



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M N Hasan

v

Tesco Stores Ltd

Heard at: Watford

On: 3 - 9, 30 April, 21-22 May 2018

Before: Employment Judge Henry

Members: Mr A Kapur

Mr P Miller

Appearances

For the Claimant: In person

For the Respondent: Mr T Adkin, Counsel

RESERVED JUDGMENT

The unanimous decision of the tribunal is that:

- I. The claimant has not been discriminated against on the protected characteristic of age.
- II. The claimant has not been discriminated against on the protected characteristic of race.
- III. The claimant, having made a protected disclosure on 6 May 2015 in respect of health and safety has not suffered a detriment as a consequence thereof.
- IV. The claimant has not been unfairly dismissed pursuant to s.103A of the Employment Rights Act 1996, for having made a protected disclosure.
- V. The claimant's claims are accordingly dismissed

Reasons

1. The claimant by a claim form presented to the tribunal on 2 August 2015, presents complaints for automatic unfair dismissal pursuant to section 103A of the Employment Rights Act 1996, Discrimination on the protected

characteristics of age and race, detriment on having made protected disclosures, and a claim for an unlawful deduction from wages in respect of pay and holiday pay.

2. The claimant's claim for pay and holiday pay have been withdrawn.
3. The claimant commenced employment with the respondent on 26 October 2013. The effective date of termination was 19 May 2015; the claimant then having been employed for one complete year.

Issues

4. The issues for the tribunal's determination were set out following a preliminary hearing and sent to the parties on 23 January 2017, which were confirmed and agreed at the outset of the hearing, as the issues for the tribunal's determination.

Evidence

5. The tribunal heard evidence from the claimant, and from the following witnesses on behalf of the respondent:
 - David Warren – Personnel Manager,
 - Paul Dolling - Area Manager, at the relevant time Store Manager at Lee Valley Extra Store,
 - Laura Fleet - Personnel Manager at Lee Valley Extra Store,
 - Ian Arnold - Senior Manager at the relevant time Senior Manager at Lee Valley Store,
 - Nicola Mendes - Tesco Group People Manager,
 - Rebecca Maslen - Compliance Manager at Colne Hatch Extra Store,
 - Chloe Bishop – Warehouse Manager at Lee Valley Extra Store,
 - Alyson Harte – Head of Resourcing at material time People Business Partner (South).
6. The witnesses' evidence in chief was received by written statements upon which they were then cross-examined. The tribunal had a bundle of documents, exhibit R1. From the documents seen and the evidence heard, the tribunal finds the following material facts.

Material Facts

7. The respondent is a well-known supermarket, operating in the retail industry and operates under a number of formats being Tesco Express, Tesco Metro, Tesco Superstore and Tesco Extra. The respondent also operates distribution centres throughout the UK.
8. The claimant was employed as a part-time Customer Assistant in the Fresh Food Stock Control Team, within the respondent's Lee Valley Extra Store.
9. At the material time, the claimant was aged 22 years. He is of South-East Asian origin and was brought up in Bangladesh. The claimant moved to the

UK in 2009 and commenced an Undergraduate degree at the University of Ulster, studying business studies in 2012. He completed his course in January 2015.

10. It is the claimant's evidence that, his course work was; management and marketing and business decision making, for which in November 2014 he wrote a specific piece of course work on Tesco Plc profits, for which in January 2015, the claimant states that he had recognised that there were a lot of issues within Tesco and Tesco Lee Valley, for which he thought the working system could be changed for the better. He identified issues with labelling of products and marketing, noting that a lot of products from Tesco ended up as waste, for which the claimant states he then put together a proposal to remedy the failings he had identified.
11. Within the Lee Valley Extra Store, the Store Manager was Mr P Dolling. He had a report of six managers, being; the Night Lead Manager; the Deputy Manager - Mr Rampersad; the F&F and GM Manager - Mr Arnold; a Customer Experience Manager; a People Manager - Mrs Fleet; and a Compliance Manager - Ms Maslen.
12. There was then a further tier of management comprising ten team leaders, the claimant being within the Fresh Food Stock Control Team.
13. On Mrs Fleet - People Manager, taking a lifestyle break, the position of People Manager within the Lee Valley Extra Store was temporarily filled by Mr Warren, between December 2014 until the end of February 2015.
14. On 1 February 2015, the claimant sent an email to Mr Warren, advising that he wished to speak to him concerning a proposal he had, stating;

“hope you are well. With due respect just to let you know that in my opinion our Store Manager, Mr Paul may save roughly £1,000 or more every month just from Fresh Department.

If you would like to query about this matter please don't discuss the matter with anyone except Mr Paul”.

15. On 3 February, the claimant again wrote to Mr Warren, stating;

“with due respect just to let you know that I have done well researched of the function of marketing management in Tesco Plc and got 74% marks out of 100% for my Marketing Management course work.

I have got two idea to let you know that:

- a. Idea 1 - £1,000 or more can be saved every month from the Fresh Department.
- b. Idea 2 - £100,00 (hundred thousand) can be increased sales every year just from the Fresh Department.

If you would like to investigate the ideas please just let me know and please find the attached file below”.

16. The claimant attached thereto his marketing management course work, a copy of which is at R1 page 99.
17. On Mr Warren receiving these emails, which he had not expected, Mr Warren met with the claimant, whereon the claimant advised that he had a proposal but he would not furnish any details, advising that Mr Warren was to keep the matter confidential which was only to be shared with Mr Dolling, the Store Manager.
18. On 6 February, the claimant emailed Mr Warren his proposal, a copy of which is at R1 page 116, headed "submitted to: Paul Dolling, Store Manager...."
19. The claimant's email to Mr Warren, attaching his proposal, stated;

"with due respect just to let you know that I have a meeting with our Store Manager, Mr Paul Dolling regarding the business gap at 4.30pm on Saturday, tomorrow.

So in our meeting if I can have our Line Manager, Mr Mark or Ms Becky to represent me that will help me more to share my idea. Please also find the attached file."
20. It is not the claimant's case that he furnished a copy of this proposal to Mr Dolling, the claimant's evidence to the tribunal being that he did not then send his proposal to Mr Dolling, the proposal only being sent to Mr Warren.
21. The tribunal pauses here, as the tribunal received significant evidence as to the arrangements for the meeting, stated to have been arranged for 4.30pm on Saturday 7 February 2015, which is also a cornerstone to the claimant's claim.
22. It is the claimant's submission that, a meeting was arranged for 4.30pm on 7 February 2015, which Mr Dolling then avoided. The claimant maintains that this was to avoid discussing his proposals premised on his race and age.
23. It was further, the evidence before the tribunal that, on Mr Warren having met with the claimant following the claimant's email of 3 February, and on the claimant informing Mr Warren that he wished to speak with Mr Dolling, but had refused to furnish Mr Warren with details of his proposal, Mr Warren accepts that he would have sought to arrange a meeting with Mr Dolling and states that the first opportunity that he then had to speak with Mr Dolling would have been on the morning of 7 February 2015.
24. It was the claimant's initial evidence as presented in his written statement and in giving oral evidence to the tribunal that, Mr Warren had arranged the meeting with Mr Dolling for 4.30pm on the Saturday, and that that was what was recorded in his email to Mr Warren of 6 February 2015.
25. This evidence however, changed on the claimant cross-examining the respondent's witnesses, where he advanced that the meeting had been

arranged specifically between him and Mr Dolling, exactly when however, it is not certain, and the claimant accepts that he had not discussed his proposal with Mr Dolling at any time before 7 February 2015.

26. It is Mr Dolling's evidence that, he had not had any discussions with the claimant regarding his proposals or otherwise setting a date of 7 February to meet him at 4.30pm. Mr Dolling's evidence was clear in this respect, being that, on Saturdays he would normally leave between 3 and 4pm, such that he would not then have arranged a meeting for 4.30pm on a Saturday.
27. From a perusal of the claimant's correspondence of 6 February, the tribunal notes that the claimant is there informing Mr Warren that he, the claimant, has a meeting arranged with Mr Dolling for 4.30pm, giving Mr Warren notice thereof, which would not have been the case had the meeting been arranged by Mr Warren.
28. In the circumstances, on a balance of probabilities, the tribunal finds that if the meeting as recorded in the claimant's email of 6 February was arranged, it had not been so arranged between the claimant and Mr Warren, or otherwise between the claimant and Mr Dolling.
29. On 7 February 2015, Mr Dolling had a family emergency necessitating him travelling to Scarborough, for which he left work early.
30. The tribunal further here notes that, there is no evidence that Mr Dolling was furnished with a copy of the claimant's proposals as furnished to Mr Warren on 6 February. It was Mr Warren's evidence to the tribunal that, he may have had a verbal discussion with Mr Warren on the morning of 7 February but that he had not provided any documents.
31. The claimant challenges this evidence, advancing that, because Mr Warren had a copy of his proposals he must have given it to Mr Dolling.
32. On 7 February 2015, it is the claimant's evidence that having attended the store around 1.00pm, he observed a meeting of managers where they were discussing issues as to the reduction of waste, and that that was the subject of his proposals, which the claimant states indicates that his proposals were being discussed.
33. The meeting that is held by Managers is called a Team Five Meeting which is led by the Deputy Manager, which is scheduled to last no longer than 30 minutes, at which every Line Manager or Team Manager in the business at the time of the meeting are to attend.
34. The standing items for the meeting are set out, and a copy of which is at R1 page 120a, of which job 14 is a standing agenda item, being "review of the waste routines and discuss the results".
35. It is the respondent's evidence that the issue of rotation of out of date stock is an on-going matter of discussion by management, being job 14 and that,

if on 7 February they had been discussing that matter, then this was a regular item on the agenda for discussion and had not been premised on any proposal from the claimant.

36. It is material here to note the claimant in furnishing his proposals to Mr Warren, had specifically informed Mr Warren of the need for confidentiality, and it is Mr Warren's evidence that he had not discussed the claimant's proposal with any person other than Mr Dolling, and there is no evidence of Mr Dolling then having had any input in the meeting of 7 February, which the claimant observed.
37. It is further the claimant's evidence that, following this meeting, in discussion with Mr Warren, Mr Warren had informed him that he had discussed his, the claimant's, proposals with Mr Dolling before Mr Dolling had left, and that a meeting would be arranged when they both returned from leave on 23 February 2015.
38. It is Mr Warren's evidence in this regard that, on his, Mr Warren, undertaking a "rumble" whereby all colleagues, including managers, would go on to the shop floor tidying shelves, rotating stock etc, at approximately 4.00pm each day, he met the claimant as the claimant arrived for his meeting, when he told the claimant that Mr Dolling had had to leave unexpectedly due to a family emergency, and that he was then on two weeks leave due to return on 23 February. Mr Warren here states that, he advised the claimant that he was happy to discuss his proposal in more detail, whereon the claimant began to show him details of his proposals which were mainly in relation to the reduction process, rotation planning and increase in company profits, Mr Warren stating to the tribunal that "none of the claimant's ideas/proposals were in relation to any concern the claimant had over Tesco customers, criminal activity or the public's health and safety....".
39. Following the claimant's discussion with Mr Warren, the claimant stated that he would still like the opportunity to speak with Mr Dolling about his ideas, for which Mr Warren advised the claimant that he would arrange another meeting when both himself and Mr Dolling were available in the store.
40. In discussing his proposals with Mr Warren, the claimant raised issue about out of date duck meat in the frozen department, which Mr Warren believing that the claimant was advising him of a current state of affairs, proceeded to the frozen food section whereon the claimant informed him that the meat had been found the weekend before and had already been dealt with by Mr Arnold (Senior Manager). In respect of the out of date meat, it is here noted that the claimant's concern was that Tesco could have saved money had the product been sold at a reduced price before their expiration date; The discussion being about Tesco being more profitable.
41. In respect of the out of date meat, it was clarified in evidence that the meat in question was not duck meat but kosher chicken meat, the out of date situation having been identified by a customer. The matter was addressed

by Mr Arnold and the claimant was a member of staff tasked to remove the out of date meat. There was no issue raised as to health and safety or otherwise criminal activities.

42. On 8 February 2015, the claimant by email wrote to Mr Warren under the subject Tesco proposal stating;

“Good Morning. I would just like to know that, are you in today in the store? If you are in today, please let me know. I need to let you know something emergency.”

43. This email was not however received by Mr Warren, the 8 February being a Sunday, at which time Mr Warren was not on shift or otherwise in the store. Mr Warren raised the issue with the claimant when next in the store, albeit, the claimant would not explain what his email was about.

44. The tribunal also notes correspondence between the claimant and his friend, Mr Jamie Roberts on 8 February 2015, by which the claimant records him not having met with Mr Dolling on 7 February, stating;

“when Store Manager comes back from the holiday again I will have a meeting with my Store Manager about the Tesco proposal. Please pray for me if I can be a Manager. I will again let you know about the meeting how it goes. Thanks once again.”

45. On 11 February 2015, Mr Warren met with the claimant on the shop floor, wherein discussions were had as to the claimant seeking to change his contracted hours; the claimant seeking to work during the morning instead of his evening shift, wanting to remain in the same department. Mr Warren aware that there were no vacancies for the shift pattern the claimant sought, being familiar with the store’s “heat map,” which detailed the allocation of staff resources, Mr Warren advised the claimant that he would see what he could do. Mr Warren is here adamant that he gave no assurances that his request could be accommodated.

46. It is Mr Warren’s evidence here, that, on asking the claimant why he wanted to change his hours, the claimant would not give him an explanation, stating that “other managers were aware of the reason for that”. Mr Warren subsequently spoke to Ms Maslen, the Acting Compliance Manager and Liam Major, Service Manager, both of whom were not aware of any rationale of the claimant, for wanting to change his work hours.

47. Later that evening at 10.35pm, the claimant emailed Mr Warren under the subject, idea 3, stating;

“in addition to my original recommendations, would like to raise the issue of problem in the frozen department too. Please can you pass this email on to Paul, the Store Manager.

I believe that the date of products in the frozen department may not properly check.

Problem – found in frozen department

Roughly 4-6 months ago at least 100 packets of duck meat were found in out of date in the frozen department. Each duck meat packet costs is approx. £9 to £10. I alerted our Senior Day Shift Manager, Ian to the problem, resulting in all of duck meat packets had to go in the waste. This problem could have been averted and further savings by this area can be made.

I felt it important to bring this to your attention.”

48. This is the issue above referred to at paragraphs 40 and 41 above.
49. At 10.50pm the claimant again emailed Mr Warren, under the subject, “please keep confidential” stating;

“Dear David,
I respectfully request you keep my IDEAS strictly confident until I have a meeting with you and Paul, the Store Manager.”
50. In respect of these correspondence, Mr Warren’s evidence is that no action was taken by him, as regarding the out of date meat, this having been addressed by Mr Arnold, and in respect of the claimant’s later request, he had asked that his ideas be kept confidential until he had a meeting with Mr Dolling. The tribunal accepts Mr Warren’s evidence.
51. The tribunal pauses here for purposes of completeness, as the claimant sought to adduce in evidence correspondence between himself and his friend, Jamie Robert, by which the claimant sought to convince the tribunal thereby, that Mr Warren spoke to Mr Dolling at times they were on annual leave concerning work matters. The document was not admitted in evidence as the document did not have probative value; the document reflecting the claimant interpreting a discussion he had with Mr Warren, where Mr Warren had stated that should the claimant furnish him with further proposals he would pass them to Mr Dolling, on the claimant suggesting, albeit, he did not then do so, furnishing his additional proposals to Mr Warren whilst Mr Warren was on leave, he was then of the opinion that Mr Warren would have furnished the correspondence on to Mr Dolling whilst Mr Dolling was on leave. This evidence had not been put to Mr Warren in cross-examination and the claimant had equally not made this contention in his evidence to the tribunal, seeking to rely on that evidence that, as a consequence Mr Dolling was then aware of his proposal prior to 23 February on his return to work from annual leave. Mr Dolling’s evidence to the tribunal is clear that he had not been aware of the claimant’s proposal before his return from annual leave. The tribunal accepts Mr Dolling’s evidence, with the correspondence between the claimant and his friend does not impugn.
52. With respect to the managers meeting of 7 February, above referred, the claimant submits that as a result of Mr Warren and Mr Dolling discussing his proposals, they had put pressure on management to more effectively perform their roles, which had caused resentment amongst the managers in being exposed by his (the claimant’s) proposals, for which the claimant

states they were then aggressive towards him. In support hereof, the claimant refers to an incident with Mr Arnold in the canteen.

