take control of the financial statements which linked to his PIP goals. As to negatives she identified the audit progressed considerably slower than she would have expected and thus her interim performance review "check-in" would remain as 'Below Expectations' because whilst the feedback demonstrated that he was progressing against some of his goals, overall, he still was not meeting the level of his peers.



357 During that discussion Mr Attoh raised that his salary had not increased since he joined GT in July 2018. Ms Hunter explained that it was not GT's policy to give pay rises to employees rated as 'Below Expectations'. She told us he asked her to follow this up with senior management.

358 Mr Attoh also asked for a copy of GT's sabbatical policies and commented that he might want to take unpaid leave when the busy season was over because he was feeling some stress due to the PIP. Ms Hunter told us given he had mentioned that she referred him to the Employee Assistance Programme ('EAP') that GT had in place.

359 Ms Hunter emailed her note of that meeting the following day Friday 7 February 2020 [342-343].

360 It was not in dispute that in the mid year performance review check-in [305-306] that amongst other matters Ms Hunter stated that Mr Attoh's performance remained 'below expectations' but that she acknowledged that he had *'made some progress ... against these goals ... albeit there are still some developmental points identified'*.

361 We return to the request Mr Attoh made for sabbatical below (390) but first need to address two other matters.

362 Mr Attoh told us that on Sunday 9 February 2020 he received feedback on an audit he had worked on for a client ("Concentra") in approximately September to December 2019 [308]. That feedback was from a manager, Mr Garcia and it included a number of development points.

363 On Monday 10 February 2020 Mr Attoh states he discovered that :-

363.1 his login credentials on GT's IT system had been breached and or manipulated by Mr Garcia; and



363.2 a client file [this relates to Concentra [JC/28]] had been accessed by Mr Garcia, and that Mr Garcia had unlawfully signed this off using his credentials.

364 Mr Attoh told us this came about because having tried to access the file his access was denied using his own log-in and pin. He was able to access this using a departmental 'admin' access and alleges as a result he realised multiple work papers had been falsely signed using his name/credentials during times when he was on holiday. He told Mr Sohal about his concerns and Mr Sohal ran a diagnostic check on Mr Attoh's laptop that identified that Mr Garcia had done that and that had occurred on around 31 December 2019, 4 January 2020 and possibly later, in January 2020.

365 On 13 February 2020, Mr Attoh notified GT that his log-in credentials had been breached and that a client file had been accessed and unlawfully signed off using his credentials. Mr Attoh states he informed Ms Hunter of this and she confirmed that the IT breach happened and he would be contacted during the investigation into the incidents. The allegation concerning that log-in and IT breach formed the basis of the protected disclosure (PID). Whilst GT does not accept that protected disclosure qualifies for protection it accepts Mr Attoh reported information. The protected disclosure is argued on two bases:-

365.1 A criminal offence had been, was being or was likely to be committed and

365.2 That a person had failed, was failing or was likely to fail to comply with any legal obligation.

366 Also on 13 February 2020, Ms Hunter received an email from Mr Holland asking her to ignore Mr Garcia's feedback for Mr Attoh for the time-being because of the log-in issue [350]. She later did take that into account. It is therefore clear that from 13 February she and Mr Holland were aware of the alleged protected disclosure.



367 We return to the issue concerning Mr Garcia at (401). Before we do so we need to address an issue that arose between 10 & 13 February 2020.

MS TAKHAR (UC/LFT/CUDL13 & VDET5)

368 In the afternoon of 12 February 2020 Abbie Bentley (One of GT's Central Resource & Capacity Advisors) emailed Ms Hunter:-

“Har-Charan [Takhar] has just spoken to me and said she has asked her people manager Ryan [Mediran] to be pulled of Acivico in May because Dodzi is the in charge and she had a misunderstanding with him on another job, I have told her to not worry about it too much and to hold fire and we will sort something for her. I thought I should inform you of this due to the meeting you have planning in for him and HR.”
[344]

369 Ms Takhar was an “A1” namely a first year associate. Ms Hunter told us that it was it was very unusual for a first year Associate to make any request to pick and choose who they worked alongside or under.

370 GT's witnesses repeatedly argued before us that whilst feedback was sought on a 360° basis, feedback from junior members of staff i.e. those that reported to the person seeking feedback were generally given little weight (as for understandable reasons junior members of staff wished to progress and did not wish to raise negative matters with their seniors on the basis that they might perceive it as damaging their career), negative feedback was thus rare and any feedback was almost exclusively positive.

371 That evening Ms Hunter emailed Mr Mediran (Ms Takhar's manager):-

“Abbie has made me aware that Har-Charan has requested not to work with Dodzi again after a misunderstanding she had with him on another job (probably Peak Gen).

Do you know any of the details of what the misunderstanding was about?

As you may know. Dodzi is going through an informal performance plan at the moment, so I just want to get to the bottom of what's happened in case there are relevant development points”



372 He replied later that evening:-

“She brought up the issue with me yesterday but she didn’t specifically mentioned any issue. She told me that she thinks it will not be ok if she still work with Dodzi (so something is wrong). I have emailed her again to ask for specific reason. I’m just bust with jobs at the moment but it is on my radar too.” [345-346]

and Mr Mediran concluded by promising to update Ms Hunter.

373 The next morning (13 February 2020) Ms Hunter responded

“Hi Ryan

Thanks for following it up. it does sound like something is wrong as it’s quite unusual for an A1 to say they don’t want to work with an in-charge. I’m happy to speak to her about it if she doesn’t mind discussing with me.”

374 Ms Hunter told us [CH/82] she raised that with Mr Attoh on 13 February 2020 and explained to him that concerns had been raised in respect of his performance and that she felt it would be a good idea for him to obtain upwards feedback from Har-Charan Takhar.

375 Mr Attoh alleges that Ms Hunter forced him to request the details from Ms Takhar directly and that the way Ms Hunter had relayed Ms Takhar’s complaint was that he had behaved inappropriately towards Ms Takhar. He told us [DA/84] *“I was in disbelief hearing this because I know from my interactions with Ms Takhar that I treated her well”*. He states it was thus wholly inappropriate for him to speak to Ms Takhar direct.

376 Mr Attoh states that made him worry and the delay in Ms Hunter then giving him feedback from Ms Takhar caused him considerable upset.

377 Mr Mediran responded to Ms Hunter the following afternoon (14 February):-

“I talked to Har-Charan yesterday and noted the following points with regards to her issue working with Dodzie [sic].

...



- *There are some miscommunication issue (eg. explaining what tasks to do). Most of it were not explained in the correct manner and as such Har-Charan finds it difficult to do.*
- *Expectation to what is done is not what is instructed to her.*
- *Dodzi gave her an unmanageable workload (too much). She is happy to do overtime but it feels quite a lot where she thinks some of it should be work that Dodzi should be responsible for. Even outside of her booking, she was asked to pick things, she's ok to pick it but she feels overload as Dodzi gave her a large list of things to do.*

As such, the job didn't work well and as such she thought it will be helpful if she will no longer work with him in the future.” [351]

378 Mr Attoh suggests that during the meeting with Ms Hunter on 13th of February she would have seen how worried he was about the allegation concerning Ms Takhar. When this was put directly to her she repeatedly indicated that she was not aware of that, did not consider it to be a particular concern as it was not an allegation of misconduct. She did accept that by the end of the meeting he was showing signs of concern but by that point the issue of the IT breach had been raised.

379 Mr Attoh also states he believed that by that point GT was trying to gather information to get rid of him and hence his concern. He thus complains about the delay in her feeding back the details she received from Mr Mediran on 14 February. When this was put to her she repeated that there was no allegation of misconduct and she wished to have a verbal discussion with him about that, there were difficulties in them meeting up and as a result they could not meet until 28 February.

380 It is thus correct to say that they did not meet for two weeks but Ms Hunter had of course asked Mr Attoh to speak to Ms Takhar direct and he had decided not to comply with that request. Nor does he allege that he told Ms Hunter that he did not feel it was appropriate for him to speak to Ms Takhar or



that it was a concern. Instead he expressly put to her that she should have inferred that the way he was presenting at the meeting.

381 If that was a concern for him he should have told Ms Hunter of that and had he done so we find that she would have addressed that quickly and sympathetically. Whilst Mr Attoh impliedly complains about her conduct now he did not do so at the time.

382 Ms Hunter made a note of the catch up phone call on 28 February [368]. That call also addressed the outcome of his sabbatical request that we deal with below (390), the feedback from Mr Garcia, his training needs and other matters. As to Ms Takhar's feedback she said this :-

“Har-Charan had commented that she thought there was some miscommunication on the job and lack of clarity in explaining work tasks. She also felt that tasks could have been more realistically matched to the length of the job booking. You expressed surprised at the feedback and pointed out that you were not responsible for the length of the Retain booking and that Har—Charan had not been put under any particular pressure to complete tasks on the job. You expressed concern that she could have been influenced in her feedback by someone else.” [368-369]

383 She signed off stating she hoped that was an accurate reflection of the meeting and asked Mr Attoh to confirm if there was anything she had omitted. He responded later that day thanking her and not raising any omissions [368].

384 We find that Ms Hunter did not as alleged refuse to disclose the details of the Mr Attoh's alleged misconduct. No misconduct was alleged. That was a misunderstanding on Mr Attoh's part. We find that had Mr Attoh considered that issue objectively he would have realised that it was not appropriate for him to speak to Ms Takhar if there was misconduct issue and Ms Hunter would not have directed him to do so. Instead, she specifically asked him to speak to Ms Takhar and she did so because that she understood it to be an issue related to feedback. Given the PIP and Ms Hunter's request that he



speak to Mr Takhar he too should have formed that view had he considered matters objectively.

385 Nor as we say do we find that Ms Hunter refused to disclose the details of that issue to Mr Attoh. Instead she asked Mr Attoh to speak to Ms Takhar himself. Nor did she force him to do so. This was a request. He alleged before us that he told Ms Hunter that it was inappropriate for him to comply with it. There was thus no insistence on her part in the face of an objection from him. Nor does he suggest that her words or manner were such that he was being forced to do so.

386 Given Mr Attoh accepted that Miss Hunter was a manager whom he got on well with, appears to have respected and whom he had not sought to be changed, he did not explain why if there was an allegation of inappropriate behaviour from Ms Takhar towards him he believed that Ms Hunter would have asked him to speak to her direct or how the manner in which that was done was to force him to do something he thought was inappropriate

387 Similarly with regards to the delay Mr Attoh was given the opportunity to speak to Ms Takhar direct, chose not to and thus if he was worried by these events that was at least in part of his own making. Nor did he raise this as an issue when he responded to Ms Hunter on 28 February.

388 That relates to a deeper issue, when Mr Attoh was asked to undertake certain action by managers to address development points or issues he did not do so.

389 We find in relation to this incident that at best he misheard what was being said, did not check, did not consider if the view he came to was inconsistent with what he was being asked to do and then closed his mind and considered this was discrimination on the part of a manager he had considerable respect for. Those matters and others, such as that concerning Mr Allen thus led us to call into doubt the views he came to and perception of events generally.



REFUSAL OF MR ATTOH'S SABBATICAL REQUEST

390 On Sunday 23 February 2020 Mr Attoh made a request for a sabbatical, namely 12 weeks unpaid leave from 11 May 2020 until 31 July 2020 [354-356]. Prior to its submission he forwarded it to Ms Hunter:

"Please find attached for your initial review and consideration prior to submission.

I am happy to move the start date to any date in May or beginning of June if that best suits the firm.

Please let me know your thoughts on this and if the form has been correctly completed.

Counting on your assistance with this." [358]

391 It forms the basis of not only a number of the complaints before us (UC/LFT/CUDL16, VDet8 & PDet2) but also part of Mr Attoh's grievance of 16 July 2020 [533].

392 At 9:16 the next working day (Monday) Ms Hunter made enquiries of Ms Gladwin and GT's "People Advisory" (part of its HR team) as she was unsure how best to proceed [358]. Whilst Ms Gladwin responded that this would need to be reviewed by Responsible Individuals ('RIs')⁶⁹ based on business needs she also indicated the "strain" issue Mr Attoh had raised might need to be addressed separately [457]. That was superseded by the response received that evening from Ms Sophie Kramer, a People Advisory Manager:-

"I've checked on this with my team and we wouldn't support someone's application, when they're being performance managed/BE rated. it is worth picking up, as you've already mentioned Natalie, regarding the 'strain' point and what we can be doing to support." [457]

⁶⁹ That is a term for the Directors/Partners in the Audit team.