53. The incident in the canteen, arose on 15 February 2015, on the claimant refusing to attend a meeting with the Fresh Food Manager, Mr Salvakumar, in respect of scanning items into a handheld device. This device produced a list of products which were approaching their expiration date, which list was then used to identify items for a reduction in price.
54. On the day in question, on the claimant having previously been off sick from work suffering with a problem with his back, the claimant had not scanned items in store above eye level, into the handheld device, and had not informed anyone of this, resulting in some items not then being identified for reduction. On Mr Salvakumar seeking to discuss the matter with the claimant, the claimant stated that he could not attend the meeting as he was unwell and needed to leave immediately. It is the claimant's evidence that he here stated that he needed to take medication and needed to eat, and had gone to the canteen to do so.
55. It is Mr Arnold's evidence that, on his addressing the claimant's refusal to attend the meeting with Mr Salvakumar, on being told by the claimant that he was unwell and needed to leave immediately, he had tried to encourage the claimant to attend the meeting, however, on the claimant maintaining that he needed to go home straight away because he was in a great deal of pain with his back, Mr Arnold then allowed the claimant to go home.
56. Approximately 15 minutes thereafter, Mr Arnold came across the claimant in the staff canteen. On Mr Arnold seeking to speak with him, the claimant refused. Mr Arnold then instructed the claimant that were he not going home straight away, he was to return to work and attend the meeting with Mr Salvakumar. It is Mr Arnold's evidence that, the claimant then responded very defensively, and in a threatening manner stated that "*he knew the law*" and "*he knew what he could and could not do*", the claimant thereon produced a receipt for medication. It is Mr Arnold's evidence that this receipt was for over the counter medicine rather than any prescribed medication.
57. It is the claimant's evidence that, Mr Arnold's "tone was hostile and rude" and that he was asked to leave the premises. The claimant states that he "*did not believe Mr Arnold would have treated older, white employees this way*" and that he felt there was no respect afforded to him.
58. Mr Arnold disputes treating the claimant in any hostile way, stating that, he had merely been questioning the claimant why he was in the staff canteen when he had told him that he needed to be going home straight away. Mr Arnold's evidence being that he "just needed the claimant to confirm whether or not he was going, so that he knew the situation and could arrange cover for the claimant's absence," further informing the tribunal that he would have had the same conversation with any colleague in those circumstances, irrespective of their age or race.

59. The tribunal accepts Mr Arnold's explanation of the circumstance and the discussions he had with the claimant.
60. It is Mr Arnold's further evidence that, the claimant at this stage raised the matter of his wanting to change his hours from evenings to mornings, but provided no reason for that request. Mr Arnold advised the claimant that he would need to discuss this with his Line Manager, Jayda Hassan or otherwise the Deputy Store Manager, Mr Ramparsad. Mr Arnold states that the claimant then implied that Mr Dolling the Store Manager, would support a change in hours for him, which Mr Arnold states he found strange, as a Store Manager would not normally involve themselves in matters to do with colleagues' shift patterns.
61. On 16 February 2015, Mr Ramparsad wrote to Mr Warren raising concern as to the claimant's behaviour, being; "odd" and "quite concerning", stating that the claimant was requesting to speak to certain managers regarding issues he claimed to be very important, and secretive, Mr Ramparsad stating;

"As I said the other day I personally spoke with him Saturday night, week 50 where he stated he wanted to talk to me because it was an emergency, but not for him for me and he wanted to help me? When I questioned him he said big managers in Tesco have been sacked and he wants to help me? I don't feel it was appropriate behaviour or a discussion I wanted to have with him, I ensured Ian Sparks was present as what he was saying was very confusing.

I had been made aware that he has had a similar conversation with Becky, and yesterday Ian Arnold had an incident with him where he claimed he was unable to work due to back pain, so he was offered the option to sit on a check-out for the remainder of his shift, but refused as was unable to sit down. This would have been pretty straight forward, but he was found upstairs "sitting down" eating lunch?

This would have been a pretty straight forward conduct issue, but he refused to talk to either Kriss (on duty line) or Ian Arnold, he then made some threatening comment around managers getting sacked and that he has information that will get people in serious trouble?

.....there are some GAs, that have witnessed his erratic behaviour and comment..... he is definitely showing indications that he is suffering mental health issues and am worried that if left he will become a risk?...."

62. On Mr Warren commencing a period of leave from 17 February 2015, Mr Warren did not action this matter, leaving it for Mr Dolling to address, who had been copied in to the correspondence, on his return from leave on 23 February.
63. Mr Warren was then on leave between 17 February to 23 February 2015.
64. On 20 February 2015, the claimant again emailed Mr Warren under the subject heading "Wish to give another TESCO PROPOSAL (2)" stating:

"I have got idea 4 and idea 5.

I need to have a meeting with you and Paul, the Store Manager as early as possible to talk about my first TESCO PROPOSAL (1), and to get feedback of the first TESCO PROPOSAL (1).

As I also wish to give Paul and you another TESCO PROPOSAL (2)

I therefore: I believe that at least £1 million (Ten hundred thousand pounds) worth of sales can be increased every year by the company.

Idea 5: Is about improvement of rules and guidance in the store.”

65. Mr Warren did not respond to this, being on leave to 23 February 2015.
66. It is here noted that a restructuring project had been scheduled to commence on 23 February 2015, and was a project that both Mr Warren and Mr Dolling were engaged with, which they took up immediately on their return from holiday. In respect hereof, both Mr Dolling and Mr Warren had back-to-back meetings with affected colleagues in the store, meetings being scheduled for every day that week.
67. On Mr Warren being in one of the above referred meetings with a colleague, he was notified that the claimant had turned up at the store, unannounced, demanding to speak with him and that the claimant would not leave the store until he had spoken to Mr Warren in person.
68. Mr Warren was not then able to see the claimant until his lunchbreak at approximately 1pm. On speaking with the claimant, the claimant stated that they had a meeting. The tribunal finds that the claimant had attended for a meeting on Mr Warren having told him on 7 February that, he would arrange a meeting between him, the claimant and Mr Dolling on their return from annual leave. The claimant took that to have been confirmation that a meeting would be arranged for 23 February, being the date that Mr Warren and Mr Dolling returned from leave. The tribunal finds that a meeting had not been agreed for this date.
69. In making this finding, the tribunal is particularly conscious of Mr Warren's evidence that, on the restructure exercise having been planned well in advance and with the workload it entailed, and that a significant number of meetings had been scheduled for that week, he was confident that he would not then have arranged an additional meeting with anyone for that period and certainly not on 23 February, being his first day back to work from leave.
70. On the claimant thereon demanding that they agree a date for a meeting between himself and Mr Dolling, Mr Warren advised the claimant that he would confirm a date and time to him later that week.
71. The claimant further discussed changing his contractual hours, which on Mr Warren pressing the claimant for reasons why he wanted to change his hours, the claimant produced an article on his phone about a stabbing in

Woolwich, for which questions were asked of the claimant as to its relevance. On the stabbing having taken place outside a Tesco store, the claimant stated that he was afraid that Tesco managers were against him and would attack him, stating that, *"It is common in London that Tesco managers get people to attack others"*.

72. On the claimant being cross examined before the tribunal as to when and where such events took place, the claimant said he did not know.

73. Mr Warren subsequently informed the claimant that as he was due to leave the Lea Valley Extra store at the end of February, he would be passing on the issues to Mrs Fleet, to address on her return from her Lifestyle break.

74. The claimant did not attend work on 25 February 2015, however, there is disputed evidence as to whether or not the claimant made contact with the store.

75. On 26 February 2015, at approximately 9.30am, the claimant emailed Mr Warren, stating under the subject heading, "about changing the shift";

"I went to the store yesterday early around 4:30pm to speak to you, about changing my shift for the early shift 9am to 2pm.

As I could not work yesterday. Can you please let me know when is the best time to speak to you about changing the shift. So that I can work."

76. Mr Warren did not respond thereto referring the matter to Mrs Fleet.

77. On 27 February 2015, Mr Warren forwarded copies of the correspondence received from the claimant in respect of his proposals and issues about changing shifts to Mr Dolling, copy Mrs Fleet, a total of 10 documents for their reference.

78. Later that day, approximately 1:30pm, the claimant sent Mr Dolling, copy to Mr Lewis - CEO, Mr Stewart - CFO, Ms Horner - Chief People Officer, Mr Terrell, Ms Shelley and Mr Warren, under the subject heading "at least 2,000 Tesco stores managers need to be trained up properly again and again to run their stores well", enclosing copies of his Tesco proposal and Marketing Management coursework. The claimant's email provided:

"I have several ideas (1 to 8) that I believe will greatly improve the running of both my store but also of others.

I believe that all store managers of Tesco, should strictly follow my all ideas (1-8), so that Tesco can easily increase their profit.

Please I need to have a meeting in emergency with the TESCO board managers: David Lewis – Group Chief Executive, Alan Stewart – Chief Financial Officer, Alison Horner – Chief People Officer, Robin Terrell – Chief Customer Officer, Rebecca Shelley – Group Communications Director."

79. A copy of the Tesco proposal there submitted is at R1 page 132A to 132F.
80. Later that day, 27 February 2015, Mr Warren wrote to Ms Mendes, Group Personnel Manager advising of the above matters relating to the claimant, stating that he was concerned about the claimant's mental state and behaviours, asking what steps should be taken.
81. On Mrs Fleet due to meet the claimant (the circumstances pertaining thereto addressed infra) in respect of his absence, and that the claimant's business report appeared to have been something related to his university studies, Ms Mendes advised:

“If Laura is going to meet him today, it would be good to understand exactly what his concerns are, where these have come from and what he would like us to do about them. If we feel that we need some support to understand his mental health, then it would be good to ask Occ Health to support us with this.”

Asking that she be kept abreast of progress.

82. It is the claimant's evidence that, following his discussions with Mr Warren on 23 February, Mr Warren had arranged a meeting with him for 25 February, and that on his having attended for the arranged meeting, on seeing his Line Manager, Ms Jeyda Hassan, he was told that Mr Warren had left the site, for which the claimant states he told his Line Manager that he was having difficulties at work and needed to change his working hours, for which the claimant then states he had written his correspondence of 26 February 2015 to Mr Warren, above referred.
83. It is the respondent's evidence, which is challenged by the claimant, that, on 25 February 2015, on the claimant not attending for his scheduled shift, and on him not informing the respondent of a reason for not doing so, not accepting the claimant's version of events above referred, in accordance with their procedures they had attempted to contact him without success, for which a letter was then sent to him. The claimant does not accept this state of affairs, stating that he did not receive any letter dated 25 February but only received correspondence dated 28 February. The respondent maintain that the correspondence of the 28 February was in a similar form to that sent on 25 February, in accordance with procedure; the correspondence stating:

“You have been absent from work since 25 February without prior authorisation and you have not contacted the store with your reason for absence.

We are concerned about you and have tried to telephone to find out the reason for your absence, however we have been unsuccessful in contacting you.

We would like to understand the reason for your unauthorised absence so we can support you with authorised time off. Unauthorised absence is a breach of company policy and could result in disciplinary action, up to and including dismissal.

We would like you to attend a disciplinary meeting on Wednesday 4 March ... to discuss your unauthorised absence and why you have not been in contact with us, otherwise this meeting may be held in your absence and could result in your dismissal.

Alternatively, please make contact as soon as possible within the next two days to discuss your reason for absence, return to work date and any support we can give you.

If you wish to discuss your return or give a reason for your absence, please ring Laura Fleet immediately..."

84. The respondent's Attendance Policy is at R1 page 83 to 86, which under the section titled "What if I can't come to work," provides:

"As soon as you know you cannot come to work and at least 2 hours before your shift starts, please phone the Deputy Manager at your store. You must personally call the store unless circumstances make this unreasonable to do so, for example, you are in hospital...If you don't let us know that you can't come to work, we will contact you at the end of your contractual shift.

If you continually do not tell us you are not coming to work, you will be managed more quickly through the disciplinary process. You could be dismissed on the third time of not telling us you are going to be absent."

85. Under the section titled "What happens when return to work," the procedure provides:

" ... The Duty Manager will arrange for you to have a Welcome Back Meeting with a manager or Team Leader during your first shift back at work to discuss the following:

- Your fitness to return to work.
- The reason for your absence.
- ..."

86. By the Absence Without Leave guidelines, it provides as follows:

"First day of non-notified absence: Contact the employee by telephone.

Our primary concern is to understand why the employee is absent and if we can help them return to work:

- Telephone the individual at the end of their shift to check they are alright and, if appropriate if they plan to return.
- If the employee confirms they are absent due to sickness or any other reason record the details in the Store Log Book and agree a return date.... When the employee returns investigate the non-notification as per the Non-notification process.

- If the employee confirms they have left the company, send letter 1: Confirmation of leaver without notice. The effective date of leaving will be the date of the last shift worked.

Failure to contact the employee by phone: Make contact in writing.

If it is not possible to contact the employee by phone, send letter 2. The letter will ask them to make contact to explain their unauthorised absence and that a meeting will be held without them if contact is not made.
Start an Absent Without Leave Case Map document.

The meeting should be planned with at least 3 calendar days notice (or 4 days to take in to account any bank holidays or Saturdays) from when they first went absent.

Employee makes contact and/or attends any disciplinary meeting

The aims of the Absent Without Leave process are to understand the employee's reasons for absence and for the employee to return to work. If the employee makes contact or attends a meeting, they are no longer absent without leave.

- Agree the return to work date.
- Record the reason for absence on the Store Absent Log.
- On their return to work hold the Welcome Back meeting and arrange a separate meeting to investigate the non-notified absence as per the non-notification process.
- If they are a leaver, issue letter 1.”

87. It is the respondent's evidence that, on 26 February 2015, Mrs Fleet made contact with the claimant by telephone, in respect of the concerns he had raised with Mr Warren, in which Mrs Fleet stated that she would like to discuss the circumstances surrounding his proposals and concerns he had, arranging a meeting for 28 February 2015, as referenced at paragraph 82 above.
88. It is Mrs Fleet's evidence that, in the phone call with the claimant on 26 February, she sought to arrange a meeting for the claimant to be held with Chris Salvakumar, whereon the claimant asked that the meeting be held with Ms Maslen, because he felt more comfortable with her, which she duly arranged.
89. It is Mrs Fleet's further evidence that, she duly met with the claimant on 28 February 2015, at which the claimant explained his proposals and that he wished to change his working hours as he did not feel safe. The claimant did not give an explanation thereof, otherwise than stating that he did not want to work past 3pm and did not wish to work in his current role in Stock Control. It is further Mrs Fleet's evidence that, the claimant not being clear for his reasons in not wanting to work after dark, kept saying that he knew that Tesco managers had seen his proposals and were "out to get him". Mrs Fleet assured the claimant that his proposals had not been shared with the claimant's managers and that they were not angry with him, and further

advised that she had spoken to Mr Dolling to arrange a meeting about his proposals and would be in touch in due course in respect thereof.

90. Mrs Fleet further states that, she further informed the claimant that the letter of 28 February had been sent to him, for which he was to attend the AWOL meeting on 4 March 2015, to discuss his unauthorised absence, and that although contact had been made as of 26 February with him, they still needed to discuss the reason for his absence and look at ways to support his return to work, further advising that the purpose of the meeting was an investigation to understand the reasons for his absence and was not a disciplinary matter.

91. On 2 March at approximately 3pm, the claimant wrote to Mrs Fleet, copy to Mr Lewis, Ms Horner, Mr Dolling, Mr Warren and Mr Terrell, under the subject "Request to organise a meeting with Tesco board management" asking that his home address be updated for the respondent's file, further stating:

"As I also said that we have done lots of research on Tesco public Limited Company, as every single week Tesco losing million pounds. As colleague's waste are important in Tesco. Therefore, can we please organise a meeting to speak to with the Tesco board management with my store manager Paul.

As we have several ideas (1-9) that we believe will greatly improve the running of Tesco's all stores (6.784) and our all ideas (1-9) may help to bring that again Tesco's profit from number 3 position to number 1 position".

92. Mrs Fleet responded at approximately 6pm, advising that she had updated his address to the respondent's system, further advising:

"As I said in our meeting I have spoken to Paul this afternoon and tomorrow I will confirm a date and time for your meeting with him and email you so that we can discuss your proposal.

I have also confirmed that your meeting regarding your absence will be at 2pm on Wednesday 4 March in store. If you need anything else please just let me know."

93. The claimant responded to Mrs Fleet, copy to Mr Lewis, Ms Horner, Mr Terrell, acknowledging that they had a meeting for 2pm on 4 March 2015, regarding his absence, and in respect of the letter of invite referencing that contact had not been made with the store and that the respondent had been unsuccessful in contacting him to find out the reason for his absence, he stated that they could have contacted him by email, as Mr Warren and Mr Dolling had his email address. The claimant further advised:

"As it is not like this I have been absent form work without prior notice, it is about I could not do my shift and was having difficulty to do my shift. As I several times spoken to our temporary Personnel Manager David, our Line Manager Becky, that I feel uncomfortable to work in the night-time. However, I again informed to our Personnel Manager David about the reason of my absence on 23 February.

I further informed to our Personnel Manager David on 26 February, but I have not received any reply yet from David.

94. On no agreement having formally been made in relation to a shift change for the claimant, Mrs Fleet determined that it was appropriate that the AWOL meeting go ahead so that the matter could further be discussed with the claimant
95. The claimant challenges Mrs Fleet's evidence as to her telephoning him on 26 February, or of the meeting taking place on 28 February, stating that this did not happen, advancing instead that Mrs Fleet had called him on 2 March 2015, asking that he meet with her as a matter of urgency, for which he attended the store, meeting with her in Mr Dolling's office.
96. Mrs Fleet accepts that she held a meeting with the claimant on 2 March, in Mr Dolling's office, however, she states that this meeting occurred on the claimant attending the store, which was not pre-arranged, where he sought to speak to Mr Dolling about his proposal, but that on Mr Dolling not being available, Mrs Fleet had then spoken to the claimant about setting up a meeting with Mr Dolling.
97. In support of the claimant's evidence, he has referred the tribunal to correspondence between himself and a friend, Mr Jamie Roberts, on 2 March 2015, the claimant giving an account of the Store Manager, Mr Dolling, and Mrs Fleet not being happy because the management board were aware of his proposals, and further gave an account in respect of the meeting in the store, that:

“Personnel Manger thought that I am trying make trouble my Store Manager Paul that's why I have emailed the Tesco Board Management... My Personnel Manager was trying to treat me completely different today's meeting... then I explained by personnel Manager that I just sent 3 ideas to the Tesco Board Management...

I have got more ideas (1-9) that will help the whole company not just for my store... a\s I called Head Office then from the Head office said that I can go to boards management through the email/send letter/with my Store Manager or Area Manger or Divisional Manager to speak about all ideas (1-9).

Then my Personal Manager said will speak to Store Manager Paul to hear about Tesco proposal....

98. It is material here note that, whilst the claimant makes reference to Mr Dolling on 2 March whilst at the store, the claimant accepted in his oral evidence to the tribunal that he had not seen Mr Dolling on that day. It is also material that, the claimant in his evidence to the tribunal makes reference to a Group Director from Head Office calling in the store in an emergency, speaking with Mrs Fleet, but of which in cross examination Mrs Fleet was clear that around 2 March 2015, she had had no visits to store from any senior members of staff or Group Director form Head Office.

99. On a balance of probabilities, the tribunal prefers the evidence of Mrs Fleet, which is not contradicted by the correspondence between her and the claimant of 2 March, and is supported by correspondence between her and Ms Mendes in respect of Mrs Fleet meeting the claimant on 28 February, and of the respondent addressing the claimant's absence in accordance with the Absence Policy.
100. On Mrs Fleet discussing the issues with Mr Dolling she expressed her concern about the claimant's wellbeing, in that he was clearly troubled by the prospect of attending work and was anxious to discuss his proposal, for which it was agreed that they meet the claimant at 1pm on 4 March 2015, prior to his AWOL meeting which was scheduled for 2pm.
101. It is here noted that it was Mr Dolling and Mrs Fleet's determination that, as the claimant had not spoken to Mr Dolling in any detail about his proposals by that stage, it would be appropriate that the matter be addressed at their level, as opposed to it being escalated further.
102. On 3 March 2015, Mrs Fleet wrote to the claimant regarding the situation, advising that:
- “As I mentioned in our meeting on Monday, you have been sent the letter regarding your absence due to not coming in and being in breach of your terms and conditions. This letter was sent before I was able to contact you on the phone and we had our meeting on Monday.
- As I explained, we will discuss in that meeting your reasons for being off work, similar to what we discussed on Monday and try and support you with a plan to get you back in work. I have been looking at a temporary support plan to help you feel more comfortable to come back to work. This will all be agreed in Wednesday's meeting.
- I have spoken to Paul and we would both like to meet with you at 1pm on Wednesday to discuss your proposal...”
103. The claimant responded stating that, as he had a meeting for 2pm on 4 March, could he have another date and time to discuss his proposals.
104. On the claimant being informed that the meeting to discuss his proposals was to take place an hour before the AWOL meeting, the claimant further stated that he was aware of that but still wished that his proposals be discussed on another day.
105. A meeting to discuss the claimant's proposal was accordingly arranged for 7 March 2015, at 1pm.
106. On the claimant acknowledging the meeting for 7 March, the claimant then advised that he had sent his proposal, ideas 1-3 to Mr Dolling because he was in charge of Lea Valley Extra Store, and that having completed further research on Tesco he had submitted his ideas 4-9 to the Tesco management board, as he believed it would greatly improve the running of

all Tesco stores, all 6,784, which was then the reason for his contacting the Tesco Board Management to organise a meeting to speak to them about his ideas.

107. Equally on 4 March 2015, the claimant wrote to Mr Lewis, Group Chief Executive, under the subject "Meeting regarding my absence at 2pm on Wednesday 04/03/2015 in my store". The claimant there set out the occasions by which he had furnished his proposals to Mr Warren and Mr Dolling, and of his informing Ms Maslen and Mr Warren of his feeling uncomfortable at work and of his desire to change his shift. The claimant then advised of his sending his proposals to the Tesco Board and of his then being called to a meeting in respect of his unauthorised absence. It is here noted that, apart from the claimant setting out his account of events, there was no request or instruction, sought from Mr Lewis.

108. The AWOL meeting duly took place on 4 March 2015, notes of which are at R1 page 149-156.

109. The meeting was not a straightforward meeting addressing the claimant's unauthorised absence on 25 February. The claimant was concerned to set out his reasons for non-attending work relevant to his proposals. Ms Maslen was concerned that this was straying from the subject for the meeting, seeking to keep the claimant on topic; the claimant adamant that he had to present the background revolving around his proposals to explain his absence. In this regard, by the notes of the meeting, the tribunal notes many instances within the meeting where Ms Maslen sought to keep the claimant on track, and of which this exchange is noted:

"(Hasan is adamant that he read the letter. Becky Maslen has tried to get Najmal Hasan to describe why he was off absent but Najmal does not want to be interrupted)

NH You have asked me a question I am answering. Do not interrupt me please.

BM The only reason I would interrupt when someone is talking is if I feel the question is not being answered that I have asked.

NH Okay until I finish my complete conversation you will not understand the reason of my absence or if I have contacted the store or not.

(Hasan continues to read from his phone)..."

110. It was the decision of Ms Maslen that the claimant, following discussions she had had with Ms Fleet before the meeting, be placed on a temporary support plan to support his return back to work. This was to be for a maximum period of four weeks, and would consist of the claimant temporarily moving to checkouts, working Wednesdays 11am to 2pm,

Tuesday 10am to 2pm, and Sunday 8.30am to 3pm In respect hereof, the claimant queried the hours set for Sunday working of 6.5 hours, stating that he wished to only work three hours on Sunday. Ms Maslen confirmed with the claimant that he would be prepared to lose the additional hours on a reduction to his normal hours work.

111. On the claimant asking what the position would be following the four week period, it was explained that the support plan was put in place to help the claimant feel comfortable in returning to work, but that after that time, he would then go back to his previous hours and department. The claimant refused to accept that he would go back to his previous hours stating that he would take it up with Mrs Fleet after the four week period.
112. With regards this meeting, it is the claimant's evidence that the officer taking this meeting had been changed from Mr Chris Prafitis, lead fresh food manager, and was against his wish. In this regard, the tribunal heard evidence from Mrs Fleet that having met the claimant on 28 February 2015, advising the claimant of the AWOL meeting for 4 March, to be held with the fresh food manager, Mr Kriss Salvarkumar, the claimant had thereon requested the meeting be held with the acting compliance manager, Ms Maslen, which she duly arranged. It is the claimant's evidence here that no discussion of that nature had been had, stating that he had expected Chris Prafitis, referring the tribunal to notes of the meeting, wherein the claimant raised issue in respect thereof, for which the tribunal notes the following:
- “NH Just to ask first question I should have meeting with fresh manager Chris Prafitis so today meeting what's the reason the manager has been changed? Instead of Chris Becky?
- BM Because the letter was sent out before she had contact with you you requested that myself or Liam held meeting and Laura said she would try to accommodate that.
- NH No, Chris Prafitis was fine to take the meeting when I arrived at 13:45 in the store I was again told meeting will be with Chris Prafitis but I don't understand why manager has been changed for today's meeting...”
113. In respect of this discourse, the tribunal notes that this conversation took place at the end of the meeting, and indeed notes from the minutes of the meeting that, at the commencement of the hearing the claimant had requested the presence of a colleague, due to the absence of his chosen union representative before the meeting got underway, it being identified that the meeting was an investigatory meeting for the respondent to understand why the claimant had been AWOL from the company, asking the claimant then to explain.
114. The tribunal also here notes the evidence of Mrs Fleet that, on the claimant having attended the store for the AWOL meeting, on his entering the manager's office she had spoken briefly with him, at which point she confirmed that the meeting would be conducted by Ms Maslen as he had requested, for which the claimant took no issue and went to the meeting

115. The tribunal finds that, had the circumstance of the claimant being presented with an officer to conduct the meeting, being someone that he had not requested, and indeed had not expected, been an issue of concern as he alleges, that the claimant would at the outset of the meeting, as he had done in respect of raising issue as to the presence of a colleague, have raised issue about the officer conducting the meeting. This the claimant did not do.
116. It is the tribunal's finding that on a balance of probability, had the claimant been expecting Mr Prafitis to have chaired the meeting as he subsequently alleged, this would have been raised at the outset, particularly observing the claimant's evidence that at 13:45 when he arrived at the store he had specifically been informed that Mr Prafitis would be taking the meeting. The tribunal finds it inconceivable that he would not have raised it on entering the room, or at the start of the meeting. The tribunal prefers the evidence of the respondent that, the claimant had specifically requested the presence of Ms Maslen to conduct the hearing.
117. On 5 March 2015, following a telephone call from Alison Horner's personal assistant, referencing the claimant's email to the board of 4 March, Mrs Fleet explained that she was addressing the matter at store level and that she had a meeting arranged between her and Mr Dolling with the claimant for 7 March 2015, to discuss his proposals in more detail.
118. In respect hereof, the tribunal notes correspondence between Ms Mendes and Ms Backhouse, employee relations manager, whereby Ms Mendes advised in respect of the claimant, that they were having numerous issues with him who at the moment keep writing to the board, stating:
- “We are on top of the situation and the SM and PM are meeting with him, but SM not convinced this will stop the flow of emails.”
119. In respect hereof, Mrs Fleet further advised:
- “We have created a support plan for Najmul to get him back into work which he has agreed. I have asked him to stop emailing the board as we will meet with him on Sat...”
120. In respect of Mrs Fleet and Mr Dolling meeting the claimant, this duly went ahead on 7 March, notes of which are at R1 page 162.
121. With regards this meeting, the claimant at 12:25am on 7 March, sent Mr Dolling and Ms Fleet the following correspondence:
- “I have done my university course work: Marketing management, Marketing, Corporate governance, Management of change, Business strategy etc course work on Tesco public limited company. After completing my graduation from the University of Ulster, I have found lots of problems and solutions too in the Tesco plc. After completing lots of research on Tesco plc, we have found the reason why the

company losing profit and the company losing lots of money and over million pounds every year.

University of Ulster is the second largest university in Ireland, and I several times showed our ideas (1-9) to our University of Ulster London Campus: Finance director, other senior directors, other senior officers (1-5) as they find our ideas (1-9) very useful for the whole company.

As we have contacted with the Tesco board management to speak to about our ideas (1-9) that we believe will greatly improve the running of Tesco's all stores (6,784) and our all ideas (1-9) may help to bring back again Tesco's profit from number three position to number one position.

I would just like to let you know that if our family members need to speak with our Honorable Prime Minister of Bangladesh we can speak and also if we need to speak with the Head of police department (IGP) of Bangladesh we can speak to them. If we need to speak with the Head of New Scotland Yard in London we can speak. As our all family members are well educated (University of Northampton, Northumbria University, Birmingham City University, University of Ulster).

However, I also just to let you know that, last year I also gave one idea to Tesco director Phillip Hill. Then Mr Hill phoned me. After the idea was very useful for the company, Tesco plc.

I believe if you strongly help us about our all ideas (1-9) then Tesco board management may offer me a great job in Tesco head office.

I will see you and Laura tomorrow at 1pm to discuss about the Tesco proposal. Thank you."

122. The tribunal pauses here as it is the claimant's evidence that at this meeting, Mr Dolling was irritated, telling the claimant that he should not have emailed his proposals to senior management and that such a proposal should have come through him or someone more senior, because then it would have "more credibility" and that the claimant needed to understand about credibility, stating that he was liked by senior management because he had a "likeable face". The claimant here submits that he believed that in the respondent's eyes, his ideas lacked credibility due to his age and race. The claimant further advances that throughout the meeting, he felt that Mr Dolling treated him like a young boy and not a serious member of staff with a degree in the business.

123. At the meeting Mr Dolling read the claimant's proposals in detail. It was Mr Dolling's evidence to the tribunal that, the claimant's suggestions:

"referred to Tesco price reduction practices, and the manner in which the practice is carried out within the store. The proposals recommended ensuring the price reduction was clearly shown on the front of all reduced products, as well as updating the bar code on the back to reflect the new price. The proposal further recommended starting the price reduction process earlier at 15:00 instead of 16:30..."

124. Mr Dolling advised the claimant that it was already Tesco's practice to include a label on the front of the product stating the lower price (as well as

a new barcode on the back) after it was reduced, and that should the store have begun its reduction too early, it would then have missed out on the potential full price sales. Mr Dolling further informed the tribunal that Tesco had a sophisticated electronic system which was used daily to scan and check the “best before dates” on all of the products in store. This was linked to a hand-held device, which instructs the user when to use a price reduction, having reference to the store ordering system and the popularity of the particular product. Accordingly, by the claimant’s proposals, there was nothing new and neither was there a more efficient way being put forward by the claimant that could be implemented in the stores; the claimant’s proposals being no different to (or any improvement on) the practice then already in place.