393 Ms Hunter had a catch up call with Mr Attoh relating to his performance plan that Friday, 28 February. In an emailed note summarising the contents of her catch up call with Mr Attoh earlier that day Ms Hunter recorded:-

“Sabbatical request: You sent me your application for a sabbatical this week and I forwarded to the RIs for consideration next time they meet. However I have since been made aware by HR that we cannot normally support sabbatical applications when people are going through a performance management process. You noted that if it is not possible to have a sabbatical, you may need to reconsider whether you stay at the firm, due to the strain you feel you are under. To let me know whether there is anything other than the sabbatical which the firm can do to support you.” [368]

394 In his witness statement Mr Attoh accepts he was told that the sabbatical request had been refused during that meeting.

395 The first time this was alleged to be race discrimination is in the further and better particulars (see (424)).

396 Whilst Mr Attoh states he was stressed and he needed this to revitalise we were not referred to medical evidence that he was suffering from stress at time. Nor had he taken up suggestions to get in contact with GT’s occupational health or the other support services offered including GTs employee assistance programme, the previous Autumn.

397 We find this was refused because Mr Attoh was performing below expectations and the further informal PIP was ongoing. We accept GTs evidence that staff who were in a PIP, were not eligible for a sabbatical. That was not challenged by Mr Attoh. We find he was treated in accordance with GT’s sabbatical leave procedures. We find Mr Attoh was treated in the same way as any other member of staff not of his race who was seeking a sabbatical and on a PIP (whether formal or informal) would have been and thus was not treated less favourably than that comparator.

398 Further, we find GT has shown that the reason the sabbatical was refused was because GT was acting in accordance with its policy and there was a



reasonable basis underlying that policy. It had a reasonable and proper cause for acting as it did.

399 Again, Ms Hunter was not challenged with regards to whether she was aware of the protected act at that point. We find that she did not become aware that he had been in contact with the BAME network until 5 March 2020 (see (352 & 432)) and Mr Attoh had made any direct reference to a claim for race discrimination until 19 March (see (451)). In any event Mr Attoh has not shown any link between that decision and his race or the protected act.

400 With regards to the whistleblowing aspect of this claim whilst from a temporal perspective this was being addressed the same time as the issue raised with regards to the “log in” by Mr Garcia that aside Mr Attoh has not shown this is in any way linked to the protected disclosure. Even if he had, for the reasons we give above, we find this was refused because it was GT’s policy to do so; Mr Attoh’s race, protected act and disclosure played no part in that.

401 Whilst Mr Attoh wanted to “revitalise” given he argues elsewhere that the length of time the various PIPs lasted was in itself the cause of stress he does not engage with how taking a three-month sabbatical would not have extended that yet further or, given many of the issues that GT was raising with regards to the performance related to gaining practical experience on the job, how taking an extended break away from the business would not cause potential issues in that regard.

THE COMPLAINTS CONCERNING MR GARCIA (UC/LFT/CUDL14 & VDET6; UC/LFT/CUDL15, VDET7 & PDET1; UC/LFT/CUDL21, VDET13 & PDET7)

402 Mr Garcia was a manager who Mr Attoh had worked with on an audit for a client Concentra, between approximately September and December 2019. Mr Attoh told us that on Sunday 9 February 2020 Mr Garcia forwarded feedback on that audit to him [308]. It included a number of development points.



- 403 Mr Attoh's subsequent complaint about an IT breach by Mr Garcia's is the protected disclosure he relies upon. We address our conclusion on whether this constituted a disclosure that qualified for protection below (488).
- 404 Two 'detriment' (in the wider sense of detriment) complaints centre around Mr Garcia:-
- 404.1 What Mr Attoh described as the unfair performance feedback he received from Mr Garcia in relation to that audit assignment, (UC/LFT/CUDL14 & VDet6) and
- 404.2 GT not adequately dealing with an IT breach by Mr Garcia that Mr Attoh was the victim of (UC/LFT/CUDL15, VDet7 & PDet1) and specifically:-
- 404.2.1 not updating Mr Attoh during the investigation; and
- 404.2.2 not providing him with a detailed outcome of the investigation and the sanctions that were imposed.

Unfair performance feedback from Mr Garcia Batres

- 405 Reading the feedback from Mr Garcia as a whole it identified a lot of positives:-

"... Dodzi was Instrumental in getting this job completed. However, there are some opportunities for professional development." Yet "Dodzi's work was not completed to satisfaction" [312] "I would have expected someone at his same level to carry out the audit to the appropriate level of quality based on work performed by peers at his level.

Dodzi's understanding of GT methodology could improve by attending the monthly audit technical update calls."

- 406 It also raised some development points:-

"From the time I have spent working with Dodzi, I noticed that there are a couple of things that limit him from performing as his full potential. The biggest one being his use of Excel and GT tools. He has been with



the firm for over a year now and I would expect his understanding of our tools to be better. Compared to his peers, Dodzi's knowledge of these tools (applan, Caseware, and to a lesser extent voyager) is below expectations and requires improvement. I have found that his lack of understanding of these tools makes him slower and less efficient at the job compared to peers and even those at a level below him. A strong opportunity for growth for Dodzi would be to better familiarize himself with these tools.

Further, I have also suggested Dodzi take some excel courses to enhance his excel skills as these are also below expectations and prevent him from producing quality work. This is reflected in his workpapers as they are hard to follow and understand the testing being performed (I can recall the revenue working papers which required a significant level of rework to achieve an appropriate presentation for the RI to understand the work performed). From talking to Dodzi. it is clear he understands what needs to be performed but his knowledge ~ does not transfer to the work he produces. I believe this then creates a ripple effect on all subsequent aspects of the job as he has less time to get organised on tasks to complete. guide the team, solve problems arising during the job, manage the client and the engagement. During my final review of the file, I found a "work plan" attached in concluding which appeared to track progress on WPS. This was never shared with me and upon performance discussion with Dodzi. he noted how this was something that the team updated in "teams" and I had access to it. I had mentioned to Dodzi during planning that if the team used a share site to prepare a plan I would need it to be sent to me to keep me updated on what is going on and although I was given access to this plan I was never made aware through emails or calls to walk through progress on the engagement. it is expected for the in-charge to communicate with the manager on progress and status of work being performed. I recommend Dodzi to play to his strengths and understand his weaknesses/limitations by delegating those tasks to team members who are more proficient in those areas. He then could pick up on other areas of the audit." [313]

- 407 Whilst Mr Attoh may have considered that unfair they are similar points to those raised elsewhere. As part of the PIP Mr Garcia was being asked to give feedback and thus it was not unsolicited. The feedback not only identified development issues but how these could be addressed but also positives. Rather than engage with the development issues (which raised similar issue to those raised elsewhere) Mr Attoh viewed them as unfair. Despite that and reminders from the panel he did not challenge the basis for his assertion it



was unfair in cross examination and instead focussed on the second “log in” issue.

408 We return to our findings on this point (430) after we have addressed those points.

GT not adequately dealing with the IT breach (UC/LFT/CUDL15, VDet7 & PDet1 & UC/LFT/CUDL21, VDet13 & PDet7)

409 As we say this complaint was twofold :-

409.1 not updating Mr Attoh during the investigation; and

409.2 not providing Mr Attoh with a detailed outcome of the investigation (and the sanctions that were imposed)

410 As a further example of how Mr Attoh’s complaints have expanded over time the first aspect was in his claim form the second was not.

411 Mr Coates explained his involvement and the background to this complaint thus:-

“28. On or around 13 February 2020, Clare Hunter came to me following a conversation that she had with the Claimant where he had highlighted that someone had re-set his password in the Concentra audit file. Clare Hunter had checked the file and it looked to have been done by Wilder Garcia Batres, the Manager on the Concentra engagement. I thanked Clare Hunter for raising it with me and confirmed that I would progress it.

29. Wilder Garcia Batres was also in office that day so I immediately asked him to come to a closed office and talk me through what had been raised. Wilder Garcia Batres did not deny what had taken place and accepted he had re-set people’s passwords, in order to expedite his completion of certain aspects of the documentation on the file over the Christmas 2019 and New Year 2020 period. He confirmed that he had not added any new work to the file in the person’s name, but was merely trying to get to stage to sign off and close down. As he was doing this over the Christmas and New Year period, he explained that he felt it was the quickest way to do this as we were already late against the deadline at this point.



30. *I explained to Wilder Garcia Batres why that was an issue and how it was effectively impersonating other people on file, and he understood the risks and why it was wrong.*

31. *I felt that the right and proper thing to do was to run a formal HR process about this and asked Natalie Gladwin, Director, to deal with it. I asked Natalie Gladwin because she dealt with a number of people related matters in the Audit department. As was normal process in these situations, Natalie Gladwin also obtained advice on this approach from our HR department.”*

412 Ms Gladwin was thus tasked by Mr Coates with investigating Mr Attoh’s complaint alongside Ms Kramer a “People Advisory” (HR) manager. They met Mr Garcia on 2 March 2020 and Ms Kramer took a non-verbatim note [370]. Ms Goodwin said this in her witness statement:-

“38. Wilder Garcia Batres explained to me that over a circa three-month period he had signed off work papers that had been completed but not signed in order to complete the files and meet deadlines for reviews of the work. Prior to using other people’s log-in details, he stated that he had informed them of his intention to sign off the work so everybody was aware of what he was doing. Some employees had voluntarily provided Wilder Garcia Batres with their passwords in order to complete the files, however, Wilder Garcia Batres had not used these and had instead reset the passwords to gain access. He also confirmed that he had not amended or altered any of the work that had been undertaken by others, nor completed any work in anyone else’s name; he had just simply added any final information to the working papers and signed the work off as completed by the other person in order for him to be able to sign it off as reviewed by him prior to being submitted to the Director or Partner for final approval.

39. Wilder Garcia-Batres is employed by the Respondent’s American entity, however, has been on a secondment in the UK in order to have a different experience with a view to progressing when he returned to the USA. Wilder Garcia-Batres was placed in the Respondent’s Birmingham office because we have a lot of American clients so it was considered that it would be useful to have him in the team, which has been correct.

40. I asked whether this was a common practice in the USA, to which he explained that the process was a bit different as they could simply put a note to confirm it was complete and that this practice of resetting passwords was not uncommon. He explained that he had not



understood the issues with this practice until his People Manager, John Coates, had queried it with him.

41. In hindsight, Wilder Garcia Batres accepted that he should have used the 'sign on behalf of' function as opposed to signing the work off as the individual who had completed it.

42. At no point during our meeting did I advise Wilder Garcia Batres that the complaint had been made by the Claimant and I did not use the Claimant's reset password as a sole example.

43. On having had the allegation raised to her, Clare Hunter, had accessed the client files to initially investigate whether what the Claimant had said had been correct. As part of my investigation, I spoke with Clare Hunter and she advised me that the information on the audit files did show that Wilder Garcia Batres had logged into the file and reset the password of the Claimant."

413 The same day 2 March 2020, Mr Coates, sent an email to the whole of the Birmingham Commercial Audit team, advising that log-in and password details were not to be shared or used by anyone other than who they related to. No names were mentioned in this email [384-386].

414 Mr Coates continued in his witness statement thus:-

*"32. I am aware that Natalie Gladwin and Sophie Kramer, People Advisory Manager, met with Wilder Garcia Batres on 2 March 2020 to discuss the allegation with him (page 370 of the Bundle) and ultimately found that there was no further formal action to be taken against Wilder Garcia Batres. **There was also no evidence found to suggest that Wilder Garcia Batres's***

explanations of his actions were false, or that he had made any substantial amendments to any of the team's work, including the Claimant's.

33. Natalie Gladwin advised me of the outcome. Whilst there would be no formal action in a disciplinary sense against Wilder Garcia Batres, we did agree that his performance grading for the year was to be the lowest possible grading, which ultimately meant that he would receive no bonus as part of the normal annual grading process later that year. This was considered a sufficient reprimand on Wilder Garcia Batres for his actions. This approach was also agreed with the Partners in the Commercial Audit department at the time.



34. As the Claimant had raised the allegation, I wanted to make sure that the Claimant was aware that we had listened to his concern, acted upon it and come to what we considered to be an appropriate resolution. Therefore, on the evening of 2 March 2020, I sent an email to the Commercial Audit team in Birmingham advising that we had become aware of password re-setting/sharing and reminding them that this was completely unacceptable (pages 385-386 of the Bundle).

35. I also spoke to the Head of Audit for the UK, Fiona Baldwin about the situation given what we considered to be the seriousness of the situation and the communications we made to the department.

36. Despite there being no obligation to provide the Claimant with any form of outcome, as he had not raised his concerns under a formal process, such as a grievance, I emailed the Claimant, copying in Fiona Baldwin, on 9 March 2020 to personally thank him for having raised the concern with his People Manager as it demonstrated a high level of integrity (page 385 of the Bundle). It also demonstrated a significantly improved relationship between the Claimant and his new People Manager as he felt comfortable enough to raise it with her.

37. Fiona Baldwin responded to the email to the Claimant reiterating my comments and advising the Claimant that he had done the right thing (page 384 of the Bundle).