125. With regards the claimant’s further proposal in respect of colleagues’ work hours in the store’s fresh department, the claimant listed hours worked by each colleague over the course of the day, but did not take into account the fact that some colleagues worked the same shift, for which Mr Dolling stated: “It was not clear how the total hours worked in one day related to the efficiency of the price reduction process. Mr Dolling further here noted that, by the proposals put forward by the claimant, it had not included a coherent business plan, Mr Dolling explaining to the claimant that Tesco management board had a process for business analysis and that specialists were hired to look at Tesco’s figures and processes. Mr Dolling thereon gave the claimant feedback on his proposals including the correct process to be followed for raising ideas. Mr Dolling’s evidence to the tribunal was that the claimant did not seem happy with his response, continuing to state that he was taking advice from the lecturer at his university on his courses of actions, and did not seem to acknowledge what Mr Dolling was telling him.
126. With regards to the claimant having stated that he had received a call from Mr Hill the previous year, on being questioned thereto by Mr Dolling, the claimant advised that he had not been able to receive Mr Hill’s call and that he had just sent him an email.
127. With regards Mr Dolling’s access to the board, he explained to the claimant that he did not have any access to the board and could not assist in setting up a meeting with them, explaining to the claimant that it was up to the board as to whether or not they wished to discuss his proposals with him and that he, Mr Dolling, had no direct contact with the board.
128. With regard Mr Dolling being agitated or otherwise annoyed with the claimant for having contacted the board, Mr Dolling was adamant in his evidence to the tribunal that he was not, and that he had merely explained to the claimant that there was a procedure, and that he had no contact to the board. Mr Dolling informed the tribunal that had he thought the claimant’s proposals had merit, he would have referred them to the relevant team at Tesco’s head office, which had been something he had done on previous occasions where members of the public had submitted an idea which he thought the company should consider.

129. It was further Mr Dolling's evidence in respect of this meeting that, the claimant kept changing the subject of the meeting to that of his absence meeting, and the reasons for it, which whilst he had sought to keep the claimant on subject, Mrs Fleet had confirmed the support action plan that had been put together for him, for a four week period, advising that the plan would be reviewed thereafter, and of his need to go back to his original contracted shift should there not be suitable alternative employment at that time. With regards the claimant's shift pattern being adjusted permanently, the claimant on being asked the reasons why he requested the change, was unable to provide a clear reason why he could not work his contractual hours, it being explained to the claimant that should he wish to permanently move from his department or change his hours, he would need to provide Mrs Fleet with supporting evidence and that this would then be considered under the Tesco "managing hours" process.
130. During this meeting, the claimant also requested a letter of thanks in response to his proposals, which on Mr Dolling stating that he was unable to provide the requested letter of thanks on the Tesco headed note stationery, he informed the claimant that he could provide a personal letter of thanks which the claimant refused, adamant that he receive a letter of thanks on Tesco headed paper. In this respect, Mr Dolling, unaware of the procedure for such a letter and/or the ramifications of issuing such a letter, advised the claimant that he would provide a letter of thanks once he has received advice, stating that he was not in a position to provide a letter on behalf of Tesco immediately.
131. The meeting further addressed the claimant's erratic behaviour, account being had to the claimant's correspondence of 7 March, making reference to his family members' relationship with the Prime Minister of Bangladesh and head of the police department of Bangladesh, being irrelevant to any issue at hand, and of the claimant's general behaviour at the meeting, and of the claimant being concerned about being attacked, Mr Dolling and Ms Fleet felt that his behaviour required some form of welfare support, for which they offered to contact occupational health on the claimant's behalf. Mr Dolling and Ms Fleet's evidence to the tribunal being that the claimant agreed.
132. By correspondence of 7 March Mr Dolling wrote to the claimant confirming the outcome of the meeting, stating:

"It was great to hear our colleagues being so enthusiastic around Tesco and how we can improve as a business.

As we discussed, you have also submitted this to our CEO, Dave Lewis and the Board of Directors, as we have no direct contact with them, they will be in touch with you if they would like to arrange a meeting with yourself. We agreed in our meeting today that this would bring the subject of your proposal to an end.

We have agreed a temporary support plan with you to help you feel more comfortable coming back to work after the discussion of your proposal, however we would expect you to go back to fresh stock control on your contracted hours at the

end of this support plan unless you can provide Laura Fleet, personnel manager, with any evidence as to why you should not remain on that department.

Laura Fleet will meet you in four weeks' time to discuss how your support plan has gone and support you getting back to work.

If you have any further questions, please contact Laura Fleet.”

133. The claimant also following the meeting, wrote to Mr Dolling, copying in Mrs Fleet and Mr Warren, stating:

“As you and Laura told me that my Tesco proposal has been acknowledged by the Tesco board management and CEO David Lewis asked to Tesco London Group Director, then London Group Director has asked you and to personnel manager Laura to give me a great professional thank you letter for the Tesco proposal (Ideas 1-3).

As Laura said that by the end of next week, you and she will give me the acknowledgement letter for the Tesco proposal (Ideas 1-3).

As from the University of Ulster, we may contact the Tesco board management to speak to about our all ideas (1-9) that the whole company losing profit every month roughly £1,000,000 and our all ideas may help to bring back again Tesco profit from no. 3 position to no. 1 position.”

134. On 8 March 2015, the claimant wrote to Mrs Fleet, stating:

“Can I have please our group director email and contact details?”

135. Mrs Fleet responded advising that she would pass on the request and ask if it was okay to give the requested detail, stating:

“As I am sure you can appreciate, it is an exception to give this information out to colleagues and I would out of courtesy always ask first.”

136. Following the meeting with the claimant on 7 March, Mrs Fleet contacted occupational health to arrange an appointment for the claimant. Ms Fleet described the claimant's behaviour advising that, this “seemed consistent with a previous colleague who had suffered from mental health issues” stating that she had genuine concerns for the claimant, and wanted to ensure that he received appropriate support. Mrs Fleet was advised to contact the claimant's GP to let them know that they were concerned about him.

137. Mrs Fleet contacted the claimant's GP notifying them that she had concerns for the claimant's wellbeing and that she had referred him to occupational health. Mrs Fleet informed the tribunal that she had requested that this contact remained confidential, and that she had not sought to obtain any information or otherwise the claimant's medical records from his GP. It was Mrs Fleet's further evidence that the call had solely been because of her

concerns for the claimant's behaviour, and on the recommendation of occupational health.

138. On 9 March 2105, the claimant wrote to Mrs Fleet advising that he had received a call from his GP, stating that the respondent had asked that his GP see him, the claimant questioning why the respondent had contacted his GP without his permission, and that he *"may send letter to Tesco board management and CEO Dave Lewis to know the reason as this is frustrating me"*.
139. Mrs Fleet responded, stating that having discussed how he felt uncomfortable in the store at their meeting on 7 March, and in light of getting him back to work with the support plan, they had suggested talking to occupational health and his doctors, which he had agreed with, advising that they had not sought information but that it was only a reference call for their information to advise that, they were going to contact occupational health and that they may then be in touch.
140. No medical information was furnished from the claimant's GP to the respondent.
141. On 10 March 2015, the claimant sent an email to Mrs Fleet, copy Mr Dolling, under the subject heading *"I do not feel comfortable and safe and secure to come for work. I need to contact with our group director."* The correspondence then stated that the claimant had contacted Tesco head office about *"my problem"*. The claimant further stated that he may not then come to work until he was contacted by the group director following his sending his proposal to Tesco Lea Valley extra store and Tesco head office; the claimant stating:

"I do not feel comfortable and safe and secure to come for work and I am getting too much frustrated about this matter.

I could not work and have loss of earning money.

I was sent a disciplinary letter.

I am being treated differently in the store.

In the beginning of the meeting Mr Paul and you confirmed that my Tesco proposal (Ideas 1-3) has been acknowledged by our honourable CEO Dave Lewis and our honourable Tesco board management people. But you and Mr Paul did not want to give me the "a great professional thank you letter" for the Tesco proposal (Ideas 1-3). When I requested twice you and Mr Paul, then you both agreed to give me the acknowledgement letter "a great professional thank you letter" for the Tesco proposal (1-3).

There has also been occurred other lots problem after sent the Tesco proposal (Ideas 1-3)."

142. On 11 March 2015, Mr Dolling sent a formal letter of thanks on Tesco headed paper, addressed from Karen McEwan, UK operations personnel director, the correspondence stating:

“I know you have written to the board of directors with a proposal of ideas on how you can improve our profits. I can assure you that your operational points have been noted by the board and thank you for your ideas; however I do not feel it necessary to set up a meeting as your points are so clear.”

143. The correspondence then addressed the claimant’s concerns about his treatment at store level, making reference to the claimant being the subject of a support plan to help him get back into work. The claimant was further advised that his attendance would continue to be managed at store level in line with company policy and procedure, for which the claimant was encouraged to contact the personnel manager to talk about why he did not feel comfortable in the store and to let them know what else they could do in store to support him, otherwise than by the support plan already in place. The correspondence concluded stating that: “I do hope that this brings you some clarity and closure to the points that you have raised and thank you again for your thoughts.”

144. By correspondence of 12 March 2015, the claimant thanked Mr Dolling for the above letter, advising that he looked forward to liaising with Mrs Fleet regarding his return to work.

145. Mrs Fleet also wrote to the claimant advising of the work programme having been put in place for him temporarily on their checkout department which, on the claimant not having returned to work, advised that she was unaware as to why he did not want to come to work on the support plan then in place, asking that he see her on Saturday 14 March 2105, to re-confirm his return to work.

146. On 13 March, the claimant responded to Mrs Fleet, copy to Mr Dolling and Mr Warren, advising:

“Last 09/03/2015 I informed to our CEO Dave Lewis and the board of directors in Tesco head office about the problem as I am having difficulty in my workplace as returned to work. As I look forward to get reply from them or our group director.

Please can you pass this email on to our group director and have the email address of our group director for me.”

147. Mrs Fleet responded by correspondence of 14 March, advising the claimant that by his email of 12 March, he had wanted to liaise with her regarding his return to work, stating that her having asked him to come to meet her, he was now seeking a reply from the group director, stating that she was then unsure what it was that the claimant would like. Mrs Fleet thereon advised:

“To help you get back into work and for the store to be able to help you, I would be the best person to set up that support for you. Our group director does not manage absence for our colleagues or set up support plans.

I will forward your email on, however I ask that you suggest a time that you can come into store to meet with myself.”

148. On 14 March, the claimant wrote to Mr Dolling, copy Mrs Fleet and Mr Warren, in respect of the acknowledgement letter sent to him on 11 March, identifying that the letter addressed two issues, asking that the issues be separated, being; his Tesco proposal (Ideas 1-3), and the disciplinary meeting outcome. The claimant asked that the letter be re-written, by which the tribunal notes the claimant sought the inclusion of the following passage:

“We also encourage you that next time any Tesco proposal (idea) you wish to bring up to us, we will look into your proposal where applicable these will be built into our business and operational plans going forward.”

149. Mr Dolling did not consider it appropriate to amend the correspondence as suggested, and no further action was taken thereon.
150. The claimant also on 14 March 2015, sent correspondence to Mr Lewis, and the Tesco’s management board under the subject heading: *“Personnel manager Laura Fleet and store manager Paul Dolling were trying to get my information from the Albion health centre without my consent and also trying to force me to talk to Tesco occupational health directors”*. The claimant thereon, set out an account of his meeting between himself, Mr Dolling and Mrs Fleet of 7 March 2015, and of the respondent contacting his GP at the Albion health centre without his consent which, after addressing the issue of his being provided with “a great professional thank you letter,” he stated that he had been forced to talk to the respondent’s occupational health doctors and that he had been forced to return to work on his old hours after four weeks, whereby he would have to finish work at 9pm, further advising that he had twice asked Mrs Fleet and Mr Dolling for the group director’s email and office address or for them to pass his emails on, stating that this had not happened.
151. The claimant thereon advised that having sent in his proposals (Ideas 1-3) to Mr Lewis and the Tesco board on 27 February 2015, he was thereafter *“being treated differently and provoked”* in the Tesco Lea Valley extra, referencing his having been sent a disciplinary letter, not having previously received such a letter having joined the respondent, that he could not work and had lost earnings, that he did not feel comfortable or safe or secure to come to work, and was *“getting too much frustrated about this matter”*, concluding his correspondence, stating: *“I further just to let you know that I do not feel comfortable and safe and secure to speak about our several ideas (1-9) that we believe will greatly improve the running of Tesco’s all stores (6,784) and our all ideas (1-9) may help to bring back again Tesco’s profit from no. 3 position to no.1 position.”*
152. On 16 March 2015, Mrs Fleet wrote to the claimant inviting him to a meeting with Mr Dolling, store manager, the purpose of which was to discuss a possible meeting with the group director, the claimant being asked to let her know if he could attend a meeting for 21 March 2015.

153. It was the respondent's evidence that, at this juncture, it was their primary aim to assist the claimant in returning to work and that Mrs Fleet and Mr Dolling had then taken the decision to try to accommodate the claimant's request to meet the group store director, following Mr Dolling having spoken to the group store director who stated that he would be willing to meet with the claimant in the circumstances.

154. On no response being had to Mrs Fleet's invite, on 18 March, Mr Dolling chased the issue up, advising:

"I have not seen a response from you in regard to our invite to meet with myself this Saturday 21 March 2015 at 9am to discuss a meeting with my group director. Please could you let me know if you would like to attend this meeting, if not I will take this as you do not want me to organise a meeting with my group director and that will be a close to any further meetings regarding your proposal."

155. Mr Dolling has not received a response to his correspondence.

156. On 19 March 2015, the claimant presented a grievance against Mr Dolling and Ms Fleet. The grievance was sent to Mr Lewis, copy the Board of Directors.

157. By this document the claimant raised issue as to; the respondent seeking to obtain information from his GP without his consent; of Ms Fleet and Mr Dolling not then seeking to give him a "great professional thank you letter" following their meeting of 7 March 2017; of Mr Dolling and Ms Fleet at the meeting on 7 March 2015, forcing him to talk to the respondent's Occupational Health doctors; and of them forcing him to return to work on his old hours after four weeks temporary duties, to finish work at 9pm; of his having requested of Ms Fleet and Mr Dolling the Group Directors email and office address; and of his having made efforts to discuss his proposals (ideas 1-3) with Mr Dolling and Mr Warren; and that after he had sent his further proposals (ideas 1-3) to the Board of Directors he was then being treated unfairly and being provoked in store; that he had been sent a disciplinary letter from Ms Fleet which he did not agree with, and had not previously had such a letter having joined the respondents; and of the meeting with Ms Maslen in respect of his absence, being interrupted on his explaining his reasons for his absence; further advising that he could not work and had lost earnings and that he did not feel "*comfortable and safe and secure to come for my work and I am getting too much frustrated about this matter*". The correspondence concluded, stating:

"I further just to let you know that I do not feel comfortable and safe and secure to speak to about our several ideas (1-9) that we believe will greatly improve the running of Tesco all stores (6,784) and our all ideas (1-9) may help to bring back again Tesco profit from number 3 position to number 1 position.

I look forward to hearing from you in relation to my grievance."

158. In response thereto, later that day on 19 March, Ms Button, the Assistant to Mr Lewis, responded to the claimant, copy to the Board of Directors, the correspondence advising;

“Could I ask you all not to respond to this or any further emails from Najmul please? This is an on-going issue and is being dealt with. Najmul is emailing and sending letters on practically daily basis even though the grievance process is being followed to the letter.”

159. It is pertinent here to note that, none of the claimant’s managers were copied herein, or otherwise brought into the claimant’s correspondence.

160. On 21 March 2015, Mrs Fleet wrote to the claimant in respect of his continued absence, the claimant then having been absent since 10 March 2015. The claimant was advised that in line with the AWOL guidelines he was required to submit a fit note from his doctor, having been absent without any explanation for seven days. Mrs Fleet further advised that unauthorised absence was in breach of company policy and could result in their following the AWOL process.

161. Mrs Fleet received no response from the claimant.

162. It was Mrs Fleet’s evidence to the tribunal that, she had been reluctant to initiate the formal AWOL process giving consideration to the claimant’s recent behaviour and concern she had for his wellbeing. However, on there being no response from the claimant to the respondent’s emails of 16 and 18 March, and on the claimant not attending work or otherwise supplying a fit note, as had been requested of him, and on the claimant not making contact in response to her correspondence, she sent the claimant a letter on 26 March 2015 inviting him to a disciplinary meeting to discuss his unauthorised absence for 1 April 2015, the correspondence advising:

“You have been absent from work since 10 March without prior authorisation and you have not updated the store regarding your absence.

We are concerned about you and have tried to contact you by telephone and email to find out the reason for your absence...

We would like to understand the reason for your unauthorised absence, so we can support you with authorised time off. Unauthorised absence is in breach of company policy and could result in disciplinary action, up to and including dismissal.

We would like you to attend a disciplinary meeting on Wednesday 1 April... to discuss your unauthorised absence and why you have not been in contact with us, otherwise this meeting may be held in your absence and could result in your dismissal.

...

Alternatively, please make contact as soon as possible within the next two days to discuss your reason for absence, return to work date and any support we can give you...”

163. The claimant was thereon advised of his right to be accompanied by a union representative, and of Ms Fleet being available to discuss matters with him immediately, providing a telephone number for that purpose.

164. On 25 March 2015, the claimant wrote to Mr Lewis, copy the Board of Directors, advising;

“I am not satisfied with the process you are adopting. Therefore, I am writing to ask you correct any procedural errors, say within 7 days, failing which I will instigate further grievance proceedings.

My preference is to be contacted by sending letter to my home address and also through email with attach a copy of the letter for me to make sure that I receive the letter form you please.

I look forward to hearing from you in relation to my grievance on 19/03/2015.”

165. The tribunal has not been taken to any correspondence or otherwise received evidence from the respondent as to their responding hereto.

166. On 30 March 2015, the claimant wrote to Alison Horner, in the same terms as that of the 25 March to Mr Lewis, above referred.

167. The claimant did not attend the meeting scheduled for 1 April, and did not make any contact with Mrs Fleet or anyone else at the store, for which Mrs Fleet again wrote to the claimant on 2 April, inviting him to attend a rescheduled disciplinary meeting for 8 April 2015.

168. On 8 April 2015, the claimant sent an email under the subject heading: *“Response in regards to the letter from you (2 April 2015) and please pass this email on to our group director”*

169. The claimant’s correspondence stated:

“I am unable to attend today’s meeting or any further meeting with you and store manager Paul Dolling. As I was being treated unfairly by you and the store manager Paul Dolling. That’s why I submitted a formal grievance with Tesco head office against you and store manager Paul Dolling on 19/03/2015.

I look forward to hearing from our group director in regard to where he should arrange a date for a meeting at which I would have the right to be represented...”

170. On the claimant not attending the meeting with Mr Dolling and Ms Fleet on 8 April, he then wrote to Ms McEwan on 9 April, stating:

“Please find attached a formal grievance letter and proposal two and other files below:

I am writing to inform you that my original grievance was not dealt with. Prior I asked several times to my Store Manager Paul Dolling and HR Manager Laura Fleet

to pass my email on to our Group Director and to give me the contact details of our Group Director. But they refused to give me the contact details and email address of our Group Director. However, yesterday I further asked to HR Manager Laura Fleet and the Store Manager Paul Dolling to pass my email on to our Group Director. But they did not reply to me.

This situation is very stressful and difficult for me.

I look forward to liaising with our Group Director regarding my return to work.”

171. The claimant attached thereto a copy of his grievance letter and further correspondence in respect of his proposals.

172. On 10 April 2015, the claimant sent a letter of resignation to Mr Dolling, copy to; Mrs Fleet, Ms Mendes, Mr Sweeney from the GMB union, and Ms Stanford from the GMB union, stating:

“I write to inform you of my decision to resign from Tesco Public Limited Company from today, 10 April 2015.

I look forward to hearing from you regarding the end date of my employment.”

173. The claimant also sent a copy of his resignation letter to Mr Lewis and further board members.

174. By correspondence of 14 April 2015, Mrs Fleet acknowledged the claimant's resignation as of 10 April, stating that he would be processed through the payroll system accordingly. She further advised the claimant that, should he like anything further, to contact either herself or Mr Dolling. Mrs Fleet did not take any advice hereon.

175. On 16 April 2015, Ms McEwan wrote to the claimant advising that she had been unable to open his attachment “Grievance letter 3” advising that the file was corrupt. The claimant thereon furnished a further copy of his grievance being a copy of that sent to Mr Lewis on 19 March 2015.

176. On Ms McEwan informing the claimant that the grievance letter 3 attachment was corrupt, she further advised that she had asked Ms Deverell, Employee Relations Manager, to look in to the points which he had raised in his email and that she would be in touch with him shortly.

177. On Ms McEwan receiving a copy of the claimant's grievance, this was forwarded to Ms Deverell and Ms Mendes, Group Personnel Manager, asking that they investigate the matter keeping her updated as to progress.

178. Ms Mendes was appointed the Grievance Manager who acted within one hour of receiving the claimant's grievance, making arrangements to meet with the claimant on 22 April 2015.

179. It is here noted that in respect of a grievance of a junior store colleague, this would normally be dealt with at store level, however, as Ms Fleet and Mr

Dolling were both named in the grievance, Ms Mendes was appointed to address it.

180. The respondent's grievance procedure is at R1 page 55, which provides that:

"The aim throughout is always to agree the most appropriate steps to address the concerns raised, and conduct a thorough investigation to establish the facts and the basis of the complaint. This should be done within a reasonable time frame to allow for the most thorough investigation possible. This would be no more than 14 days from when the grievance is received, unless both parties mutually agree an extension, or if it is reasonable to extend this time frame to allow further investigation. This should be done without undue delay."

181. The procedure provides for an informal process and a formal process. By the informal process it provides that, to avoid matters escalating the individual should:

"raise your concern in the first instance with your Line Manager who will do all he/she can do to support you in identifying the most appropriate solutions to the problems as quickly as is practical. This should be no longer than 14 days unless both parties have agreed to extend this period."

182. By the formal procedure provides that, if the issue cannot be resolved informally or the issue is too serious to be resolved informally, then the formal process is the most appropriate procedure which provides that the individual:

"Should put your concerns in writing clearly setting out the nature of your grievance. ...This can be either be a letter or a Grievance Form which is available from your Personnel Manager, Area Personnel Manager or USDAW Representative.

If your grievance is against your Line Manager, then you should discuss this with your Personal Manager.

In certain circumstances it may not be possible to meet within the timescale identified. In this situation, we will identify another date with you for the grievance to be heard as near as possible to the original timescale."

183. The grievance meeting was subsequently arranged for 23 April 2015.
184. On 21 April 2015, the respondent's Ms Scrivens, was contacted by ACAS in respect of the claimant being identified as an ex-employee of Tesco. Ms Scrivens, on 22 April advised Ms Mendes thereof, advising her that she was to contact the ACAS Conciliator to discuss the case details, and for her to make a decision about whether to enter in to pre-claim conciliation.
185. An Early ACAS Conciliation Certificate was subsequently issued on 29 May 2015, recording that the claimant entered early conciliation on 15 April 2015.

186. On the claimant's representative unable to attend the scheduled meeting for 23 April, the grievance meeting was rearranged for 29 April.
187. On the 27 April, Ms Mendes wrote to the claimant noting that she was aware of his having resigned, and asked that she be given the opportunity to meet and see him first and try to resolve his concerns before processing him as a leaver. Ms Mendes advised that she would consider all the points being raised by the claimant.
188. On 28 April 2015, on the claimant acknowledging the details for his grievance meeting, advised:

“I know the reasons why the company losing millions of pounds. As prior I ask to my Store Manager and HR Manager several times (more than 10 times) that I did well research on Tesco Plc while I was at Ulster University, and got 74% mark out 100 for the Marketing Management course work on Tesco Plc. After completing my graduation, I practiced my knowledge at my workplace.

But my Store Manager and HR Manager did not listen to me at all, and treated me as a young boy (22 years old). But my Store Manager also was trying to steal/take my ideas (that defiantly help to improve to our company's profits). However, my Store Manager and HR Manager were treated me terrible way. These situations was very frustrated and difficult for me, then I had to resign my job.

However, I have also more ideas that I believe could help the Tesco's all stores increase revenue and improve productivity.”

189. The grievance meeting duly took place on 29 April, notes of which are at R1 page 248 to 265.
190. It is noted that at the commencement of the hearing, the claimant raised issue with Ms Mendes being impartial having previously been aware of his concerns, for which Ms Mendes asked the claimant whether he was happy for her to continue hearing the grievance which the claimant stated he was.
191. The grievance meeting commenced at 9.15am and concluded at 2.50pm.
192. The claimant presented eight points being the issues of his grievance, a copy of which is at R1 page 337. The claimant raised issue that; on 4 and 5 February the Store Manager had treated him as a young boy; that having sent his proposals to the Tesco Board of Directors he was then subject to a disciplinary letter without valid reason and further being harassed at the meeting on 4 March 2015; that on 2 March Ms Fleet had been angry with him for having submitted his proposal to the Board of Director on 27 February 2015; that on 7 March Ms Fleet and Mr Dolling forced him to talk to Tesco's Occupational Health; that on 9 February 2015 Ms Fleet and Mr Dolling had sought information from his GP without his permission; that Mr Dolling and Ms Fleet had refused to give him the email address and contact details of the Group Director; that between February and March 2015 he had been treated unfairly in store by Mr Dolling, being approached in respect of GMB trade union representation, and; that Mr Dolling and Ms Fleet had not wanted to give him a *“recognition letter in relation to my*

proposal 1", the claimant stating that *"The situation was very frustrating and difficult for me that's why I had to resign my job."*

193. With regards a resolve to the claimant's grievance, Ms Mendes asked the claimant what he considered would be a satisfactory solution. The claimant's representative responded that;

"In this case we have discussed options. The positive option would be considering management potential for the future. Also, there is a financial element – Najmul has been left almost penniless so there is a recompense element."
194. And on Ms Mendes putting the question direct to the claimant the claimant advised "As Peter has described we discussed this."
195. Ms Mendes advised that she would investigate it and addressed the Management Options Programme to the claimant.
196. On the claimant being asked whether he would be prepared to return to the store, the claimant identified that he did not feel comfortable and that the Store Manager was very angry with him, for which it was proposed that he consider another store. The claimant agreed that he would return but not as a CA, the claimant being advised that as he had resigned as a CA he could not then be reinstated to a higher grade of employment. The claimant stated that he would be prepared to go to Surrey Quays Tesco as a Checkout Assistant.
197. It was agreed that there would be a further meeting in two weeks for Ms Mendes to make her enquiries as to the claimant being reinstated to Surrey Quays, and of the hours of work. The claimant was thereon advised that temporary arrangements would be made for him to start on 6 May 2015 with a follow up meeting on 15 May 2015.
198. For completeness, the tribunal notes that following the grievance meeting, the claimant then furnished Ms Mendes with numerous correspondence, the relevance of which the tribunal is not clear. Indeed, it was the evidence of Ms Mendes to the tribunal that, having received the correspondence she had not been clear, for which she had sought clarification from the claimant on 5 May 2015. The documents are not relevant to the issues for this tribunal's determination.
199. The claimant's resignation was withdrawn, and the claimant duly commenced employment at the Surrey Quays Extra Store.
200. On 6 May 2015, the claimant presented further complaints to Ms Mendes that there were poor standards of hygiene in the male toilets at the Surrey Quays Extra Store, in that there had been no soap available in the soap dispenser for two days and that as a consequence, staff members working in the Food Department were not able to wash their hands with soap; the claimant having been informed of there being no soap for two days by colleagues in the store.

201. The claimant further raised issue as to staff not wearing name badges, for which he then set out reasons why it was important for staff to wear name badges, the claimant concluding his correspondence that:

“I believe that at least 2,000 Tesco Store Managers need to be trained up properly again and again to run their stores well.

I felt it important to bring this to your attention.”

202. It is the claimant’s evidence that, he began to feel that he was not liked at Surrey Quays for which he identifies an incident with an employee named “Mandy”, the individuals surname was not known, for which the claimant states she was very aggressive towards him and critical of his customer service, the claimant stating, “I believe this was due to my age and race”.
203. As part of Ms Mendes’ investigation, she held a number of investigation meetings with Tesco colleagues who had been named by the claimant, Ms Mendes interviewing Mr Warren, Temporary Personal Manager, Jayda Hassan, the claimant’s direct Line Manager, Laura Fleet, Store Personnel Manager, Liam Major, Services Manager, Ian Arnold, Senior Manager and Mr Dolling, Store Manager. The claimant was then furnished with copies of the meeting notes prior to the resumed grievance meeting on 19 May 2015.
204. It was Ms Mendes’ decision not to uphold the claimant’s grievance which decision was communicated to the claimant at the resumed grievance meeting on 19 May.
205. Notes of the resumed grievance meeting are at R1 page 338 to 348. The claimant was represented by his GMB union.
206. Ms Mendes addressed the eight issues raised by the claimant’s grievance, addressing each in turn and giving her conclusions thereon, not upholding the claimant’s grievance.
207. The tribunal by the notes of the meeting notes this account in respect of the claimant being refused contact details of the Director that:

“Further contact details were refused to you as PD was concerned about your contact behaviour. He did not refuse to forward your proposals but he did not believe it correct to give you email the address for fear of you forwarding and sending emails that were not appropriate. For example, you have emailed a large volume of emails with no relation to this grievance ie no soap in toilet in Surrey Quays, no staff searches carried out. This is not acceptable behaviour. I do not deal with these issues. I believe PD had a genuine concern you would misuse email contacts provided and this is why he did not give you the email address for Store Director, and in respect of which the tribunal notes this exchange:

NH I send you issues that I see so that things can be brought to attention. My Uni tutor advised me to tell managers of things that are wrong. That is why I write to you.

- NM How many emails have you sent this grievance period raised?
- NH Over 100 at least.
- NM The volume of complaint/issues you raise is not engaging. This is not the correct process. What you do is actually disengage people and I think this is what has happened. You have emailed so much people have switched off to the content?
- NH If I see an issue with Tesco I should raise it and tell people. This is what I have done.
- NM I think you have been misadvised in this case. PD had reasonable concern not to give you email address of Store Director. Your behaviour with me has reinforced this belief. Again you need to respect correct process.”

208. And on Ms Mendes informing the claimant that she did not uphold his grievance, the tribunal notes the following exchange:

“I need you to ensure the following:

1. The stream of emails to me needs to stop. I find your behaviour irrational/paranoid.
2. I have concerns of your well being. If you would like to remain with the company I would need your permission to refer you to Occupational Health for reference. I do find your behaviour concerning and erratic. The bigger picture has supported this.

NH I do not think I need to see my doctor. I do not need to see Occupational Health.

NM I need you to decide what you would like to do?

NH I will let you know by email when I receive written notice of the outcome.

.....

NH If I do not receive a satisfactory outcome I will resign from Tesco.

NH I have given you the outcome. I do not uphold your grievance.

NH If I could have one-week unpaid time off.

NH OK. This will be agreed for one week.

NH I will inform you next week of my decision.

.....

NH Actually I want to resign as of today from employment with Tesco (19/5/15)”

209. Ms Mendes thereon accepted the claimant’s resignation.

210. The findings of Ms Mendes were confirmed by correspondence of 19 May, copy of which is at R1 page 349 to 351.
211. The claimant was thereon advised of his right to raise a Stage 2 grievance to Ms Hart, Regional Personal Manager.
212. On 21 May 2015 the claimant wrote to Ms Mendes advising that he was not satisfied with the outcome, stating;

“As you were also involved in my grievance(s) in the first instance. I believe that you also gave a bad reference to our CEO Mr Dave Lewis and the other Board of Directors about me. As you did not want to arrange a hearing meeting in the first instance as you did not deal with my grievance(s), and it was necessary to resign my job, after when I just submitted and ACAS application form, then you arranged a hearing meeting 29 April 2015.”

213. The claimant then stated that he had been treated in a “*terrible way/unfairly in my workplace*” following his submitting his proposal to the Board of Directors. The claimant then advised:

“I do not mind that my employer (Tesco) has not offered me as a Manger job as a result of my proposal of ideas. Even though Tesco has taken my all ideas (millions of pounds) and is using my ideas into their business.

But I have not received a financial outcome from my employer (Tesco) as a result of my grievance(s).

I will take my grievance(s) to the Employment Tribunal Court, and also publish my all proposal of ideas and grievance(s) in a press conference.

I have paid lots of money (University fees around £21,000) to my university. As I have passed very difficult time because of my workplace problems. As the situation for very difficult and frustrating for me.

I am seeking a financial outcome 20K (£20,000) from Tesco Stores Limited as a result of this complaint...”