38. At that point, I considered this matter to be closed.”

[our emphasis]

415 Mr Coates’s email of 9 March to Mr Attoh included as part of the chain his earlier email of 2 March. It said this:-

“As you would have seen below, the recent concerns that you raised to Clare with reference to the inappropriate management of passwords on Voyager files have been listened to, and acted upon accordingly. It’s important that we are encouraging an environment where every single one of us is comfortable in doing the right thing. and calling out behaviour that we believe does not meet this standard. I wanted to thank you for demonstrating a high level of integrity in raising this matter with your people manager.

I told Fiona this story last week, and she was impressed with your behaviours demonstrated in this instance. and I’m sure will also thank you directly shortly.

All the best and speak soon.” [385]



416 Mr Attoh responded the following day to thank both Mr Coates and Ms Baldwin [384]. Later that day Ms Baldwin (who Mr Coates identified was the Head of Audit for the UK,) also emailed Mr Attoh:-

“Just to reiterate John’s comments - speaking up is often a difficult thing to do but you have done exactly the right thing and shown real integrity in the example below. Thank you and well done.” [385]

417 Mr Attoh complained before us not only that GT failed with regards to the matters we set out at (409) but also that he was not spoken to as part of the investigation. It is clear Ms Gladwin concluded he did not need to be:-

“44. After I felt that I had all of the information, I had a discussion with John Coates and Sophie Kramer and we came to the conclusion that it was clear that Wilder Garcia Batres’s intentions were good and honest in terms of getting the jobs completed with minimum disruption to the Audit Partner(s), and that he had genuinely not appreciated that the practices in the UK are different to those in the USA. Further, the amendments to the files were minimal and did not cause any concern, such as checking a box to confirm that an invoice had been received from a client.

45. We did consider this from a data security perspective as by logging on as someone else, the audit trail is potentially compromised and not compliant with what we want.

46. In light of this, we felt that the best approach in this instance was for John Coates, as Wilder Garcia Batres’s People Manager, to talk to him about what he had done and what the UK practices are. Also, his quality grading, which is based on audit quality, would be affected by this.

47. After I had concluded my investigation, John Coates sent an email to the Birmingham Audit Team (pages 385-386 of the Bundle) reminding them that log-in/password sharing was not acceptable as it meant there was no clear audit trail of who has done/reviewed what work. John Coates also made it clear that any further incidences of this would be dealt with under the appropriate disciplinary procedures.

48. The issue of the log-in credentials had not been raised as a grievance by the Claimant. As such, it was not dealt with under the formal grievance process which meant that I was not required to update the Claimant throughout the process and/or to provide him with a detailed outcome.



49. Further, the Claimant has raised that he feels he should have been made aware of the sanctions that were imposed, however, this is not the case as any sanctions given to an employee are confidential to that employee.”

418 Whilst Mr Attoh’s complaint before us went further than that. Mr Attoh suggested Mr Garcia had amended the documents he had lodged to place him in a poor light. Despite requests to do so Mr Attoh could not point us to where he had raised that, either at the time, at some point prior to the hearing, or indeed what the amendments were or where he had requested the original and final versions of the documents Mr Garcia had signed off. Ms Gladwin was asked twice in cross examination. She was clear on both occasions Mr Attoh did not complain his work had been work altered or that had been done to make it look poor.

419 Mr Attoh he did raise manipulation in his subsequent grievance of 22 April [433-434]. The deficiency on his part was that that was not raised before Mr Coates or Ms Gladwin and only after he had been told the outcome of the investigation. At no point did he identify before us how the data was manipulated pointing us to the documents. Those failures reflect common themes; including a failure to raise points at the time, only identifying them sometime later after matters had been investigated, by seeking to reopen them and a lack of detail of how the complaint was structured.

420 That argument represented yet another substantial change in Mr Attoh’s stance and an expansion of the complaints he was bringing not least because the nature of the allegation of bad faith against Mr Garcia increased substantially in its magnitude to that previously.

421 We find there were a series of errors on GT’s part in relation to this issue:-

421.1 Mr Coates accepted he had not checked the documents. He should have done so before coming to the conclusion he came to (see our emphasis at (414)) notwithstanding that point was not made by Mr



Attoh at the time which we find given its seriousness it should have been.

421.2 Mr Garcia was effectively subjected to a disciplinary sanction (he was precluded from receiving a pay rise and he told us his promotion prospects were also affected) without a formal disciplinary process being undertaken.

421.3 It was unclear who the decision maker was – was this Mr Coates, Ms Goodwin, Ms Kramer or some combination of them?

422 The email of 2 March aside we find GT did not update Mr Attoh during the investigation. Given the tampering of the document was not raised by Mr Attoh at the time of the original complaint nor in response to Mr Coates's email, given this was a conduct issue against Mr Garcia (and not a grievance) and Mr Garcia had accepted what he did was wrong it is understandable GT did not consider it needed to speak to Mr Attoh as part of that investigation. Mr Attoh was treated no differently to any other member of staff would have been.

423 It is not in our judgment not fair to say that Mr Attoh was not given any outcome. It should have been clear to him in our view from the two emails of 2 & 9 March that his concerns had been acknowledged and were being acted upon. As this was a conduct issue against Mr Garcia we accept that confidentiality dictated the outcome should not be shared with Mr Attoh in any further detail than it was. In that respect Mr Attoh was treated no differently to any other member of staff.

424 Mr Attoh does not address how either aspect of this complaint (UC/LFT/CUDL15, VDet7 & PDet1 & UC/LFT/CUDL21, VDet13 & PDet7) was connected to his race, it was not raised as an act of discrimination until the



further and better particulars were lodged ⁷⁰ nor does he address how it created the prescribed consequences for harassment. Whilst he assumes Mr Coates, Ms Gladwin or Ms Kramer were aware of the protected act (the conversation with Ms Cooper) Mr Attoh does not address how he suggests they were and nor did he challenge them about that. Indeed as his email demonstrated at the time he seemed happy with the outcome. It was only after he was told his PIP was to be formalised on 19 March 2020 (see (448)) and the day after he was invited in writing (21 April) to attend a formal capability meeting [454-456] that he again raised the issue as a grievance and an ethics query on 22 April 2020 [433].

425 Nor did he suggest what he should have been the outcome to the breach. When he was asked if he had been subjected to a disciplinary or similar process as a result of a complaint by a colleague if he would have been content for the outcome to have been relayed to the complainant he did not engage with the question and his answer did not address the privacy issues that flow from that. GT's witnesses were clear it was not its policy to divulge outcomes of complaints to complainants for those very reasons. We accept that was so.

426 Whilst Mr Attoh complained he was not provided with details of the outcome of the investigation, that was entirely appropriate for reasons of employee confidentiality. We consider he was treated in the same way any other individual had been. There was no evidence led before us of situations where colleagues of whatever race had been provided with details of the outcome of a disciplinary matter or investigation involving another employee.

427 It did not occur to the GT investigators during the investigation that there was an allegation that documents had been tampered with or that they were. We find the realisation first dawned on them whilst giving evidence that they

⁷⁰ Whilst these are undated they were lodged sometime between the hearing on 15 March 2021 [34-45] and the amended Grounds of Response that were dated 26 April 2021 [67-87]. The case management order that stemmed from the hearing on 15 March 2021 required them to be lodged on or before 6 April 2021.



should have addressed that. We find whilst that was a flaw they would have treated any individual in the same way. Not least because Mr Attoh had not complained about that at the time.

428 Whilst what Mr Garcia did was wrong, GT concluded the practices used in the Unites States where he trained were very different and whilst not absolving him, were mitigating factors. Likewise Mr Garcia admitted what he had done straight away which further suggested he believed that was acceptable practice. Whilst it clearly was not GT suggests he did not act in bad faith merely that he was adopting an unacceptable short cut. He was penalised by being rated below expectations and therefore had not received a pay rise since the incident. No comparators have been brought forward whose circumstances were materially the same who was treated differently to Mr Garcia.

429 Further Mr Attoh had clearly previously felt Mr Coates was someone he could trust. He had gone to him when he felt he could no longer work with Mr Anton and that was actioned without question.

430 Those matters aside the feedback provided by Mr Garcia was unchallenged by Mr Attoh in cross examination and given it was consistent with other issues raised by colleagues about Mr Attoh's work, was both positive and negative, and identified strategies to improve we find it was not unfair.

431 We find that in addition to being treated no differently to the way any member of staff would have been, viewed objectively GT's actions (which are what are the subject of these complaints) did not create the environment or circumstances required for harassment. Further, Mr Attoh had not shown Mr Garcia was aware of the discussion with Ms Cooper. We find they were not done because Mr Attoh raised issues with Ms Cooper nor because he raised this as a complaint. Instead rather than being treated detrimental having reported the incident Mr Attoh was commended for having done so.



THE REQUEST THAT MR SOHAL ACCOMPANY MR ATTOH TO PIP MEETINGS.

- 432 On 5 March 2020, Mr Attoh emailed Ms Hunter to say he had reached out to GT's BAME network and as a result requested that Mr Sohal, attend any further PIP meetings with him *"due to some of the strain and uncertainties I am currently under"* [375-376].
- 433 We find from that date she was aware of the existence of that contact between Mr Attoh and Ms Cooper and it was related to race.
- 434 Ms Hunter contacted HR [371] and also responded that day to Mr Attoh [374-375] to say that GT did not offer the opportunity to be accompanied to meetings unless they formed part of a formal process. The process at that point was an informal one and she copied to him GT's Right to be Accompanied policy. She suggested that Mr Attoh liaise with Mr Sohal outside of her weekly meetings with him, that she would continue to share the minutes of the informal meetings with him, and he could continue to have the opportunity to respond if he felt that the notes didn't reflect their conversations. She also sent him a further copy of the details of GT's Employee Assistance Programme and explained that its private medical scheme also offered unlimited support through a scheme called "Stronger Minds" and gave him details for both.
- 435 Despite that response Mr Sohal emailed Ms Hunter and Mr Attoh repeating the request. There followed an exchange between them in which Ms Hunter responded explaining the position as outlined above and Mr Sohal pushed back querying this. Ms Hunter sent a link to GT's formal capability process to both [378] only for Mr Attoh again to repeat the request. The exchange concluded with the following email from Mr Sohal to Mr Attoh in response to that :-



“Can I just ask that you make sure that Dodzi understands clearly why he is on an informal PIP, and when will this process end - as he believes that the timeframes on this keeps changing and why not all feedback is taken into account etc and also if he is to move on to a formal PIP what would be the impact of this.

There are other disclosures that Dodzi has made to me, but through your discussions with Dodzi these could be resolved but may warrant further follow up.” [372]

436 Mr Sohal explained the position in his witness statement:-

“28. ... It appeared to me that he didn’t understand the process, no matter how many times he was informed of it.

29. I continued to support the Claimant in the background as he proceeded through his informal PIP, meeting on a regular basis.

30. I asked the Claimant to provide me with the feedback so that I could analyse the feedback and comment back to the Claimant. There was a lot of feedback that he thought was good and I had to explain to him that there were some good things in it, but there were also a lot of development points. In fact, most of the feedback had development points. It seemed that the Claimant focused on the good points in the feedback and had disregarded anything critical or developmental.

31. I do not think that the Claimant was able to self-assess. He was in a cycle where he would blame circumstances on where he was and was not able to look inwardly and consider whether there was anything he could have improved on based on his skills/actions.

32. I would say that the Claimant was correctly rated as ‘Below Expectations’ based on the feedback that he had shared with me.”

437 That Mr Sohal was concerned Mr Attoh did not understand the PIP process was similar to what Mr Sohal had relayed were Mr Attoh



seeking clarity of the process back in November 2019 (see (298)). We heard how Mr Sohal had explained matters to Mr Attoh and of course Mr Attoh had had plenty of opportunities to clarify that process in the interim with Mr Sohal and Ms Hunter.

438 Also on 6 March Mr Sohal emailed Mr Attoh:-

“I have a had call with Clare just now, just to give some clarification on why you required my support and Clare will continue to speak to HR and see what they advise.

I think for now please leave it with Clare to follow up, and we will then meet up accordingly as directed by HR in terms of capability issues.

Just to clarify we have had a high level call, not going into any specific details about your circumstances but propose a way forward to support you.” [377]

439 On 12 March 2020 Ms Hunter had a catch up call with Mr Attoh. Mr Attoh explained that he found the PIP process to be quite stressful as it had been going on for some time and he was not clear about the timeline. Again Mr Attoh repeated a number of matters that had already been raised and addressed, including his request to have a companion present during the informal PIP meetings, the Concentra issue concerning Mr Garcia, his request for a sabbatical and the feedback from Ms Takhar. Again the minutes [389], which she emailed to him the same day, suggest that Ms Hunter again explained the outcomes to him.

440 On 16 March Ms Hunter sent feedback to Mr Attoh and tried to arrange a catch up meeting. They decided to hold it via teams given he was self isolating [390] although Mr Attoh asked if it could be in person [391]. He also requested an update on whether Mr Sohal could attend.