214. The claimant sent further copies to Mr Lewis, copy to the Board of Directors.
215. On 3 June 2015, the claimant wrote to Mr Prajapati, copy to the Board of Directors, and further to Ms Mendes and Ms McEwan on 4 June 2015 of the same content, asking that CCTV footage be retained in respect of the following period; 6 May, 7 May, 10 May, 13 May, 14 May and 17 May, identifying specific time periods within those days. The claimant further advised that on Sunday 17 May 2015, between 10:50am and 5:45pm, a member of staff named “Mandy” identified as English, was rude to him as she was misbehaving with him on the checkout when he was serving her, the claimant stating that this could be seen from the CCTV footage. The claimant then advised that he requested the CCTV footage record for purposes of the Employment Tribunal and that he was requesting it under the Data Protection Act, and that he believed that Ms Mendes being English, had told English staff and colleagues in Tesco Surrey Quays Extra

Store, about him and that was why “Mandy” was behaving as she did with him on the checkout, stating that he has been the target of unlawful discrimination.

216. The claimant then set out that, having completed his BSC Degree in Business Studies, and having done lots of research on Tesco stores, he knew why the company was losing profits. That having submitted his ideas and proposals in February 2015, Mr Dolling and Mr Warren had taken his ideas which were then being used in store, but they did not wish to recognise his ideas, and that after he had furnished his proposals to the Tesco Board of Directors on 27 February, Mr Dolling and Mr Warren felt that he was being critical of them, and that the consequence was that he was being treated *“terrible way/unfairly in the Tesco Lea Valley Extra Store”*, identifying the following individuals as perpetrators, being; *“Paul Dolling (English), Laura Fleet (English), David Warren (English), Becky (English), Chloe (English), The line Manager who cannot remember the name (English), and Ian (English) from Tesco Leave Valley Extra Store and Mandy (English)”* of the Tesco Surrey Quays Extra Store. The claimant further stated that Tesco Stores Limited had taken all his ideas and had deceived him.
217. Ms McEwan forwarded the claimant ‘s email to Ms Deverell, Employer Relations Manager, to address on 8 June, who then wrote to the claimant on 10 June 2015, advising of her making a request of Ms Mendes to arrange for recordings to be checked, and where the claimant appeared on the system to secure the coverage.
218. On 8 June 2015, Ms McEwan also wrote to the claimant advising of the above, and that Ms Deverell would be his point of contact.
219. Following Ms Mendes’ enquiries, Ms Mendes was informed by the Store Manager of Surrey Quays, that there was no CCTV footage of the claimant on the date identified, further advising, that:
- “Having checked with the Security Team, I can confirm there is no footage for the incidents requested.
- We keep CCTV footages of any serious incidents that occur and has been reported. Otherwise, normal footages are only held for two weeks as the hard drive is equipped to do so for a limited period of time.
- Had Mr Najmul requested it or even reported the incident, it would have perhaps been possible to have it checked.”
220. On 9 June 2015, the claimant wrote to Ms Deverell advising that he did not wish to take his grievance to the appeal stage, albeit he reserved his right to do so, that he had an ACAS early conciliation certificate, advising that he was seeking to negotiate a settlement, and asked for copies of the notes of the grievance meeting. The claimant then restated the content of his correspondence of 3 and 4 June, thereon advising that he had been contacted by the BBC Panorama Team, the Evening Standard newspaper,

the Sun newspaper and Channel 4, regarding his multi-million pound ideas and grievances. The claimant then stated:

“It is submitted that Tesco Stores Limited, have unlawfully “stolen” my ideas/proposals/suggestions and deliberately acted in such a way that I was forced to resign from my position. The intellectual property “stolen” includes:

1. Proposal 1 (at least £112,000 worth of sales can be increased).
2. Proposal 2 (Multimillion pound worth of sales can be increased).
3. Tesco Surrey Quays Extra – no soap available in all in the toilet area as found poor standards of hygiene in the male toilets area on Wednesday, 6 May 2015 (there are four soap dispensers in the male toilet area. But it’s been two days (one of our staffs confirmed since two days), there is no soap available at all in the toilets areas. As Staffs (Bakery or Food Counters Colleagues) are using toilet and washing their hands with soap. It is just poor standards of hygiene.
4. The Store Manager and Team Leader used to steal money/wine, expensive products etc (Tesco Clapham North Express).
5. Unacceptable behaviour on the shop floor, Tesco Lea Valley Extra Store (Ian the Senior manager).
6. No staff searching at all (every member of the Management Team (Line Managers and Senior Team) must conduct a minimum of four staff searches per week. They will take people from the shop floor (one at a time) in to a room where you will be asked to empty your pockets, turn up collars etc. If you have been on a checkout they will ask you to remove your shoes as well, the Tesco Surrey Quays Extra Store).
7. Staff (including Store Manager and HR Manager) do not know at all about the importance of “wearing name badges”.
8. In my opinion Tesco Stores Limited are still losing millions of pounds because most Tesco Stores do not follow the rules of good corporate governance”.

221. The claimant concluded his correspondence advising:

- “1. I am seeking financial compensation of £20,000 as a result of my grievance(s).
2. I wish to be reinstated as an employee of Tesco and, if I so determine, be permitted to work only on Sundays on the checkout department at Tesco Surrey Quays Extra Store.”

222. On 10 June Ms Deverell responded to the claimant clarifying the position regarding an appeal from his Stage 1 grievance, advising that whilst the time period within which to do had expired, she was nevertheless willing to extend the timescale for him to enter an appeal to 17 June 2015, and further, as above referred advised as to the steps being taken with regards the CCTV footage.

223. Ms Deverell further questioned the notes the claimant requested, advising that he was entitled to such notes relating to the grievance meeting, and further stated the motives of Ms Mendes in holding the grievance meeting, in that she felt the claimant had initially resigned in haste on 10 April 2015, and to give him time to reconsider the position following the outcome of his grievance, and that following that outcome, the claimant had then re-rendered his is resignation which she had then accepted, with effect from the date of the outcome meeting, being 19 May 2015. Ms Deverell then acknowledged that the claimant, having engaged ACAS early conciliation, the next steps would be for him to take his case to the Employment Tribunal.
224. By correspondence of 11 June 2015, the claimant identified that the grievance minutes he had sought was a further copy of the notes furnished to him, which copy had been taken away by his trade union representative, further stating that unless and until he had been furnished with a statement in writing as to the outcome of the grievance, he did not accept that the Stage 1 grievance process had been finalised, and that until such time, he could not file an appeal and therefore the time limits as identified by Ms Deverell did not then apply. The claimant concluded advising that, should Tesco not resolve his grievance through ACAS conciliation he would commence proceedings in the tribunal.
225. On 22 June 2015, the claimant wrote to Ms Deverell stating that he wanted to take his grievance to the appeal stage, asking that a Bengali speaking representative be provided.
226. Ms Deverell responded on 23 June, acknowledging his intention to appeal, advising that the respondent would be in touch to arrange a date for the meeting.
227. On the claimant having identified a colleague, Mr Hasan, to be his representative, enquiries were made as to whether he was a union member, the claimant being advised that if he was a union member he should make use of their service as they can be very helpful in ensuring that he is fully prepared for the meeting.
228. By correspondence of 25 June 2015, the claimant presented his grounds of appeal citing 14 grounds, a copy of which is at R1 page 393. The claimant therein set out the catalogue of incidents on which his grievance was based, and from which the tribunal notes this entry:

“I showed/discussed about my ideas/proposals/suggestions with my several teachers at the Ulster University, also told my teachers that I know why Tesco Stores Limited have losing profits. After my teachers told me that they find very useful my ideas for the company, and advised me to submit my ideas to Tesco, then Tesco will offer me a Manager job.

First email was sent to HR Manager, David Warren on 1 February 2015 (£1,000 or more can be saved every month from the Fresh Department). But he did not respond me in relation to my email.”

229. The claimant then setting out a catalogue of incidents up to 4 June, maintained that he did not receive a response to his grievances (R1 page 393 to 398).
230. An appeal hearing was arranged for 14 July 2015, to be chaired by Ms Alison Hart, People Business partner, notice of which was sent to the claimant on 29 June 2015.
231. The Appeal Hearing duly took place on 14 July 2015. The claimant provided a statement of his case, which was then considered in detail by Ms Hart, a copy of which is at R1 page 403 to 409. Notes of the Appeal Hearing are at R1 page 411 to 419.
232. Following the hearing, Ms Hart conducted further investigations on the claimant raising matters that had not been part of the grievance meeting held by Ms Mendes, but which arose thereon.
233. Further interviews were then sought to be had with Ms Bishop, Fresh Food Manager, and Ms Maslen, Compliance Manager.
234. On 21 July 2015, the claimant was informed that with regards the outcome to his second stage grievance hearing, whilst they had intended to respond within 7 days, investigations were still ongoing with further interviews still to conduct, advising that the outcome could be expected early the following week; the claimant being offered their apologies.
235. On 28 July 2015, the claimant was again written to being given an update on Ms Hart's investigation, the claimant being advised:
- “I still have one more interview to conduct, which is taking place this week and I hope to give you my outcome early next week.
- Unfortunately, logistics of meeting with the people I need to speak with has taken some time due to holidays and shift patters, so my apologies for this taking longer than I expected.”
236. By correspondence date 31 July 2015, Ms Hart informed the claimant of the outcome of the Stage 2 hearing, which did not uphold the claimant's grievance. Ms Hart furnished her investigation report, which addressed in turn, each of the claimant's 14 grounds of appeal. A copy of which is at R1 page 440 to 444.
237. For completeness, it is here noted that on 28 July 2015, the claimant presented a further grievance to Mr Lewis, against Ms McEwan, Ms Hart and Ms Mendes, raising issue in respect of; his having requested CCTV footage; that Ms Mendes had a good relationship with Mr Dolling and Ms Fleet, raising issue of procedural impropriety for which he was then not given a fair hearing in respect of his grievance; that he had not been given any credit for his ideas/proposals and/or suggestions and for which he had been provided a poor reference, and for which he maintained Ms McEwan

provided a bad reference about him to make him look bad to the Tesco Board of Directors; and that Ms Hart was delaying in giving him an outcome to his grievance appeal, advising that if he did not have a satisfactory resolve to his issues he would present a complaint to the tribunal.

- 238. This issue was not taken further by the respondent.
- 239. A further Early ACAS Conciliation Certificate was issued on 27 July 2015, recording the claimant as having entered early conciliation on 22 July 2015.
- 240. The claimant presented his complaint to the tribunal on 2 August 2015.

The Law

- 241. On a claim of unlawful direct discrimination, it needs to be established that, there was less favourable treatment and that the reason or an effective reason was one of the protected characteristics. Sometimes a claimant is able to point to someone else in the respondent's employment who has been treated differently in the same circumstances. Indeed, it is a requirement that a comparator must be on the basis of someone else who is in the same or not materially different circumstances.
- 242. Where there is no person who actually fulfils the requirement of the statutory comparator it is necessary to construct an imaginary or hypothetical comparator, a non-existent person who, had they existed, and had the same circumstances as the claimant, would have been treated more favourably.
- 243. It then becomes incumbent on the claimant to show that such comparator, whether actual or imaginary, would have been treated less favourably. At this point the test of comparison starts to merge with the test of motivation. The answer to the question "*what is there to show that the actual/hypothetical comparator would have been treated differently?*" becomes almost the same as the answer to the question "*what was the reason for the treatment?*" Indeed, it is sometimes easier to go straight to the question of what was the motivation for the treatment rather than take it in the logical order, because if the answer to the question of motivation is answered in favour of the claimant it becomes relatively easy to find that there has been different treatment.
- 244. Proving unlawful discrimination is a difficult task for a claimant. No employer will admit to it and indeed discrimination is often operating at an unconscious level. S.136 of the Equality Act assists the claimant in this regard. Where the tribunal finds facts from which the tribunal could decide in the absence of any other explanation that a respondent had unlawfully discriminated, the tribunal must hold that the contravention of the Act occurred unless the respondent shows that it did not contravene the Act. In this regard, it is for the claimant to show facts from which the tribunal might infer unlawful discrimination. Those facts may emerge either from the claimant's own evidence or from the evidence of the respondent, and is for the tribunal to infer from a consideration of all the facts in the case. If this is not established, the claim fails at that point. If there are such facts, the onus

is on the respondent to show that the protected characteristic was not part of their motivation.

245. The claimant may not be able to point to a comparator whose circumstances are not materially different from his own, the statutory comparator, but may point to cases where there are similarities, and if he shows differential treatment it may help him move the burden onto the respondent.
246. Normally speaking, the fact that the respondent has acted unreasonably in a particular regard does not in itself amount to facts that would raise the inference of unlawful discrimination. It is necessary to remark further that it is simply not enough to show that the claimant was treated in a particular way and that he is of a particular protected characteristic. There are two stages to the test, not only must there be shown less favourable treatment, but it must be shown that the treatment was because of that protected characteristic, or that it can be so implied and upon which the burden, as above stated, shifts to the respondent.
247. As regards victimisation, it is for this tribunal to determine whether the claimant has done a protected act, intends to do so or is suspected of having done so.
248. A protected act occurs where the claimant has brought proceedings under the Equality Act, given evidence or information in connection with proceedings under the Equality Act, or done any other thing for the purposes of, or in connection with the Equality Act, or made an allegation (whether or not express) that there has been a contravention of the Equality act.
249. If this is established, it is then for the claimant to establish that he has been treated less favourably than the respondent treats or would treat a person who has not done a protected act.
250. Where the claimant establishes such a difference, it is for this tribunal to determine whether the claimant has proved facts from which the tribunal could conclude in the absence of an adequate explanation from the respondent that, the treatment was consciously or unconsciously done by reason of the protected act. On this being the case, it will be for the respondent to then prove that it did not treat the claimant less favourably by reason of that protected act.
251. The law relevant to the protection afforded to public interest disclosures can be found at s.43A to s43H, s47B and s48 of the Employment Rights Act 1996 (ERA).
252. The meaning of “protected disclosure” is provided for by section 43A of the ERA which provides:

“In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

253. By section 43B, it provides that a ‘qualifying disclosure’ means 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 the following, - *which for the purposes of this case are that:*

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

...

(d) that the health or safety of any individual has been, is being or is likely to be endangered

254. Sections 43C to 43H then sets out the bodies to whom the disclosure is to be made for the protection to attach.

255. In order to fall within the statutory definition of a protected disclosure, for the purposes of s.43A there must be a disclosure of information. There is a distinction between “information” and an allegation for the purposes of the Act, see Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38. EAT per Mrs Justice Slade,

20. That the Employment Rights Act recognises a distinction between ‘information’ and an ‘allegation’ is illustrated by the reference to both of these terms in section 43F. Although that section does not apply directly in the context of this case nonetheless it is included in the section of the Act with which we are concerned. It is instructive that those two terms are treated differently and can therefore be regarded as having been intended to have different meanings.....”

.....

24. Further, the ordinary meaning of giving ‘information’ is conveying facts. In the course of the hearing before us a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating ‘information’ would be ‘The wards have not been cleaned for the past two weeks. Yesterday sharps were left lying around’. Contrasted with that would be a statement that ‘You are not complying with health and safety requirements’ in our view this would be an allegation not information.”

25. In the employment context, an employee may be dissatisfied, ... with the way he is being treated. He or his solicitor may complain to the employer that if they are not going to be treated better they will resign and claim constructive dismissal. Assume that the employer, having received that outline of the employee’s position from him or from his solicitor, then dismisses the employee. In our judgment, that dismissal does not follow from any disclosure of information. It follows a statement of the employee’s position. In

our judgment that situation would not fall within the scope of the Employment Rights Act section 43”

.....

Disclosure

27.....The natural meaning of the word disclosure is to reveal something to someone who does not know it already. However section 43L(3) provides that ‘disclosure’ for the purpose of section 43 has effect so that ‘bringing information to a person’s attention’ albeit that he is already aware of it is a disclosure of that information. There would be no need for the extended definition of ‘disclosure’ if it were intended by the legislator that ‘disclosure’ should mean no more than ‘communication’”

256. On there being a disclosure, it is necessary, for the protection to attach that, the employee holds the reasonable belief in that which is disclosed, which is a subjective requirement, ie what the employee in question believed rather than what anyone else might or might not believe in the same circumstance. This is not, however, a test solely of subjectivity, which had this been the case the requirement would be for the employee to show that they genuinely believed that the disclosure tended to show one of the events set out at s43B(1)(a)-(f). Instead, s.43B(1) requires a “reasonable” belief which introduces an objective element into the relevant test, being some substantial basis for the holding of that belief. It is to be noted that, having a reasonable belief does not mean that it must necessarily be true and accurate, it is only necessary that the disclosure “tends to show” that the relevant failure has occurred, is occurring or is likely to occur. Accordingly, if the employee is wrong but reasonably mistaken in the belief held, this can still amount to a protected disclosure, see Darnton v University of Surrey [2003] ICR 615, as approved by the Court of Appeal in Babula v Waltham Forest College [2007] ICR 1026. The determination of the factual accuracy of the employee’s allegation being of relevance in helping to determine whether the belief was reasonably held, showing or tending to show the relevant failure sought to be disclosed.