441 On this issue Ms Hunter told us:-

“102. I spoke with HR and was advised that as the PIP was still in the informal stage, there was no right to be accompanied at these meetings, also we did not want to over-formalise the informal process by having representatives. I replied to the Claimant explaining this, and also attached a copy of the ‘Your Right to be Accompanied’ Policy which further set this out for the Claimant’s reference. Further, given the Claimant’s comment about being under strain within his sabbatical request, I provided the Claimant with details of the Respondent’s Employee Assistance Programme and reminded the Claimant that the private medical insurance, which he received, offered unlimited support via AXA (pages 374-376 of the Bundle). However, the Claimant did not take up either of these options.”

442 Whilst again having a companion present during the informal PIP was not one of the complaints identified by Judge Meichen again we find that Mr Attoh was treated no differently to the way another colleague would have been in the circumstances when this was refused. GT was merely following its procedures and he was seeking more favourable treatment not less.

MEETING OF 19 MARCH 2020 (UC/LFT/CUDL17, VDET9 & PDET3)

443 Ms Hunter held another call with Mr Attoh on 19 March 2020. She told us that she thought it would be useful to have Mr Holland on the call for a couple of reasons.

443.1 Mr Attoh had expressed confusion about the PIP process to Mr Sohal, on the call to explain some of the points as it appeared that Mr Attoh unfortunately had not understood what I had been telling him throughout the process.

443.2 The informal PIP was coming to an end and a decision needed to be made about where to go next.



444 The main complaint about this meeting concerns *“Mr Holland entering into a ‘protected conversation’ with the claimant, that had the purpose of agreeing a termination date without giving any reasoning as to why the respondent were seeking to terminate the claimant’s employment [19 March 2020]”*. However, that meeting addressed other issues.

445 This complaint was first made in the grievance dated 16 July 2020 [533]:

“Those who instructed and authorised [Mr Hunter] to enter into a protective conversation with me to silent me are the same people who intimidate, harass, bully and called me names in the firm.....”

446 It was also raised in the claim form [15] and first referred to as an act of discrimination in the further and better particulars (424).

447 Mr Attoh said this:-

“94. Mr Holland informed me that Grant Thornton would like to enter into a protected conversation. Mr Holland did not give me a choice about whether I wanted to enter into a protected conversation.”

448 We did not hear from Mr Holland but have heard from Ms Hunter who Mr Attoh accepts was present was present. During that meeting Ms Hunter told us Mr Attoh stated:-

“114. ... that he had not felt supported throughout the informal PIP process. I was personally very disappointed to hear this because I had met with the Claimant at least monthly, if not weekly at some times and had spent significant time outside of my meetings with the Claimant researching things that he had asked of me, including training, which he then did not carry out.

115. We explained that the Claimant had been directed to the ‘Supporting Wellness’ page on the intranet, and to EAP, as well as being offered the opportunity to be referred to Occupational Health, however, the Claimant had not taken up any of this.

116. The Claimant also stated that he was unhappy that he had not been allowed any representation in the informal PIP meetings. We again explained to the Claimant that there is no right to be accompanied in the informal stages of a PIP. We encouraged the



Claimant to seek support from the BAME network, if this was who he felt comfortable to speak with, however, this support would need to be provided outside of the formal meetings.

117. Finally, we explained that whilst some positive feedback had been received, there had not been a sufficient improvement in the Claimant's performance whilst on the informal PIP and that as such, he would be invited to a formal capability meeting."

449 She then went on to explain that only then did the issue of the protected conversation arise. As we say above, Ms Hunter told us that she had spoken to Mr Holland prior to the meeting. She states they established that the PIP was reaching a natural end, there had not been any significant improvement in Mr Attoh's performance and the next step was to progress to the formal capability stage but it was also clear that Mr Attoh was not happy with GT. She told us Mr Holland had spoken to his own People Manager, Ms Kramer, and they had identified that a potentially amicable resolution could be explored with Mr Attoh, the first stage of which was to identify if Mr Attoh was interested in having a protected conversation; if he was then a discussion could ensue regarding the terms of an exit under a Settlement Agreement. She told us at that point no settlement figures had been agreed.

450 As to what was said her evidence was this:-

"118. In light of fact that the Claimant's performance management was to proceed to a formal stage, Dan Holland explained that there was another option available if the Claimant would be open to discussing it, but in order to do this, they would need to have a 'protected conversation'. Dan Holland read from a script and explained what a protected conversation was, namely that it is a confidential discussion between both parties that allow them to enter into potential pre-termination discussions and that such a discussion was confidential and could not be referred to in any potential subsequent claim or Tribunal.

119. Dan Holland went on to explain that if the Claimant agreed to a protected conversation, the discussion would explore the option of him exiting the business with an agreed settlement which would include an ex-gratia payment, a controlled exit from the business, coaching and support from the Resourcing teams in relation to securing a new role,



confirmation that the formal capability process would not continue, a contribution to legal fees and that the Claimant would have input into the wording of an agreed reference.

120. The Claimant stated that he did not wish to enter into such a conversation and would 'fight it to the end', to which Dan Holland confirmed that if he changed his mind, he could do so and should speak to Dan Holland if this was the case. The protected conversation was not raised with the Claimant again."

- 451 On 20 March 2020, the day after the meeting, Mr Holland emailed Mr Attoh with a summary of their conversation [415-416]. GT asserts this is the first time Mr Attoh made any direct ⁷¹ mention of race (see point 2 of the 'concerns raised' [415]).
- 452 Whilst GT in its amended response assert that Mr Attoh agreed to enter into the protected conversation, we find the facts as relayed by both parties were that an offer was made to hold a protected conversation but no such conversation took place, because that was declined by Mr Attoh. GT denies that this was discrimination, harassment, victimisation, a detriment or an act that Mr Attoh was entitled to rely on for the purposes of his constructive unfair dismissal complaint.
- 453 This complaint was thus not about what was said in a protected conversation, if the statutory requirements were met, if Mr Attoh had a choice whether to enter into such a conversation and if that choice was informed or not. Nor as relayed does it involve an allegation that GT had already formed a view as to the outcome of the formal process. The way Mr Attoh put this complaint before us was at that he was not given a choice to have into a protected conversation.

⁷¹ As distinct from an indirect reference for which it would need to be inferred such as making contact with a diversity champion such as Ms Cooper



- 454 We find that by offering to have a protected conversation and when he declined, not holding one GT was offering Mr Attoh the very choice that he argues he was not given. The factual aspect of his allegation therefore fails.
- 455 By providing for protected conversations the law acknowledges that in a situation such as this it may be in the interest of both parties to hold a protected conversation. There is nothing unusual about that. It may be detrimental for a professional employee to have on record that s/he has been the subject of a formal performance process. Thus, it is not unusual for an employee who is underperforming to be invited to enter into a protected conversation or a without prejudice discussion.
- 456 Mr Attoh did not explain in his witness statement or before us, what was said or done by Mr Holland that could be said to constitute harassment. Ms Hunter told us and we accept that Mr Holland read from a pre prepared script. Mr Holland was a HR advisor and it is thus fair to assume he was well versed in how these matters needed to be addressed.
- 457 Whilst Mr Attoh did not tell us, Mr Rosinke identified what he believed the harassment was as part of his investigation; Mr Holland threatening to refuse to provide Mr Attoh with an employment reference. Mr Rosinke addressed this in his witness statement [DR/35a] stating he found no evidence the threat of a reference being declined had been used to intimidate and/or bully him.
- 458 In reaching that finding Mr Rosinke had interviewed three of the four people present at that meeting concerning including Mr Attoh's companion, Mr Sohal. The only absentee was Mr Attoh for the reasons we relay below (553).
- 459 For the reasons we give at various points elsewhere Ms Hunter was a highly credible witness and Mr Attoh was not. On this issue her evidence for the most part is corroborated either by Mr Attoh or the documents. Where there is a dispute we prefer her account to that of Mr Attoh.



- 460 Mr Attoh has not shown that white employees or colleagues who were not Black African would not have been invited to enter into a protected conversation or how that offer was connected to his race more generally (or for that matter the protected act or the protected disclosure that had by then taken place).
- 461 By 5 March 2020 Ms Hunter (and thus Mr Holland as her HR advisor) was aware Mr Attoh had been in contact with the BAME network. Ms Hunter denied that she was aware of the discussion between Mr Attoh and Ms Cooper. We accept that was so.
- 462 Whilst Ms Hunter told us she spoke to Mr Holland in advance of 19 March she did not say when. For reasons we will go onto it was only at that meeting on 19 March that she and Mr Holland became aware that Mr Attoh was making a complaint of race discrimination. Having discussed matters with Mr Holland in advance of that meeting she told us and we accept a decision was taken to offer to have a protected conversation. We find that the protected act (the conversation with Ms Cooper) played no part in that decision. Ms Hunter was not aware of it. In any event we make a positive finding as to the reason why that was offer in a few paragraphs time.
- 463 Also by this point Mr Holland had advised (366) that Mr Attoh's complaint relating to Mr Garcia's feedback (the protected disclosure) was initially not to be considered as part of the informal PIP.
- 464 If Mr Attoh was underperforming GT's procedures required he be performance managed. By this point Mr Attoh had been on informal PIPs for almost 12 months. Whilst there had been improvements for the reasons Ms Hunter gave (471) Mr Attoh was still not performing at the required level. The next step was to embark on a formal PIP.
- 465 Given that decision, that many individuals might wish to avoid that for fear of having to disclose the same in future job applications and the adverse it might



have on their career and the various complaints Mr Attoh made we find that it is unsurprising GT offered Mr Attoh the option of a protected conversation, albeit one that he declined. We find it was for those reasons and again it was in no sense connected to Mr Attoh's protected disclosure, or for that matter his race or the protected act.

466 We find GT, in those circumstances had reasonable and proper cause to act in the way it did. We have considered if the offer of a protected conversation suggested that ultimately his dismissal was predetermined. Mr Attoh's resignation means that we can only speculate on the outcome of that process.

467 We find based on the evidence we had before us it is more likely than not that he like others who we heard had had their PIP processes formalised would have been dismissed. However we find that would not have been due to prejudgement on the part of GT. The success rate of informal processes undertaken by GT we find supports that view. We again make a positive finding in this case that is more likely than not, that that was due to the inability of Mr Attoh to undertake his role to the standard required and in particular here his lack of engagement with the process. Mr Attoh's inability or as it appeared to us was the case, Mr Attoh's unwillingness to accept what had been said when it did not accord with the version of events he has later come to believe occurred reinforces that view.

468 Even if that amounted to a fundamental breach of contract by GT we find Mr Attoh remained in his employment.

MR HOLLAND INVITING MR ATTOH TO ANOTHER PERFORMANCE IMPROVEMENT PLAN (UC/LFT/CUDL18, VDET10 & PDET4)

469 As we say above the day after that meeting on 20 March 2020 Mr Holland emailed a summary of the meeting to Mr Attoh [415-416].

470 There followed a delay sending the formal capability invitation letter to Mr Attoh. On 3 April 2020, Mr Holland emailed Mr Attoh apologising for not



having done so explaining that had been due to the “fallout” from COVID19 and the national lockdown that commenced on 23 March 2020. Mr Holland went on to say that as Mr Attoh was on annual leave for most of the next two weeks the invitation letter would be sent on his return from leave [417].

471 On 21 April 2020 Ms Hunter had a telephone conversation with Mr Attoh where she gave him verbal feedback on an audit he had undertaken relating to Peak Gen (Mr Attoh had sent her his self-assessment on the 16 March 2020 [422-424] but as the audit was still ongoing at that point she told us and we accept she waited until it had completed in order so she could give Mr Attoh a full picture of his performance). That afternoon she emailed her summary of that discussion [418-420 (& also 426-428)]. That summary was detailed and was broken down adopting the goals in Mr Attoh’s PIP as headings. Whilst it identified there were still outstanding documents she needed to review and she identified definite positives and some improvement, there remained a number of matters where she said his performance was still not of the required level. She summarised these in her witness statement [CH/125] as *“timeframes which continued to require significant improvement, and the Claimant was still demonstrating a lack of familiarity with the Respondent’s methodology and approach meaning that correct papers were not necessarily attached in the correct places at the correct times.”*. Essentially she said this could have been overlooked on the first job he completed for her which was two months into his employment. By then however he was 20 months into his employment.

472 Via an email dated 21 April from Mr Holland [454-456] Mr Attoh was invited to a meeting on 24 April to discuss another performance improvement plan. Mr Holland attached a note on his right to be accompanied [457-459], GT’s capability policy [460-464] and various other documents [456].

473 On 23 April 2020 Mr Attoh requested the meeting be postponed until after the COVID19 lockdown had been lifted. That request was declined on the basis if



the meeting was delayed for that reason it could be delayed indefinitely and given the meeting was to be held remotely via Microsoft Teams there was no reason why this could not proceed [447-448]. The meeting was rearranged and took place on 30 April. We address this at (511).

474 Ms Hunter told us that whilst the invitation email was sent by Mr Holland, the letter came from her. Mr Attoh acknowledged that was the case in his witness statement [DA/100]. Given she was Mr Attoh's people manager and thus responsible for administering the PIP we accept that was so.

475 Mr Attoh makes no complaint about Mr Holland in relation to this complaint in his witness statement. Nor does he say how that invite created the required environment for harassment, constituted less favourable treatment or how Mr Holland knew of the protected act or how that invitation was linked to those matters or the protected disclosure. Instead he states:-

"100. ...I was shocked that the unjustified scrutiny on my performance had escalated from being informal to formal, because I had demonstrated good performance. I felt as if Grant Thornton were deliberately trying to increase my stress and anxiety."

476 We find Mr Attoh had been made aware that the PIP was to be formalised as far back as the 19 March 2020 (see (443)) so it is difficult to see why he was shocked by that in the sense it came as a surprise. Clearly we accept he did not agree with the decision.

477 That is a challenge to the substance of the basis for the formalisation of the PIP. We address that at (511) below but before we do we need to refer to three matters:-

477.1 The grievance Mr Attoh raised on 22 April 2020 (see (478))

477.2 The ethics query Mr Attoh raised on 22 April 2020 (see (483)) and

477.3 Mr Attoh's resignation of 23 April 2020 (see (492)).



GRIEVANCE & ETHICS COMPLAINTS OF 22 APRIL 2020

478 On Wednesday 22 April 2020 Mr Attoh raised both an ethics query with GT concerning the log-in issue by Mr Garcia [619-745] and also a grievance.

479 It is worthwhile reciting the latter:-

“In July/August 2019, I raised concerns about a previous people manager who was then changed and challenged his performance assessment. I was also not given an opportunity to appeal the decision made.

Since then I have felt victimised and unsafe in the work place.

I brought this to the attention of my present people manager (Clare Hunter) and a director (Natalie Gladwin) and was asked to put this in a grievance.

There has been repeated strain and undue stress on me for the past 9 months in the firm as I had been put on an informal performance plan that kept changing although I contested the basis for this. Having been going through this process for such a duration has not helped my wellbeing. I have also repeatedly requested some training on the firm's audit methodology/tools and software to ensure that I could undertake the work appropriately as I was an experienced hire with no prior knowledge of the tools however this has not been granted to date and therefore has a negative impact on my performance as it takes time to become familiar with a software with inadequate training. I have not been supported and given the opportunity and training to improve.

Having been on this for so long has put so much strain on me that I requested a sabbatical that was refused although we recently were asked to volunteer to take sabbaticals.

With my sabbatical request refused. I wanted to take holidays to recuperate but this was also refused although we are now recommended to take majority of our holidays sooner.

I have had my voyager sign off manipulated without my consent and taken over without me knowing and my credentials used by the assignment manager (Wilder Garcia Batres) on an audit. This resulted in him using my name and initials to sign off some work papers on the file as preparer and then he signed off as reviewer, so impliedly he was actually deceitfully signing off as both preparer and reviewer. I brought this to the attention of my people manager (Clare Hunter) and wanted further update on the outcome but none has been provided. The audit



director (John Coates) was also informed about this. I needed to know the outcome as it makes me continually feel edgy when working. knowing that someone can compromise my work by manipulating my credentials. All I know from my people manager is that, she had investigated the voyager file and indeed my credentials had been taken over and used by someone else on this audit assignment.

I also feel that I am being victimised and mistreated by some of the manager/snr manager group of my office for amongst others this matter I raised and the manager Involved in this breach's feedback on my work on this audit is being used as a measure to purposely performance manage me out of the firm although I was initially told that HR had asked that his feedback be discounted in my performance plan.

I am being asked to continue to work under undue stress and strain on my mental health without permitting me to take a sabbatical/extended holiday to help and this certainly has a major impact on my performance (at a time when my performance is also under such scrutiny) as I am not in the right state on mind and have not been in most of the informal performance plan process I have also had instances in the past and one recently where I see that work related feedback is being influenced against me. I believe an associate on a Job I recently worked on was influenced to provide factually inaccurate feedback which I contested but nonetheless is being used against me in the performance plan.

This is causing me a lot of mental anguish and affecting my wellbeing. I have brought this to my people manager's attention. I am under so much strain but still feel under duress to carry on working although I have requested to have some time off and do need this to recuperate and for my wellbeing.

I will be grateful if this can be investigated further and consideration given to me immediately taking sometime off, either sabbatical or holidays to recuperate as it is affecting my work." [433-434]

- 480 Ms Kubie (who as we say above was an Employee Relations manager) responded to that on 22 April [436] stating that the points raised would either
- 480.1 be considered at the capability meeting scheduled for 30 April on the basis that for the most part they duplicated or emanated from the matters to be discussed at that meeting and



480.2 in relation to his complaint that he felt victimised and unsafe in the workplace she ask him to provide further information as to what had happened, when the incidents occurred, who was involved and to provide any supporting evidence that he might have so that could be considered.

481 She also addressed references to the application for a Sabbatical and/or taking holiday to recuperate by stating he could apply for either, it was not guaranteed a Sabbatical request would be approved and in so far as any time out of the firm was approved, the PIP process will be paused and will then be picked back up on his return.

482 We return to the capability meeting on 30 April and how the grievance was addressed within it at (511 & 523).

The ethics complaint

483 This was lodged on 22 April [619] and does not form one of the complaints that were before us. We have as we say endeavoured to ensure that any complaints Mr Attoh raised before us orally and that he put to the witnesses were addressed.

484 On 27 April Ms Sarah Hick, part of the ethics team, escalated this complaint to Ms Baldwin (whom Mr Attoh referred to in the ethics complaint as someone he was happy for it to be shared with) [633]. It essentially repeated the complaint concerning Mr Garcia including the assertion that Mr Garcia had manipulated Mr Attoh's credentials (by which we understood him to mean his log-in and password) but did not refer to his work being amended by Mr Garcia.

485 Ms Hick and Ms Baldwin liaised and thereafter Ms Hicks sent an outcome to Mr Attoh on 4 May [634] to say the password/log-in issue had been investigated previously and "*... it would be inappropriate for me to detail any outcome of the investigation or sanctions (if considered appropriate) as that*



would breach of confidentiality including GDPR privacy requirements and I'm sure if things were the other way around. you would also be keen for discretion beyond those directly involved in the investigation. However, you should be reassured that I understand what has happened and am comfortable with the outcome."

486 The ethics complaint was closed on 14 May [631].

487 On 26 May [629] Mr Attoh raised a number of queries regarding the capability process. On 19 June [626] Mr Holland responded. Mr Attoh replied on 16 July [624] copying Ms Hick and Ms Baldwin amongst a number of others. The following day Ms Hick responded that that was not a matter that the Ethics Function should be addressing, he was referred to GT's grievance procedure and the ethics complaint was again closed [622-23]

The impact of the ethics complaint on the protected disclosure

488 If at the conclusion of the internal process, Mr Attoh had been dissatisfied with the outcome of the ethics complaint, given that related to a professional ethics issue he should have raised that with his professional body. The fact that he did not leads us to conclude that he was either satisfied with the outcome or on the basis he did not pursue it, concluded it did not warrant such a referral, or was not in the public interest for him do so. We conclude it was either the last or second to last point.

489 We come to that view because if he genuinely considered the complaint was such that it met the requirements for a protected disclosure logically he should have also concluded that he was duty bound professionally to have referred that to his professional body. He did not. That is yet further supported by the way he articulated his complaint about that issue before us; that solely focussed on the personal effect that had on him rather than the public interest.



490 There was no argument before us that information had not been relayed and that had been done to his employer, the dispute focussed on whether the disclosure of information was in the reasonable belief of the worker making it is made in the public interest and tends to show one or more of one the two states of affairs argued here. We repeatedly sought to address what legal obligation had been breached or criminal offence committed. Mr Attoh was unable to detail how either were engaged with the specificity required or how he held that belief despite the Judge explaining *Babula*, *Korashi* and the caselaw at length to him. Similarly had he believed that either was the case as a professional he failed to explain why he failed to report either to his professional body (or the authorities).

491 Whilst there is a scale stretching from the personal to the public in our view his position was close to the personal end of that range he referred to it as a “*personal violation*” and thus we find the alleged protected disclosure did not qualify for protection.

Mr Attoh’s resignation

492 Before the grievance and ethics complaint could be addressed at 19:32 the following day (23 April 2020) Mr Attoh resigned via an email to Ms Hunter:-

“Please accept this email as formal notice of my resignation from my position as Assistant Manager with Grant Thornton UK LLP

Having considered the treatment meted to me and the strain and stress it has put on me. I think it is in my best Interest to resign from my employment with the firm as the office culture is not what I expected and has been unhealthy for me causing me so much distress.

With feedback processes being influenced against me, manipulation of my log on credentials and using it to sign off work papers deceitfully in my name, amongst others, I do not see a future in that environment.

I will serve my notice period of 3 months in line with my employment contract which I believe should end on 23 July 2020. Please do let me know if this is correct.



Also let me know what else I need to do for a proper hand over nearer the time and I will do so.” [452]

493 Whist he refers therein to his treatment and victimisation he made no direct reference to his race or the protected disclosure as the basis for the treatment.

494 In his grievance the previous day he complained about his former people manager Mr Anton, the lack of training, the length of performance management and strain that imposed, the refusal of his sabbatical request, the log-in issue (which he asserted included a manipulation of the data) and his victimisation and mistreatment by a group of (senior) managers in his office.

495 In his witness statement Mr Attoh referred to three matters:-

*“99. On the same day I submitted an ethics query about the IT breach [619]. Grant Thornton responded by saying that they had investigated this query, appropriate action was taken but that I could not be informed about the action that was taken because this was a confidential matter [706-707]. **I was bitterly disappointed with the response from Grant Thornton because I felt I deserved to know the outcome of an IT breach that was a personal violation.** Overall, I felt as if **the mistreatment I had suffered from 17 May 2019** made me lose trust and confidence with Grant Thornton. **The last straw was them not revealing the sanction they gave pursuant to an IT breach that was both a personal violation and a gross misconduct offence.** Although the trust and confidence had gone at this point, I was aware that there was a formal investigation ongoing about the IT breach and hoped that the outcome to that would reveal the sanction that was given.*

*100. Also **on 21 April 2020 I received a letter from Ms Hunter confirming that I had been invited to a formal capability meeting on 24 April 2020 [455-456]. I was shocked that the unjustified scrutiny on my performance had escalated from being informal to formal, because I had demonstrated good performance.** I felt as if Grant Thornton were deliberately trying to increase my stress and anxiety.*

Resignation and more malicious conduct



101. On 23 April 2020 I resigned with notice for the following reasons:

101.1. The general mistreatment I was subjected to whilst working for Grant Thornton (please see all the instances of mistreatment from 17 May 2019, especially continuously putting me on performance improvement plans despite my performance being good);

101.2. The breach of my IT credentials, the lack of an update and outcome to the investigation; and

101.3. Being put on another performance improvement plan as per the meeting after the 19 March 2020 meeting.

[474]

I deny that I resigned in order to avoid being capability managed by Grant Thornton. I resigned because Grant Thornton's mistreatment of me made me lose trust and confidence with them (please see the above reasons for more details). Had I have resigned on the grounds of wanting to avoid being capability managed, I would have resigned without notice."

(Our emphasis)

and in his claim form [15] he referred to

"The breach of my IT credentials and unfair decision to put me on another performance improvement plan was the final straw in an orchestrated campaign of harassment, bullying, false accusation and racial microaggression."

496 The Judge specifically asked Mr Attoh what the trigger for the resignation was. He told us the final straw was GT telling him the PIP would be formalised. That was at the 19 March meeting. He was asked why if that was so he resigned on 23 April over a month later. Having referred to this being in the midst of the first national lockdown and thus he was working from home Mr Attoh told us that via an office Teams meeting the office lead, David White, had stated that the earliest staff would be returning to the office would be August. Mr Attoh told us that having worked from home for a few weeks and having begun to feel better health wise he realised, what he described as the toxicity of that office, was a place he didn't want to work any more and the only way to avoid that was by resigning.