257. Once a qualifying disclosure has been found for the purposes of section 43B to H, the tribunal, having regard to section 47B, will be concerned to determine whether the acts of which the claimant maintains to be a detriment, were done on the grounds that she had made a protected disclosure. In this respect the tribunal is aided by authority of Fecitt and Others and Public Concern at Work v NHS Manchester [2012] IRLR 64 CA, per Lord Justice Elias, at paragraph 45, that:

“In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer’s treatment of the whistle blower. If Parliament had intended the test for the standard of proof in section 47B to be the same as for unfair dismissal, it could have used precisely the same language but it did not do so.”

258. And per Lord Justice Davis, at paragraph 65

“... the test to be applied under section 47B was not simply an objective ‘but for’ test: there was required an enquiry into the reasons why the Employer acted as it did ...”

259. With regards to detriment, the tribunal is assisted in its task, in authority from Shamoon v the Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL, per Lord Hope, that:

“As May LJ put it in Desouza v Automobile Association [1986] IRLR 103, 107, the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.”

260. By s.103A of the Employment Rights Act 1996, it is an automatic unfair dismissal where the reason for the dismissal (or principal reason) is that the employee made a protected disclosure, namely, the principal reason operating on the employer’s mind at the time of making the decision as to dismissal and more than a subsidiary reason to the principal reason, and where there are multiple protected disclosures the tribunal’s task is to determine whether taken as a whole, the disclosures were the principal reason for the dismissal, see El-Megrissi v Azad University (IR) in Oxford EAT 0448/08.

261. The law relevant to constructive dismissal was set out by Lord Denning, MR in the case Western Excavating (ECC) Limited v Sharp 1978 ICR page 221, as follows:

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed.”

262. On the contention that there was a fundamental breach of the contract of employment, by breach of the implied term of mutual trust and confidence, this breach has been considered in the case of Post Office v Roberts [1980] IRLR, page 347 at paragraph 45 per Talbot J, referring to Kilner Brown J. in Robinson v Compton Parkinson Ltd [1978] IRLR 61, that:

45.“It seems to us although there is no direct authority to which we have been referred, that the law is perfectly plain and needs to be restated so that there shall be no opportunity for confusion in the future. In a contract of employment, and in conditions of employment, there has to be mutual trust and confidence between master and servant. Although most of the reported cases deal with the master seeking remedy against a servant or former servant for

acting in breach of confidence or in breach of trust, that action can only be upon the basis that trust and confidence is mutual. Consequently, where a man says to his employer "I claim that you have broken your contract because you have clearly shown you have no confidence in me, and you have behaved in a way which is contrary to that mutual trust which ought to exist between master and servant" he is entitled in those circumstances; it seems to us, to say that there is conduct which amounted to a repudiation of the contract."

46. *In stating that principle, in our view Kilner Brown J does not set out any requirement that there should be deliberation, or intent, or bad faith.*

47. *Finally, there are very important words in a part of the judgment in Palmanor Ltd v Cedron [1978] IRLR 303, the words appearing in the judgment of Slynn J at page 305. It is a short quotation and reads as follows:*

"It seems to us that in a case of this kind the tribunal is required to ask itself the question of whether the conduct was so unreasonable that it really went beyond the limits of the contract. We observe that in the course of the argument on behalf of the employee, it was submitted that the treatment that he was accorded was a repudiation of the contract."

48....*We would agree that there may be conduct so intolerable that it amounts to a repudiation of contract. There are threads then running through the authorities whether it is the implied obligation of mutual trust and confidence, whether it is that intolerable conduct may terminate a contract, or whether it is that the conduct is so unreasonable that it goes beyond the limits of the contract. But in each case, in our view, you have to look at the conduct of the party whose behaviour is challenged and determine whether it is such that its effect, judged reasonably and sensibly, is to disable the other party from properly carrying out his or her obligations. If it is so found that that is the result, then it may be that a Tribunal could find a repudiation of contract.*

263. With reference the nature of the breach being of a final straw incident, this concept was considered in, London Borough of Waltham Forest v Omilaju [2005] IRLR, page 35 per Dyson L J, at paragraph 19, who addressed the questions in this fashion.

19. ..*"What is the necessary quality of a final straw, if it is to be successfully relied on by the employee as a repudiation of the contract? When Glidewell L J said that it need not itself be a breach of contract, he must have had in mind, amongst others, the kind of case mentioned in Woods at p531 where Brown-Wilkinson J referred to the employer who, stopping short of a breach of contract*

“squeezes out an employee by making the employee’s life so uncomfortable that he resigns. A final straw, not itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase “an act in a series “, in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, 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.

20. I see no need to characterise the final straw as “unreasonable” or blameworthy conduct. It may be true that an act which is in the last in a series of acts which, taken together, amount to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy, but, viewed in isolation, the final straw may not always be unreasonable still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.

21. If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.

22. Moreover, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the acts as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee’s trust and confidence has been undermined is objective.”

Submissions

264. The parties presented written submissions. The submissions have been carefully considered.

Conclusions

Allegation 1

The claimant sent a number of emails to Mr Warren relating to a proposal which he had created. The proposal was created as part of his university course and was to suggest improvements to the respondent's business to increase revenue. Mr Warren failed to respond to those emails.

The claimant believes that the alleged perpetrator failed to respond to his proposal because he was a man of Asian ethnic origin and due to his young age (22 years old). He believes that had he been a white older man R would have considered his proposal and been courteous in responding. C is aware that most of senior management, and those he was in correspondence with, are white and older. He noted that they did not take him as seriously as those of the same age and racial background as themselves. He notes that Mr Dolling referred to the fact the proposal should come from Mr. Dolling as it would be more 'credible'.

265. The emails of which the claimant refers are those as to the 1 February 2015, 3 February 2015, 6 February 2015, 8 February 2015, 11 February 2015, 20 February 2015, 23 February 2015 and 26 February 2015.

266. The tribunal finds that of the claimant's emails of 1 and 3 February 2015, Mr Warren had met with the claimant and discussed his proposals to the extent that the claimant was prepared to disclose, which was minimal, the claimant seeking to address his proposals with Mr Dolling.

267. On the claimant submitting his proposal of 6 February 2015, and on the claimant presenting at the store on 7 February, the tribunal finds that Mr Warren did discuss the claimant's proposal with the claimant, albeit the claimant again here sought to discuss the matter only with Mr Dolling, for which Mr Warren undertook to arrange for a meeting following his and Mr Dolling's return from leave after 23 February 2015.

268. On the claimant having requested a meeting with Mr Warren when next in the store by his email of 8 February, Mr Warren when next in the store did indeed meet with the claimant on 11 February.

269. With regards the claimant's correspondence of 11 February 2015, on the claimant requesting that his ideas remain confidential until he had a meeting with Mr Warren and Mr Dolling, there was then nothing further for Mr Warren to do until such meeting took place, which was to take place following Mr Dolling's return to work after 23 February 2015.

270. With reference to the claimant's correspondence of 20 February 2015, this being furnished to Mr Warren whilst on leave, there was nothing then for Mr Warren to do until the meeting between them and Mr Dolling took place after 23 February, the claimant stating that he needs to have a meeting with the store manager as early as possible, it being already agreed that a meeting would be arranged once Mr Dolling had returned from annual leave.
271. By the claimant's correspondence of 23 February 2015, copied to Mr Warren, no action was identified for him to take. The correspondence was sent to Mr Dolling merely seeking whether he had any feedback regarding process changes. There was therefore no reason for Mr Warren to have a meeting with the claimant.
272. With regards to the claimant's correspondence on 26 February 2015, regarding changing his shift, the tribunal notes that the claimant on holding his discussion with Mr Warren on 23 February, had been informed that he (Mr Warren) would be leaving the store at the end of the month and would be forwarding the matters to Mrs Fleet to address, which Mr Warren duly did on 27 February 2015, to include the claimant's issue raised by his correspondence of 26 February.
273. In these circumstances, the tribunal finds that where arrangements for meetings had been made with Mr Warren, these were undertaken, and that where meetings had not been had following correspondence from the claimant, the claimant had fully been apprised as to what action was being taken in respect of the issues being raised by his correspondence.
274. The tribunal accordingly finds no substance to the claimant's contentions in this regard.

Allegation 2

On the 7 February 2015 the claimant had a meeting arranged with Mr Warren and Mr Dolling, which on the claimant attending for the meeting was informed that Mr Dolling would not attend the meeting as he had left to go on an emergency holiday.

The claimant believes that the alleged perpetrator failed to attend the meeting because he did not want to meet with him due to his race and age. He is of the view that a white older employee would have been treated with more respect and the alleged perpetrator would have also attended the meeting. This is also apparent from the alleged perpetrator's comment that such a proposal would be more 'credible' coming from himself (ie. a white, older man).

275. The tribunal finds as set out at paragraph 28 above that on 7 February 2015 there had not been a meeting arranged with Mr Dolling to take place as alleged. The tribunal further finds that Mr Dolling having been called away

for a family emergency, his absence was on account thereof, and had not had any connection with the claimant's proposal or otherwise any desire not to meet with the claimant.

276. The tribunal finds no substance to the claimant's allegation that Mr Dolling failed to attend the meeting because of the claimant's age or otherwise race or otherwise because of the claimant's proposals.

Allegation 3

On 15 February 2015, Mr Arnold was rude to the claimant whilst in the canteen. He was putting pressure on the claimant to leave the premises.

The claimant is of the view that the alleged perpetrator was rude to him because of his race and age. Mr Arnold was also aware of his proposal and the respondent's employees believed that he should not have been getting ideas above his station. This was because he was a young, Asian man. The claimant has not observed Mr Arnold speak to other white, older employees in this way.

277. As set out at paragraph 59 above the tribunal finds that on 15 February 2015, Mr Arnold had not put pressure on the claimant to leave the premises, but had sought to understand whether the claimant intended to leave the premises as he had originally understood, on the claimant advising that he was unwell, or otherwise whether he was going to remain at work. The tribunal finds no evidence by these facts to support the claimant's contention that pressure was put on him to leave the premises, the claimant having stated that he was ill and needed to leave the premises, or otherwise facts from which the tribunal could infer that any action was then being taken because of the claimant's age or race.

278. For completeness, the tribunal further finds that on the 15 February 2015, Mr Arnold was not aware of the claimant's proposals and that the alleged aggression, if there was such aggression, was not predicated on matters discussed at the management meeting of 7 February 2015 in respect of job 14 team matters, which discussions had not been predicated, on the claimant's proposals. Neither is there evidence of considerations of age or race being a factor.

279. The tribunal finds no substance to the claimant's allegations.

Allegation 4

On 25 February 2015, Mr Warren having agreed to attend a meeting with the claimant at 4.30pm to discuss his proposals, on the claimant arriving at 4.00pm was told that Mr Warren had left the respondent's premises.

The alleged perpetrator was unwilling to meet with the claimant, and treated him rudely and disrespectfully, by not attending the meeting. It is averred that the alleged perpetrator would not have acted in this way if he had

arranged a meeting with an older, white employee. He repeats that this is because he was not considered 'credible'.

280. On the evidence before the tribunal there is no evidence of a meeting having been arranged between the claimant and Mr Warren for 25 February 2015. The anecdotal evidence from the claimant, of his having attended the store on the 25 February to meet Mr Warren, without any evidence as to how or when such a meeting with Mr Warren was arranged, this is not sufficient to substantiate his claim.

281. The tribunal accordingly finds no evidence to support the claimant's allegations in this respect.

Allegation 5

The claimant sent a first proposal to one of the Tesco Board of Directors. He copied in Paul Dolling and Laura Fleet, following this Mr Dolling and Mrs Fleet sent him a disciplinary letter, which was critical of the claimant for being absent from work.

The alleged perpetrator sent the claimant the disciplinary letter because they were unhappy that a junior, young employee of Asian origin was sending a proposal to senior management. The alleged perpetrator would not have behaved in this way to the hypothetical comparator.

282. The tribunal finds that on the claimant having been absent from work on 25 February, and on the respondent, in line with the Absent Policy, having failed to make contact with the claimant by telephone, had engaged the absence without leave process. The tribunal is satisfied that the relevant managers were not then aware of reasons for the claimant's absence, such that, the tribunal can find no correlation between the claimant having furnished his proposal to the Board of Directors and the AWOL meeting invite letter of 28 February. Neither is there evidence to suggest that age or race was a consideration. In any case, it is pertinent to note that the AWOL Policy had been applied to the claimant before he sent his proposal to the Board Members.

283. With regards the contents of the letter, the tribunal finds this to have been a true account of the circumstance then known to the respondent, and the basis for their inviting the claimant to the AWOL meeting. The tribunal finds nothing untoward by this correspondence, which was in accordance with procedure and consequent upon the claimant's absence.

284. The tribunal finds no evidence to support the claimant's allegations in this respect.

Allegation 6

The claimant attended a meeting with Laura Fleet. She was very critical of the claimant and rude. She questioned his decision to submit the proposal. She also asserted that his behaviour was poor.

The claimant believes that the alleged perpetrator was rude to him and was raising unsubstantiated criticisms because she was unhappy that a young man of Asian ethnic background was submitting a proposal. She would not have treated the hypothetical comparator in this way.

285. The tribunal does not accept the claimant's contention in this respect. On opposing oral evidence from the parties, from a perusal of the documentary evidence presented to the tribunal as between the claimant and the respondent, and further within the respondent's organisation, the correspondence at the material time does not refer to or otherwise support the claimant's contention, which had the position been as alleged by the claimant, one could reasonably have expected some reference thereto to have been made, which is not the case. Further, the tribunal can find no circumstance warranting the conduct alleged of Mrs Fleet, where Ms Fleet had not had previous relations with the claimant or previously shown any antipathy towards him.

286. On the evidence before the tribunal, the tribunal finds no substance to the claimant's contention.

Allegation 7

The disciplinary hearing was originally supposed to be heard by Fresh Food Manager, Chris (Asian origin). At the last minute he was replaced with Ms Maslen and Ms Bishop. During the meeting Ms Maslen and Ms Bishop were aggressive and rude to the claimant. He was not allowed to explain his position and was not taken seriously.

The alleged perpetrators were dismissive and rude. A hypothetical comparator would not have been treated with such disrespect.

287. As set out at paragraph 116 above, the tribunal does not find that the manager appointed to conduct the claimant's AWOL meeting was changed at the last minute. The tribunal finds that following the claimant's discussions with Mrs Fleet, and on the claimant requesting that the acting compliance manager, Becky Maslen, chair the meeting, this had been accommodated and Ms Maslen duly appointed. The tribunal further notes that, on the claimant stating that Mr Chris Prafitis was the officer to have chaired the meeting, the tribunal has found nothing by the correspondence or otherwise anything to which the claimant alludes to as identifying that Mr Prafitis was to have been the manager conducting the AWOL meeting, pointing to such a fact. Further, by the invite letter, the manager there

identified would have been that of Chris Salvakumar, being the fresh food manager, not Mr Chris Prafitis, as the claimant advances.

288. The tribunal does not find this allegation to have been substantiated.
289. With reference the meeting being conducted in an aggressive and rude manner, from the notes of the meeting, which appears to be a full note of the meeting to capture the full extent of the discussions had, the tribunal does not find the record to support the claimant's allegation. Indeed, on Ms Maslen seeking to contain the claimant to the issues, the subject of the AWOL meeting, the claimant being adamant to present his case as he wished, he was afforded the opportunity so to do and had presented fully that which he wished to say.
290. The tribunal does not find evidence to support the claimant's submission in this instance, the claimant being allowed to fully explain his position, and with regards the issues raised relevant to the subject of the meeting, these were taken seriously.