- 497 Whilst that appeared to be the clear final straw Mr Attoh later sought to refer to the ethics query and log-in breach as the basis for his resignation even those events were after he had resigned.
- 498 In closing submissions he told us the final straw was placing him on a formal PIP. That decision was communicated to him on 19 March but not actually undertaken until 30 April. That was after he resigned.
- 499 Whilst we find Mr Attoh was not entirely clear on what the trigger for the resignation was and inherently demonstrated confusion in that some events after the resignation were argued as part of the basis for the constructive unfair dismissal complaint, we find a number of factors were acting on Mr Attoh's mind, including the way he felt he had been treated, his dissatisfaction with the outcome of the IT log-in issue, and what he viewed as the unfair feedback, the informal PIP and culminating in the decision to formalise the PIP and that he did not want to return to the office once he had been working from home during the lockdown.
- 500 Many of those matters were historic. We find despite that Mr Attoh continued to dwell on them and continue to raise those matters even when internal processes had been exhausted and adjudicated on. This was a further example of one of the common problematic themes of Mr Attoh's evidence; he identified events as the cause of others despite the alleged cause having followed the event it was said to have caused.
- 501 We find GT had reasonable and proper cause for acting as it did when it formalised the grievance, it was entitled to conclude Mr Attoh was under performing. Mr Attoh refused to accept that, any constructive criticism or to engage with the process. Had he done so it may have been he would have been able to address GT's concerns. He did not.
- 502 Mr Attoh suggested repeatedly he was being forced out for the reasons we give at (538). We find that GT did not behave such that Mr Attoh could



conclude it intended to abandon or altogether refuse to perform his contract. We find the opposite was the case. It had extended the informal PIP when it could have formalised it (or dismissed) and expended considerable time and resources trying to coach and support him.

503 That aside Mr Attoh complains that GT did not try to persuade him to retract his resignation. Ms Hunter told us that was not GT's policy but that calls into question if Mr Attoh was prepared to remain. If so the question arises did he really consider that a fundamental breach of contract.

504 As we say we return to how the capability meeting on 30 April and the grievance was addressed within it at (511 & 523) below.

Post Resignation Events

24 APRIL - MS. HUNTER CONFIRMING THAT THE ONGOING CAPABILITY PROCESS WOULD CONTINUE AS NORMAL UNTIL THE END OF THE NOTICE PERIOD (UC/LFT/CUDL19, VDET11 & PDET5)

505 This complaint so far as we can discern was first made in the further and better particulars.

506 Given this occurred after Mr Attoh's resignation it could not ordinarily constitute an act giving rise to constructive unfair dismissal however given Mr Attoh had been warned that he was to be placed on the formal PIP before he resigned we address it.

507 Ms Hunter told us her rationale for acting as she did:-

"143. ... The reason that the PIP/capability process was to be continued during the notice period was because the Claimant was on a three-month notice period and was booked onto chargeable work at a senior level for clients during that time. As such, we needed to continue to monitor his performance to maintain standards in a regulated sector.

144. This is a normal practice within the Respondent and I am aware that [JM], who was an Associate who I was People Manager of, worked her one-month notice period in March/April 2019 and remained on a



PIP during this time. [JM] was on an informal PIP, which was to progress to a formal capability meeting, however, she resigned after being notified that this was to progress to a formal process. The only reason that this did not continue to be progressed to a formal capability process during her notice period was because of the short length of notice that she was working and the fact that she was working at a junior level in a non-leading client facing role. I felt that the informal PIP remaining in place would be sufficient for that one month, however, had she have been on a three-month notice like the Claimant was, she too would have progressed to a formal capability during her notice period.”

- 508 We have initialised the name of the individual concerned because this judgment will be placed on the internet, she played no part in this claim, has no knowledge of it and thus not had an opportunity to make representations on this issue. In those circumstances it would not be interests to relay her circumstances.
- 509 We conclude for the reasons we give below that GT was entitled to conclude that Mr Attoh’s performance remained below expectations and thus GT was entitled to formalise the PIP as was its usual process. That being so we find that GT was entitled whilst her was working his notice to continue the PIP process and to formalise it so his performance was still being monitored whilst he remained an employee.
- 510 Given those performance issues we accept that to formalise the PIP was the normal process for GT and that was the reason that was done. We find it was in no sense connected to harassment, his race and nor was it in any sense connected to his protected act or protected disclosure. Indeed as we say above whilst Ms Hunter was aware of the protected disclosure she was not aware of the detail of the alleged first protected act.

FORMAL CAPABILITY MEETING OF 30 APRIL 2020

- 511 Given this occurred after Mr Attoh’s resignation we address it for the reasons we give at (506).



- 512 As we say at (475) Mr Attoh was formally invited to this meeting via an email dated 21 April [454-456] attaching a note on his right to be accompanied [457-459] and GT's capability policy [460-464] and various other documents listed [456]. The original meeting scheduled for 24 April was rearranged and took place on Thursday 30 April 2020. Ms Hunter chaired the meeting and Dan Holland of HR was present. Mr Attoh was accompanied by Mr Sohal. This was Mr Sohal's last involvement.
- 513 The outcome of the meeting was that Mr Attoh was given a written warning and informed that he was going to be placed on a formal PIP from 11 May 2020 until 15 June 2020. We address the complaints about those issues at (516) below.
- 514 The meeting lasted from 10:00 - 14:18 with breaks and was minuted [483-495]. Mr Sohal told us [AS/40] also addressed the majority of Mr Attoh's grievance concerns. The exception being Mr Attoh was informed his victimisation complaint would be treated as a separate grievance if he were to provide appropriate evidence or examples which could be investigated. Specifically Mr Sohal said this

"48. ... Clare Hunter and Dan Holland handled the meeting fairly and provided the Claimant with a sufficient amount of detail for him to understand the reasoning behind the PIP process and what would happen moving forwards. I did not feel at any stage that the meeting itself, or the reason for it, was unfair.

49. Following the capability meeting, the Claimant was working his notice and I continued to speak with him whenever he asked, although this was less than it had been.

50. Before he left, the Claimant had been toying with the idea of raising a grievance and had mentioned this to me. I had advised him that if he were going to raise a grievance he would have to provide sufficient detail and examples of the points he was raising because without those, it may not be possible for his grievance to be properly investigated.

51. I was not aware that the Claimant submitted a grievance on 16 July 2020 until I was contacted by Tino Makwembere, Senior Adviser –



Employee Relations, People and Culture, on 23 September 2020 to request my attendance at a grievance investigation meeting.”

515 There was no complaint before us that the issues in Mr Attoh’s grievance of 22 April were not addressed, but we address that below (523). We turn to his subsequent grievance of 16 July below (see (547)).

Issue of a written warning & being informed that he was going to be put on a formal PIP (UC/LFT/CUDL20, VDet12, & PDet6)

516 Whilst this occurred at the formal capability meeting on 30 April and was thus after Mr Attoh’s resignation we again address it for the reasons we give at (506).

517 GT’s capability process identified three specific outcomes of the capability meeting (although the use of the word “include” makes clear that was a non exhaustive list) [460]:-

- No sanction
- Sanction
- Dismissal

518 As to sanction the capability procedure stated:-

“If you have been given a sanction. as result of the formal capability process. this will be confirmed to you in a letter that will also detail:

- *the issue and the improvement that is required*
- *the timescale for achieving this improvement and a review date*
- *the time the sanction will remain on your record*
- *any measures such as coaching or supervision which will be given to help you improve your performance*
- *if relevant. what reasonable adjustments can be made to help you in your role*
- *what might happen if the improvement required is not achieved*



- *your right to appeal.” [461]*

519 Ms Hunter told us her rationale for acting as she did:-

“145. On 5 May 2020, the Claimant was provided with the written outcome of his capability meeting (pages 480-482 of the Bundle). I had considered all of the information that had been obtained and discussed at the capability meeting and ultimately found that despite a lengthy informal process, including appropriate training, the Claimant was not consistently performing to the level of an Assistant Manager. Accordingly, I issued the Claimant with a first written warning and advised him that his performance would continue to be monitored for the remainder of his notice period.

...

147. I spoke with the Claimant on 7 May 2020 following his receipt of the outcome of the formal capability process. We discussed the Claimant’s PIP that would be in place from 11 May to week commencing 15 June 2020. The goals would remain the same as the previous PIP, namely: Quality of audit deliverables; Audit quality; Timeframes; and Team management and communication.”

520 Mr Attoh did not Ms Hunter’s rationale put to GT’s witnesses, despite reminders, the names of individuals who were treated less favourably than the way he suggested he had been (that is to say that it was not GT’s normal practice where he was performing below expectations that a formal (or informal) PIP process would be commenced and/or a warning issued. The closest he came to doing so was to suggest that Mr Garcia who was given a “below expectation” rating by reason of the matters we refer to above. As we also state above that gave rise to sanctions such that as a matter of best practice a disciplinary process should have been commenced against him. The concerns about Mr Garcia did not relate to his capability to the job as was the case with Mr Attoh and that being so we do not consider that his circumstances were materially the same as those of Mr Attoh.

521 Because Mr Attoh was underperforming at this stage, in accordance with GT’s capability process, an appropriate sanction was a warning and to formalise the PIP he had been on. No appeal was lodged by Mr Attoh against the



outcome. In our judgment for the reasons we give above GT was entitled to reach that conclusion and his underperformance was the reason those steps were taken. We find the protect act, protected disclosure and his race formed no part of that. Nor given the absence of what she said or how she relayed that information could be viewed objectively as harassment.

522 We have addressed above (506) how despite Mr Attoh had resigned he had done so on notice and GT having concluded there was a performance issue it was entitled to continue the performance management process.

How Mr Attoh's grievance of 22 April was addressed

523 Whilst Mr Attoh does not raise a specific complaint concerning how his grievance of 22 April was addressed we address this here for completeness.

524 As we say at (480) Mr Attoh was informed that his grievance of 22 April would be addressed at the meeting scheduled for 30 April to discuss the PIP. Whilst Mr Attoh did not specifically put this point to Ms Hunter, having considered the minute of the meeting we find Ms Hunter attempted to and addressed the issues raised in his grievance of 22 April. The exception to that was an allegation of victimisation. Ms Hunter said this on the issue:-

"141. However, there was one point that I did not feel had been covered off fully, which was the matter of victimisation. The Claimant had again raised this, but had not provided any specific detail of his complaints. Accordingly, I advised the Clamant that this would be treated as a separate grievance if he were to provide appropriate evidence or examples which could be investigated."

525 For the reasons we give above Mr Attoh had repeatedly been told by GT (and Mr Sohal amongst others) that if he wished to raise discrimination complaints that he need to say what was said or done, by whom and when that he, was complaining about and sent copies of GT's grievance policy on a number of occasions in which that was made clear.



526 Mr Attoh is a professional man and thus can be expected to be able to take on board and follow procedures such as that policy. That policy after all applied to all staff and not just qualified auditors such as he was.

527 He should have followed it. He did not. Absent that GT was in a difficult position short of accepting what he said as fact, there was little it could have done to investigate the matters concerned because it simply did not have the detail of them. Mr Attoh had by then made complaints about a number of individuals senior to him, naming them. Given the issue he complains about those named individuals having undertaken against him was of similar nature (discrimination/whistleblowing) to the other matters he complained about and those individuals were also senior to him, there is no good reason why he could not have given the detail that was being sought. He did not.

528 We find the fact that he did not raise many of those matters until some time later raises doubts as to his account.

ONGOING FORMAL PIP PROCESS

529 On 5 May 2020 Mr Attoh was forwarded the outcome of the capability meeting [481-482]. No appeal was lodged by Mr Attoh against the outcome.

530 Two days later on Thursday 7 May 2020 Mr Attoh and Ms Hunter had a discussion about the PIP, the goals of which were to remain the same as the previous PIP. During the remainder of his notice period Mr Attoh was scheduled to be working on the audit that was managed by Ms Budhia. Ms Hunter told us how she discussed with him some of the key points that she felt could demonstrate that he met his goals on that audit. Later that day she sent through her notes of the meeting and the PIP goals [496-499].

531 On 26 May 2020 Mr Attoh sent submissions concerning the formal capability meeting [530-531]. They included 6 numbered points, one of which was an issue relating to a 'conflict of interest' concerning Mr Holland.



- 532 Mr Holland subsequently addressed these in an email of 19 June [528-530 & 626-628]. As to the conflict of interest point he stated Mr Attoh had not objected to his involvement in advance of the meeting and when this was raised the meeting was adjourned to allow Mr Attoh to locate the document that formed the basis of his complaint. Mr Attoh's concern related to an email from Ms Mohan following the outcome of the appeal against Mr Attoh's performance rating in November 2019, which she advised there was no further right of appeal but that he could seek support from Mr Holland, as his local contact from the People Advisory team, if he had any further issues. Mr Holland states that as the email did not relate to the capability process it was agreed by all parties at the meeting including Mr Attoh that Mr Holland could be present and that was reflected in the meeting notes [485-486]. Mr Holland also stated at the time that as part of his role, he was aware of all employee's performance ratings but had not been involved in Mr Attoh's appeal of his performance rating.
- 533 In our judgment that demonstrates a misunderstanding on Mr Attoh's part, not only of the role of HR, but also as a failure, when that was explained to him to accept the explanation and to continue to pursue matters that had been addressed.
- 534 In the meantime on 29 May 2020 Ms Hunter held another catch up with Mr Attoh [506-507]. Mr Attoh reported he had been having conversations with Mr Budhia in order to obtain feedback as the audit progressed as requested and Ms Hunter suggested that as Matt Buckingham, a Partner, was also due to review the file soon and that it might be worth asking him for feedback too so that he had feedback from two sources on this audit.
- 535 Ms Hunter held another catch up with Mr Attoh on 18 June 2020. She told us Mr Attoh was awaiting written feedback from Ms Nisha Budhia, a Senior Manager, in relation to an audit he was working on, but that his impressions from the verbal feedback he had received were that Ms Budhia was not



completely happy with the quality of Mr Attoh's work, or with his management of the team. As a result Ms Hunter told us it was agreed the PIP would be extended to 23 July 2020. She sent her note of the meeting [516] to Mr Attoh that evening and he agreed it the following day. Ms Budhia's comments on his performance on the audit were provided after that meeting in the late afternoon of 18 June 2020 [508-514].

536 Also on 19 June 2020 Mr Holland responded to Mr Attoh's submissions of 26 May 2020 concerning the formal capability meeting [528-530]. Mr Attoh did not respond to that until 16 July 2020. We address that below (547).

537 The earliest possible date for a claim to be in time was 22 June 2020.

THE NUMEROUS PIPS (UC/LFT/CUDL5)

538 This complaint relates to the PIPs having lasted for over a year and the strain this placed on Mr Attoh. We have found at the points the PIPs were entered into (201 & 214, 275 & 343 and 505) there were legitimate and genuine performance concerns about Mr Attoh. We found that GT was entitled to genuinely conclude Mr Attoh was not performing at the required level. That needed to be addressed and good practice requires a structured process such as a PIP. That is just what GT did.

539 The PIPs identified clear targets and Ms Hunter gave coaching how this could be achieved as had much of the feedback we have seen.

540 It is difficult to see how if as Mr Attoh alleges he was being treated in the way he was in order to force him out of the business and not because there was a genuine performance issue, why Ms Hunter was still investing the time she was in him. If that had been the case nor does Mr Attoh explain why GT did not dismiss him when he did not have qualifying service to bring a constructive unfair dismissal claim given that when he was placed on the first informal PIP. That was also almost 6 months before the first alleged protected act and almost a year before the alleged protected disclosure.



- 541 Instead GT extended the informal PIP in November 2019 rather than progress to a formal PIP GT was giving him a further opportunity to improve, which again reinforces that view.
- 542 Whilst the PIPs collectively extended for more than twelve months and that must have been stressful for Mr Attoh he does not suggest how GT could have otherwise addressed that to achieve the required outcome in a structured way. Mr Attoh did not address how his request to take a sabbatical that that would have had the effect of extending the PIP and prolonging matters for him was consistent with his complaint about the strain he was under.
- 543 His position is that he was not underperforming.
- 544 We find GT had reasonable and proper cause for acting as it did in placing him on those PIPs. He was treated in the same way any member of staff who was underperforming would have been treated. Whilst placing him on and then continuing those PIPs was unwanted, and given we do not accept Mr Attoh's account of events, save where supported by other evidence, we find he has not shown facts from which harassment could be objectively inferred.
- 545 Whilst we were not taken to any evidence to suggest Ms Hunter decided to formalise the PIP prior to 5 March 2020 when race was first identified. We found that the decision to formalise the PIP was first communicated to Mr Attoh on 19 March and that Ms Hunter was therefore aware he had contacted the BAME network by then. Ms Hunter denied that she was aware what the specifics of that contact related to and nor was she asked about that. We accept given our findings generally in relation to Ms Hunter's evidence that she was not aware that Mr Attoh had made a complaint relating to race under the Equality Act as opposed to merely seeking support from the BAME network and thus he had made a Protected Act. Accordingly, the victimisation aspect of that complaint must fail.



546 We found his disclosure does not qualify for protection but nor do we find that played any part in the decisions either. The decisions regarding the PIPs were made for the reasons we give above. Race, the protected acts and protected disclosures played not part in those decisions.

GRIEVANCE OF 16 JULY 2020 (PA2)

547 On 16 July 2020, a week before his notice was due to expire Mr Attoh raised a grievance to Mr Holland copying to a number of others raising 4 main grounds:-

“(1) The mental strain I was under due to Grant Thornton

(i) subjecting me to inappropriate conduct generally (i.e. intimidation, harassment, bullying and name calling, that made me feel the working environment was unsafe); and

(ii) subjecting me to numerous performance improvement plans which spanned a period of over a year;

(2) Grant Thornton not allowing me to go on a sabbatical;

(3) Grant Thornton not dealing with the breach of my IT credentials adequately; and

(4) the mistreatment I was subjected to was because of his race and an attempt to manage him out of the business” [520-521]

548 GT accepts this is a protected act for the purposes of discrimination.

549 As we state above this was not the first time race was directly raised as the reason for Mr Attoh’s treatment (see (451)).

550 Sometime over the course of the next week or so Mr Rosinke was contacted by Maria Thomas, Head of Employee Relations, People and Culture, and asked if he had capacity to assist on a grievance that had been received. He told us and we accept she did not provide any names at the time. He was appointed to do so and on 22 July 2020 was sent a briefing email including Mr Attoh’s grievance from Ms Tino Makwembere, a Senior Adviser – Employee Relations Centre of Expertise, People and Culture.



- 551 Around this same time, Ms Makwembere contacted Mr Attoh to verbally inform him that Mr Rosinke had been appointed to Chair his grievance, and that he would be invited to a grievance investigation meeting shortly.
- 552 On 23 July 2020 Mr Attoh's notice took effect. An exit interview was conducted [544-546].
- 553 On 28 July 2020 Mr Attoh was invited to attend a grievance meeting on 5 August 2020 [547]. The letter records he was advised of the right to be accompanied at the meeting and was provided with GT's 'Your Right to be Accompanied' policy [457-459]. Around that time the other individuals identified as relevant witnesses were invited to meetings (see for example [548]). That invitation (for Mr Holland) indicates that his meeting was originally scheduled for the day after Mr Attoh's meeting. For reasons we will come on to the meeting with Mr Holland was delayed.
- 554 On 2 August Mr Attoh confirmed his attendance [558-559] stating that he would be bringing a companion but not who that was. In subsequent exchanges Mr Attoh confirmed that would be Alexander Adeeko [558], a friend, who GT established was not one of its existing employees. Mr Attoh was informed that Mr Adeeko would not be able to attend because he was not a colleague or a trade union representative [559].
- 555 The exchange continued in which Mr Attoh explained that as he was not a member of a trade union and was no longer an employee of the Respondent, he wished to bring a friend [555-557]. GT states that unsuccessful attempts were made to contact Mr Attoh by telephone. That was not disputed so we accept that was so. As a result Ms Makwembere emailed Mr Attoh on 5 August offering to provide Mr Attoh in advance the questions that would be asked of him and that he could respond in writing if he did not wish to attend the meeting [554].



- 556 Mr Attoh responded the same day stating it was “... *absolutely unfair that you will ask that I attend the meeting with an employee of the firm or a trade union member when I am neither a current employee of the firm or a member of a union.*” before continuing that that was “*due to the environment you created for me which is the reason for my complaint which remains unresolved, I am unable to attend any meeting with a previous work colleague.*”. He again requested that he be accompanied by Mr Adeeko.
- 557 The exchange continued for just short of a week with Ms Makwembere explaining that as the grievance related to his time with GT, GT’s usual process with regard to companions would be followed and Mr Attoh refusing to attend any meeting without Mr Adeeko as his companion [551-553].
- 558 Mr Rosinke told us he tried to break the deadlock by offering to speak to Mr Attoh directly on 13 August 2020. In addition to making the offer his email setting out his rationale; that face to face discussions were the best way to allow a panel to fully understand an individual’s position [583].
- 559 It appears no response was received so Ms Makwembere emailed Mr Attoh [550] with a list of questions [560-566] which GT wanted to ask him. Mr Attoh was asked to return his responses by 21 August 2020 in order that these could be considered and investigated appropriately.
- 560 On 19 August 2020, Mr Attoh emailed [582] to explain he had been unwell and confirming that he would respond fully when he felt able to do so. Mr Rosinke replied confirming that he looked forward to hearing from him once he felt better [582].
- 561 On 21 August 2020, Ms Makwembere emailed Mr Attoh offering to extend the previous deadline of 21 August 2020 to submit written responses to the questions, to 7 September 2020 [581].
- 562 No response was received by GT by 7 September. On 11 September 2020, four days after the extended deadline had passed, Mr Attoh emailed to



confirm that he could not respond as he was getting advice on the matter [580-581]

563 In the light of Mr Attoh's failure to respond instead of deciding to take no further action Mr Rosinke decided to start speaking to the witnesses who could be identified as relevant from Mr Attoh's grievance.

564 In the last couple of weeks of September grievance investigation meetings were conducted by Mr Rosinke and who was accompanied by Ms Makwembere who took a note of each :-

564.1 Mr Holland (17/09/2020) [574-579]

564.2 Ms Hunter (22/09/2020) [594-596]

564.3 Ms Gladwin (23/09/2020 [597-598]

564.4 Mr Sohal (30/09/2020) [599-601]

564.5 Mr Turner (30/09/2020) [602-604]

565 On 22 September 2020 Mr Attoh commenced early conciliation. Early conciliation concluded on 22 October 2020.

566 Also on 22 September 2020 26 Ms Makwembere emailed Mr Attoh explaining that as it was not in anyone's interests to leave his grievance unresolved indefinitely, the grievance would be progressed and yet again extended the deadline for Mr Attoh to respond to the questions that had been sent to him on 13 August 2020. He was also asked to confirm either a proposed date for a meeting, or if he would be providing responses by 25 September 2020. Mr Attoh was told if he had not done either of these things by 30 September 2020, GT would conclude the investigation and share the outcome report with him in writing [580].



- 567 No response was received from Mr Attoh, so we were told and accept the investigation proceeded solely on the points raised in Mr Attoh's written grievance.
- 568 After the investigation meetings concluded, Ms Makwembere moved roles internally within GT and was replaced by Karen Warren, Senior Manager – Employee Relations Centre of Expertise, in supporting Mr Rosinke.
- 569 On 26 October 2020, Ms Warren emailed Mr Attoh confirming that the investigation into his grievance had been “concluded as best it could without any input from him” and offered him a final opportunity to provide written responses or to meet Mr Rosinke. Ms Warren gave Mr Attoh until 29 October 2020 to revert to her on this and advised that should he fail to respond, the outcome would be provided to Mr Attoh in writing [610].
- 570 The day after the deadline expired Mr Attoh responded to Ms Warren (30 October 2020) confirming he would seek advice and would respond ‘sometime later next week’. Mr Attoh was granted that further week to respond and Ms Warren confirmed that GT awaited a response by 6 November 2020 at the latest [609].
- 571 On 6 November 2020, Mr Attoh emailed Ms Warren repeating his earlier position that he would be willing to attend a meeting if he could bring a companion from outside the Respondent. Ms Warren repeated that GT's position remained unchanged in that any companions were to be either trade union representatives or (former) colleagues but also provided Mr Attoh further time until 13 November 2020 to respond [608-609].
- 572 No response was received from Mr Attoh.



GRIEVANCE OUTCOME

- 573 Complaints UC/LFT22, VDet14 & PDet8 relate to GT *“unfairly finding that none of the claimant’s grievance complaints were upheld relating to the 16 July 2020 grievance [16 November 2020 (outcome provided)].”*
- 574 Beyond that in his witness statement Mr Attoh stated *“... the outcome letter is dated 29 October 2020, so this is clearly a predetermined outcome and that their offer to wait until 13 November 2020 to wait for a written response was a lie”* [DA/122]. Whilst the grievance outcome cover letter is dated 29 October 2020 [611] the outcome itself is dated 3 November 2020 [618].
- 575 Mr Rosinke told us and the documents demonstrate Mr Attoh was given five extensions to the original deadline of 21 August 2020, to respond to the questions (7 September 2020, 30 September 2020, 29 October 2020, 6 November 2020 and 13 November 2020).
- 576 As those extensions demonstrate Mr Attoh was given further opportunities to engage after 26 October 2020 and indeed responded to these. He did not do so substantively. We find that whilst the outcome was re-dated to reflect the extensions after 26 October the cover letter was not. However that does not mean the outcome was predetermined.
- 577 As the outcome itself makes plain the period of investigation ranged from 22 July 2020 to 20 October 2020 [612-618] and as Mr Attoh was aware from Ms Warren’s email of 26 October 2020 the investigation into his grievance had been *“concluded as best it could without any input from him”* by then. Mr Rosinke had granted those extensions so Mr Attoh could respond and we find had he done so Mr Rosinke would have considered and investigated that feedback. Mr Attoh did not do so. Whilst the investigation was substantively concluded by 26 October 2020 we find it was not predetermined. Nor in any sense was that dating/predetermination issue related to race, Mr Attoh’s protected act or the protected disclosure for the same reasons. It was a



simple failure to amend a date. We find as a professional man it is fanciful for him to have suggested any were such and those allegations do him no credit.

578 As to the substance of the grievance it included four heads:-

578.1 Allegation one: intimidation, harassment, bullying and name calling

578.2 Allegation two: breach of Voyager credentials

578.3 Allegation three: strain of the PIP

578.4 Allegation four: race discrimination

579 Mr Rosinke addressed each in turn before concluding :-

“Outcome [618]

In the Panel's view. many of DA's allegations have been raised previously In a number of ways internally. with different people, and attempts have been made to address these with the limited information provided by DA.'

This grievance process would have provided DA with the opportunity to express his views directly to the Panel and provide further information to enable a deeper investigation. Without such information, and any specific evidence to the contrary, it appears to the Panel that DA had either not accepted the response at the time or disliked the response to his allegations, which has led to him continuing to raise the same issues (including upon leaving the firm).

The Panel do not uphold the allegations and dismiss the grievance.

Recommendations [618]

The Employee Relations team monitor any correlation between the Capability processes and ethnicity to identify any trends and provide insight for future interventions. The Panel recommends that the firm acts on the suggestion that the Orientation process for individuals with a culturally different background is reviewed. Especially at experienced hire level as. Despite technical ability. cultural fit may need additional support to make it a smoother integration.



The Birmingham Audit leadership team are made aware of the perception of a boy's club in the office and review that the preventative measures already adopted are still effective. In addition, a discussion amongst the leadership team regarding the relevance of cultural diversity awareness may be appropriate.

One aspect that was noted by more than one individual was regarding an improvement to providing timely accurate and clear feedback; in particular when the feedback is highlighting under performance. The Panel are aware this is not an issue exclusive to the Birmingham team. but suggest this is noted by the Birmingham Audit leadership team and recommend discussions on ways to improve feedback is considered with support from the People Advisory team.

The Panel are satisfied that due process was followed by the Audit leadership team into the Voyager credentials investigation and that appropriate follow up action was taken. Given the potential serious nature of the investigation. the Panel recommend that the actions taken are reviewed to ensure they are still appropriate.”

580 Within that Mr Rosinke also deal head on with the complaint we allude to at (141) (and specifically refer to at (151)) *“most people (over 70%) of my race who were in my department of the office or who joined whilst I have been here in the past 2 years have left”*. In his report [617] Mr Rosinke stated the Panel had reviewed the data for the time period relating to Mr Attoh’s employment (July 2018 to July 2020) within the Audit team in the Birmingham office. That included both formal and informal action taken under the firm's capability policy as well as leavers and joiners and he identified only two formal and four informal capability cases and no dismissals under the formal capability policy within those criteria. He concluded that the panel were unable to correlate Mr Attoh’s statement of 70% with the data collated from GT’s systems and nor could he find any evidence to support Mr Attoh’s statement that his performance management through an informal or formal PIP was related to his ethnicity. Further, Mr Rosinke was satisfied that there were performance concerns with Mr Attoh’s performance.

581 In his witness statement Mr Rosinke relayed the data in more detail:-



“35(d) ... This is incorrect. In July 2018, of the 169 employees in the Birmingham Audit team, four identified as Black or Black African (including the Claimant) and in July 2020, of the 157 employees in the Birmingham Audit team, two identified as Black or Black African (including the Claimant). 50% of the people of the Claimant’s race left the Respondent in the two-year period.

Of the two employees who left, neither left ‘through similar performance management out agendas’, in fact, one resigned due to ‘work location’ and the other was on a fixed term contract which expired, although has since re-joined the Respondent. Neither were subject to any performance management process.

During the Claimant’s employment, within the Birmingham Audit team, there were only two formal capability cases, and four informal PIPs, both including the Claimant. Of the four informal PIPs, including the Claimant, two successfully completed their PIPs and two progressed to formal capability processes, being the Claimant and an Associate named [JM].

[JM] resigned after being advised that her informal PIP would be made formal and I do not believe that the formal process proceeded during her notice period given that she was only to work one months’ notice. She did, however, remain on her informal PIP and was monitored for the duration of her notice period.

The nationalities of the employees subject to informal PIPs were White British; Mixed – White and Black African; Black or Black African (the Claimant); and not specified’ ([JM]).

There were 24 joiners and 44 leavers, none of which were dismissals following the capability process.

It was difficult to investigate the Claimant’s claims of race discrimination further as he had not provided any specific examples within his written grievance for me to look into, and he had not responded to the questions that had been sent to him. I did ask all of the individuals that I spoke to whether they were aware of or had witnessed anything of concern that might corroborate the Claimant’s allegations, but nobody was aware of anything that even hinted at being potentially discriminatory.”

582 Despite not upholding the grievance Mr Rosinke’s recommendations make clear he understood the nature of the complaints as was demonstrated by him identifying related improvements that could be made to GT’s practices going forward.



- 583 As to the first allegation having reached the view that Mr Holland had read from a script when offering the protected conversation Mr Rosinke determined Mr Holland had not made a threat concerning a reference and that the performance grading was a fair one as demonstrated not just by Ms Gladwin but also Mr Sohal. That aside Mr Rosinke still looked beyond that at the bullying complaints. He identified that Mr Attoh appeared to choose to sit alone and kept himself to himself and identified that being so it was understandable that once viewed through a particular lens, it could be easy to interpret actions in a certain way and accepted there was a perception, if not a reality, of a boy's club environment in the Birmingham office.
- 584 As to the second Mr Rosinke sought again to explain that that it would be inappropriate for Mr Attoh to be made aware of any actions relating to another employee as this would be in breach of GDPR.
- 585 As to the third having found no evidence that supported Mr Attoh's allegation of Intimidating behaviour to harass him (so he resigned) Mr Rosinke considered the refusal of the sabbatical request was for valid reasons but then went on to explain these; as Mr Attoh was underperforming and a break in the process would have delayed the PIP and resulted in elongated Mr Attoh's PIP process still further.
- 586 As to the race complaints (the fourth issue) Mr Rosinke identified no evidence to support Mr Attoh's statement that his performance management was related to his ethnicity and instead there were genuine performance concerns with his performance. However, again he went on to recognise there was work still to be done to improve the experiences of colleagues from ethnic backgrounds in particular in attainment and career progression.
- 587 That approach was to Mr Rosinke's and GT's immense credit. We find GT was a progressive and open business and it accepted there were historic issues and work to be done addressing them. For the reasons we give above and those below we find that race played no part in Mr Rosinke's decision and



he came to the decision he came to for the reasons he gave. Insofar as a constructive unfair dismissal is argued we find and that was based on sound evidence flowing a reasonable investigation.

588 We find Mr Rosinke's decision to only permit a companion who was a union representative or an employee merely followed GT's procedure. We find that Mr Attoh was treated no differently to any other member of staff with regards to a companion. Mr Attoh was seeking more favourable treatment than colleagues were entitled to.

589 We find the repeated opportunities Mr Rosinke gave Mr Attoh to input into his investigation were if anything more favourable treatment than he would have given to other members of staff, not less.

590 We find Mr Rosinke investigated the grievance properly and came to the conclusions he came to based on sound grounds. The investigation and the recommendations he made show he did not just accept what he was being told by the witnesses but checked for evidence/records to support their accounts. Further, he went beyond the allegations as put. Despite the absence of detail from Mr Attoh as to the basis for the 70% claim Mr Rosinke researched the available data, Mr Attoh did not accept that data but nor as we say did he challenge the witnesses as to the way the individuals concerned described themselves and nor was he in a position to contradict the reasons identified by GT for the basis on which those individuals departed.

591 Whilst GT acknowledge that it was aware of both protected disclosures and the protected act by this point given our positive finding as to the reason why Mr Rosinke acted as he did we find they played no part in his decision and those complaints fail.

592 In any event the second alleged disclosure like the first in our judgment was focussed on the personal rather than the public and again we find the disclosure did not qualify for protection (see (490 & 491)).



Our further findings and conclusions

- 593 Having made determinations on the evidence we considered the evidence in the round mindful that discrimination is hard to prove and the burden of proof applies. We were mindful that Mr Sohal and Mr Rosinke both acknowledged the existence of a clique of staff within the Birmingham office and the failings we identified with regard to note keeping by some staff (such as Mr Anton), delays in minutes being sent (Ms Gladwin) and the errors in relation to investigation (and sanctioning) of Mr Garcia. We note that whilst we were told diversity training was optional for GT ,staff it was not in dispute Mr Attoh having referred to them that forums were arranged in the aftermath of the George Floyd Murder. We found that whilst there was some way to go GT was making genuine attempts to diversify its workforce and to ensure an ethnically representative distribution of colleagues in higher management and to ensure there were no barriers to entry.
- 594 Those matters aside in each and every instance we have found that either events did not occur as Mr Attoh alleged or if they did, they were not for the reasons he suggested.
- 595 We found Mr Attoh was a wholly unreliable witness. He was unable to date many of the events and despite repeated requests to do so provided no detail of his complaints at the time. He repeatedly raised matters either not raised at the time (the amendment by Mr Garcia of the documents to support the adverse feedback he gave being one, which was not raised until after the conclusion of the investigation) or in some cases at any point before (the allegation that Mr Coates had improperly signed off accounts). Further, he repeatedly changed position.
- 596 He made serious allegations without any basis for them, or giving any thought to them or their consequences for the individuals concerned only to retract the same against Mr Coates, Ms Skeaping and Mr Sohal (only in the case of Mr



Sohal to repeat it again having apologised, retracted and Mr Sohal then having been released and attendance excused).

597 Mr Attoh suggested before us that Ms Makwembere, had been moved to a new role because she was black when that was merely speculation on his part.

598 At points and until this was pointed out Mr Attoh alleged that detriments had occurred before the protected acts/protected disclosures that were alleged to have led to them. At other points we found he had misattributed comments made long after the event in one context to an earlier point and other context (for example the alleged “*bums on seats*” comment made by Ms Gladwin and his complaint about Mr Anton not providing feedback).

599 As to his perception of events in addition to the chronological sequencing issue we refer to a few paragraphs before this, we found there were inherent contradictions in his fundamental case; he gave three reasons why Mr Anton initially took against him, non were connected to race. He told us repeatedly (having been repeatedly being asked to do so) the reason he did not raise specific instances of discrimination was because of the culture in GT. He could not explain how that was consistent with him going to Mr Coates with regard to Mr Anton, Ms Cooper in relation to seeking support, Ms Hunter in relation to Mr Garcia)and the way when he raised grievances and an appeal, these were investigated. He was unable to explain why given he alleged he had raised issues of discrimination with what was essentially one of GTs diversity and inclusion champions how that could be so.

600 Nor could he explain given he worked in a regulated sector and was a member of a professional body, if he had felt that issues could not be raised internally why he did not raise them with his professional body as he was duty bound to do if he believed that was so.



- 601 Those internal inconsistencies led us to conclude that he did not question the view he had come to or the basis for it, or why having come to it, having accepted he did not initially hold that view, if there was a legitimate basis for that change of view. He solely looked for evidence supporting his own position and steadfastly refused to accept any evidence that did not. That applies not just to the feedback he was given but his direct discrimination, victimisation, harassment and protected disclosure complaints. As the comments he gave in advance when seeking feedback demonstrate he sought to blame others/events and not accept responsibility either for his own development or failings.
- 602 Mr Attoh was given multiple opportunities to attend a grievance meeting and/or to provide evidence in alternative ways and deadlines extended accordingly. Before that Mr Attoh had been told how to raise grievances and appeals and what information had to be provided and failed to do so. As we say without that evidence GT could not properly investigate those matters. His failure to do so and the inconsistency when he gave his explanation for failing to do so, together with the other matters we raise lead us to doubt his account across its length and breadth. They lead us to conclude the reason he could not provide that detail why not led us to conclude that was because events unless supported by other evidence did not occur as he said.
- 603 We find that save for the deficiencies we list above with regards to Mr Garcia and note taking GT acted fairly and reasonably throughout including the grading review, the PIP processes and grievance. As to the PIP process it was entitled to come to the views it came based on the evidence before it. Mr Attoh was performing below expectations for an auditor of his experience in its view. Those views were not influenced by race, the protected act or the protected disclosures.
- 604 We find GT had reasonable and proper cause for acting as it did, the evidence before us was that GT did not intend to abandon or altogether



refuse to perform the contract with Mr Attoh and Mr Attoh was not entitled to treat himself as dismissed. His claims in their entirety fail.

Employment Judge Perry
Dated: 12 June 2023