Allegation 8

The claimant attended a meeting to discuss his proposal with the alleged perpetrators. At this meeting Paul Dolling was frustrated with C which was evident by his facial expressions. He stated that C should not have emailed the proposal to senior management as it would have "more credibility" if it came from the alleged perpetrator.

The alleged perpetrators initially refused to provide C with a recognition letter to confirm that his proposal had been adopted.

At this meeting the alleged perpetrators also put pressure on C to speak with occupational health.

The alleged perpetrators also tried to force C to accept his old working hours (which had previously been changed) so that he would finish at 21:00.

The alleged perpetrators were suggesting that the claimant should not have emailed his proposal to senior management as it would not have credibility coming from him. The claimant took this to mean because of his young age and race. He was not taken seriously at the meeting and was being forced to speak to OH and to work late shifts. The claimant believes the respondent would not have treated the hypothetical comparator in this manner.

291. The tribunal find that in the lead up to the meeting, there was concern raised as to the claimant contacting the board, for which the tribunal finds that this would have been addressed at the meeting on 7 March. However, in respect of the issue then being raised, the tribunal finds that the issue was

addressed in the manner of Mr Dolling explaining to the claimant that he did not have contact with the board, thereby extracting him from the process, but equally advancing that the board, having received the claimant's proposals, would then make contact with the claimant should the board wish to take the proposal forward, effectively informing the claimant that it was not then for the claimant to press the issue; the ball was then in the board's court for the board to then take action.

292. The tribunal does not find that in these circumstances, Mr Dolling was frustrated with the claimant for having sent his proposals to the board. Having stated this, the tribunal does however believe that there would have been an element of frustration on the part of Mr Dolling, in that, on Mr Dolling explaining the process and having addressed the claimant's proposals with him, the claimant then seemed insistent on pressing his case and not receptive to that which Mr Dolling was informing him; the tribunal having witnessed such conduct of the claimant where he refused to accept states of circumstance presented to him, instead seeking to present argument without foundation as to why his proposition could then be acceptable, which when pressed as to the facts on which his proposition was based, the claimant then stated that it could be possible but refusing to accept the factual state as presented then to him. In such circumstance, the tribunal finds that such frustration of Mr Dolling, as there may have been, would have been on account of the actions of the claimant at the meeting, and not because the claimant had presented his proposals to the board.
293. With regard to providing the claimant with a "recognition letter to confirm that his proposal had been adopted," the tribunal does not find this to have been an issue of concern for Mr Dolling, the issue being whether or not a letter of recognition as to the claimant's proposals being put forward, were to be provided, not that they had been adopted. Despite this, with regards the claimant's proposals and a letter of recognition, the tribunal does not find there to have been a refusal on the part of Mr Dolling or Ms Fleet. To the contrary, Mr Dolling had offered to furnish a personal letter of recognition to the claimant, the issue arising on the claimant seeking the letter be furnished on Tesco letterhead, which Mr Dolling at the meeting on 7 March was not then in a position to do without taking advice. The tribunal finds that the claimant had been advised of this state of affairs, and that there was not then a refusal to provide a letter of recognition, only that Mr Dolling needed to take advice as to its provision. And indeed, a letter of recognition was duly provided in Ms McEwan's, UK operational personnel director, name on 11 March 2015.
294. With regards pressure being put on the claimant to speak with occupational health, the tribunal, preferring the evidence of Mr Dolling and Mrs Fleet, find that whilst they discussed the issue of the claimant being referred to occupational health, this was done with the claimant's approval. There is no evidence before the tribunal to support the claimant's contention that pressure was put on him to speak with occupational health.

295. The tribunal here accepts that, Mr Dolling and Ms Fleet would have expressed their concerns in strong terms, and of their desire for the claimant to see occupational health, but this is very distinct from pressure being put on an individual to do that which they did not then wish to do, which this tribunal does not find to have been the case.
296. With regards the claimant being forced to accept his old working hours so that he would finish at 21.00 hours, the tribunal does not find this to be supported by the evidence of the meeting on 7 March 2015; Mrs Fleet at pains to explain to the claimant that the support plan was temporary for four weeks and thereafter the claimant would revert to his contractual position which would be reviewed at the end of the four week period, and that should the claimant not wish to return to his normal contractual hours, that he was to furnish reasons why, and that further change would then be considered under the respondent's managing hours process. The tribunal does not find evidence to support the claimant's contention in this respect.
297. The tribunal further does not find considerations of age or race to have been here at play. There are no circumstance from which such an inference could be made, and there is no evidence to suggest that a person not of the claimants age or race would have been treated any differently.

Allegation 9

The alleged perpetrators attempted to get C's medical records without his permission.

A continuation of the above: The respondent would not have sought to obtain the confidential information of an older, white employee. The claimant notes that the respondent accepted this was inappropriate conduct. He believes that the conduct was due to his race and age.

298. As set out at paragraph 137 above, and the claimant's correspondence to Mrs Fleet following on 9 March, there is no evidence of Ms Fleet having requested information. Indeed, as is Mrs Fleet's evidence to the tribunal which is corroborated by the claimant's email of 9 March 2015, where he there states that, his GP stated that the respondent had asked the GP to see him. There is no evidence of the respondent requesting any medical information on behalf of the claimant.

299. The tribunal finds no substance to the claimant's contention.

Allegation 10

The alleged perpetrators refused to give the claimant the e-mail address of the respondent's Group Director (Paul Dolling and Laura Fleet).

The clamant believes that he was not given the Group Director's email address because he was young and Asian. The respondent would have provided the email address to a hypothetical comparator.

300. The tribunal does not find there to have been a refusal of Mr Dolling or Ms Fleet to furnish the claimant with the Group Director's e-mail but to the contrary Mrs Fleet had expressed a willingness so to do, on her asking the group director for such permission, informing the claimant, on his asking, that it was an exception to give this information out to colleagues and that she would out of courtesy always ask first.
301. The tribunal also here notes that, there is no suggestion that the claimant had been unable to send correspondence to the group director by reference to his title of group director.
302. It is also of relevance here to note Ms Mendes' finding into the claimant's grievance, of Mr Dolling's reticence to furnish the claimant with the email address on account of the claimant's prolific nature of sending emails, which was not predicated on considerations of race or age. The tribunal also here notes that despite Mr Dolling's reticence, he was nevertheless prepared to facilitate a meeting between the claimant and the group director, when shortly after the claimant had requested the email address, he had sought a meeting be arranged with the group director, Mr Dolling writing to the claimant on 18 March 2015, in respect thereof but to which the claimant did not respond.
303. In these circumstances, the tribunal finds no substance on which to support the claimant's allegations that, Mr Dolling or Mrs Fleet refused to give the claimant the email address of the respondent's group director, for reasons of race and/or age. The tribunal finds no evidence on which to found the claimant's claims for discrimination.

Allegation 11

Claimant submitted a grievance relating to his unfair treatment. There was no action taken which led to his resignation on the 10 of April 2015 and subsequent correspondence with ACAS.

The claimant is of the opinion that his grievance was not investigated or considered because of his age and race. Once again he was not taken seriously.

304. On the claimant having submitted his grievance of the 19 March 2015, to Head Office, the tribunal finds that, when Ms Button then wrote to those individuals who had received the claimant's grievance, advising that they were not to respond thereto, the grievance was not then forwarded to any other persons within the respondent's establishment and as a consequence of which, the grievance was then not further considered.
305. In respect hereof, the tribunal is conscious that by Ms Button's correspondence, on advising the Head Office personnel not to action the claimant's grievance stating that the grievance process was being followed

to the letter, the tribunal finds that this could not have been the case because the grievance that had been furnished, was only then being furnished for the first time, being the correspondence to which Ms Button was responding; the claimant prior hereto had not presented a grievance, and therefore, there was then no grievance process in train. The tribunal finds that on the claimant submitting his grievance there was no action taken thereon by the respondent.

306. With regards the circumstance for this inaction, the material person being Ms Button, in circumstances where there is no suggestion that Ms Button was aware of the claimant's age or race, save for his name, and where the tribunal has been unable to find any evidence to suggest issues of race or age had been a consideration by any person within the respondent's establishment dealing with the claimant, up to this point in time, the tribunal has been unable to find any circumstance from which an inference could reasonably be drawn that the action of Ms Button was predicated on considerations of race or age, or otherwise influenced thereby, whether directly or indirectly.
307. With regards to the claimant resigning as a consequence hereof, the tribunal is conscious that Ms Button's correspondence was sent to the claimant for which the claimant would then have been aware that the matter was not being dealt with by Head Office, and that as of the 30 March 2015, the claimant sending correspondence to Ms Alison Horner – Chief Peoples Officer, noting that the grievance was not being addressed, he was then aware of the circumstance in respect thereof and at that time did not seem to be concerned as to that circumstance, for which he says he was considering resigning, which circumstance remained up until the 10 April when he presented his resignation.
308. Further to the above, the tribunal finds that on the 9 April 2015, the claimant not attending the meeting with Mr Dolling and Ms Fleet of the 8 April, on his writing to Ms McEwan it is here stating that his original grievance had not been dealt with, he thereon raises further issue in respect of Mr Dolling and Ms Fleet advising that, he looks forward to liaising with the Group Director regarding his return to work. This being raised the day before the claimant resigned, where it is clear that the claimant at that juncture was seeking a return to work following a meeting with the Group Director, on Ms McEwan then taking no action to change that state of affairs, the tribunal does not find there to have been circumstances relating to the claimant's grievance, then not having been heard, to have changed the claimants position from that of the 9 April to his resigning on the 10 April.
309. On these facts, the tribunal can find no evidence to support the claimant's contention that he resigned on the 10 April 2015, in consequence of the respondent taking no action on his grievance of the 9 March 2015.
310. Turning to consider the issue relating to the claimant's contact with ACAS, and ACAS' correspondence with the respondent, the tribunal finds that ACAS, first making contact with the respondent on the 21 April 2015, this

was after Ms Mendes had taken positive action in respect of the claimant's grievance, setting up a hearing for the 21 April, albeit the grievance was not then heard until the 29 April. In these circumstances, the tribunal does not find the respondent to have taken action in respect of the claimant's grievance, predicated on correspondence from ACAS.

Allegation 12

Following the claimant's contact with ACAS respondent arranged a stage 1 grievance meeting. This was conducted by Nikki Mendes. The claimant raised that as part of his criticism was now that Ms Mendes had failed to investigate his grievance, she should not conduct the hearing. Nevertheless, she proceeded to chair the meeting. During this meeting Ms Mendes agreed that the claimant could withdraw his resignation and work in the store in Surrey Quays.

The claimant believes that the respondent would not have allowed Nikki Mendes to hear the grievance if a hypothetical comparator had raised the complaint.

311. As above stated, the tribunal does not find that the stage 1 grievance was predicated on the claimant contacting ACAS.
312. With regard to Ms Mendes chairing the meeting, the tribunal finds that on the claimant identifying Ms Mendes' involvement with his issues to date, Ms Mendes had sought the agreement of the claimant in her proceeding to chair the hearing, which on the claimant giving his consent, the tribunal finds no substance to the claimant's contention in this respect.
313. It is not in dispute that Ms Mendes agreed that the claimant could withdraw his resignation and further agreed that the claimant could then work in the Surrey Quays store, albeit it on a temporary basis. The tribunal has been unable to identify any basis on which the claimant alleges that this act was then an act of discrimination on ground of his age or race. The tribunal finds no substance to the claimant's contention in this respect

Allegation 13

Whilst working in the Surrey Quays store a white employee named "Mandy" was very aggressive to the claimant and critical of his customer service.

The claimant believes Mandy was rude to him because of his age and race. He has not observed employees treating older, white employees as rudely.

314. On the evidence presented to the tribunal, the tribunal is not in a position to comment hereon otherwise than to note that the claimant raised issue thereon, which on the claimant unable to identify who the individual "Mandy" was, beyond the name, and on the respondent not having CCTV footage of the relevant period, the claimant having requested the CCTV footage after

the period for which the respondent would customarily retain CCTV recordings, the tribunal is unable to make a determination.

Allegation 14

The claimant's grievance was dismissed. This led to his resignation.

The claimant is of the view that his grievance was not properly investigated which led to its dismissal. He is of the view that this was due to his age and race (namely, not being taken seriously).

315. As set out at paragraph 208 above, on Ms Mendes informing the claimant of her findings and that his grievance was not upheld, the claimant resigned with immediate effect. The tribunal accepts that the claimant tendered his resignation on receiving the outcome of the grievance investigation, however, on the tribunal receiving no evidence to identify any failings in the investigation by Ms Mendes, the tribunal finds that there is no basis on which to found the claimant's claim for discrimination on the protected characteristic of race and/or age, or that there had been a breach of any kind.

Allegation 15

Claimant repeatedly requested CCTV to prove the incident which occurred on the 17.05.15. His requests were initially ignored. A response was only provided when the claimant raised the Data Protection Act 1998.

The claimant believes that the respondent did not respond to his emails because of his age and race and because they did not want to disclose evidence proving that he was the victim of discrimination.

316. On the claimant making his request for CCTV footage on the 3 June to Mr Prajapati, and Ms Mendes on the 4 June 2015, and Ms McEwan on the 4 June 2015, On Ms Deverall writing to the claimant on the 9 June advising of the steps being taken to secure the CCTV, the tribunal does not find the respondent to have ignored the claimant's request at any stage.

317. With regards the requests of the claimant, the request initially raised, made reference to the Data Protection Act, and as such, the tribunal has not been presented with any request of the claimant in respect of CCTV where the Data Protection Act had not been referenced, such that the tribunal does not find substance to the claimant's complaint that "a response was only provided when the claimant raised the Data Protection Act 1998".

318. The tribunal equally finds no basis on which to found the claimant's claim for discrimination on the protected characteristic of race and/or age.

Allegation 16

The alleged perpetrator delayed in giving the claimant his appeal outcome. He was not given the decision until the 04.08.15 (Ms Alyson Hart).

The claimant avers that, as above, his grievance and complaints were never taken seriously as he is a young man of Asian background. The appeal was not taken seriously.

319. The tribunal does not find the claimant's contention here substantiated. On Ms Hart conducting the stage 2 grievance meeting, and having informed the claimant that she would expect to have an outcome within seven days, on Ms Hart then having further investigations to undertake, and on her unable to conclude her investigations as she had thought, and on her having apprised the claimant thereof on the 21 July and the 28 July, giving the claimant a further timescale within which she hoped to furnish the outcome, and furnishing her outcome within that timeframe, the tribunal does not find there to have been any delay of Ms Hart in giving her outcome. The tribunal further finds no evidence to support the claimant's contention that his grievance and complaints were never taken seriously because he was a young man of Asian background.

Allegation 17

The claimant's grievance appeal was dismissed.

The claimant avers that, as above, his grievance and complaints were never taken seriously as he is a young man of Asian background. The decision makers throughout were white, British and he believes that the respondent treats such employees with more respect.

320. The tribunal finds that on the claimant presenting his stage 2 grievance appeal, Ms Hart had considered each of the claimant's specific allegations in turn, for which the tribunal can find nothing untoward therewith, for which this tribunal could say that Ms Hart's conclusions were unreasonable or otherwise perverse. There was evidence before Ms Hart to support her findings and so not to uphold the claimant's grievance, for which she was then entitled to dismiss the stage 2 grievance appeal.

321. The tribunal can find no evidence from which to infer that Ms Harts findings were otherwise than as stated, to enable the tribunal to entertain the claimant's contention as to discrimination.

Victimisation

The claimant submitted a grievance dated 09.03.15. This specifically referred to him being treated differently and that he did not feel comfortable and safe at work. He did not feel comfortable because he was being

discriminated against. The claimant avers that this was an allegation that the respondent had contravened the Equality Act 2010. Whilst it was not express it clearly referred to difference in treatment.

322. From a perusal of the claimant's grievance to Mr Lewis dated the 9 March 2015, the claimant there refers to his proposal being presented and the treatment he had received following that proposal being presented, for which the claimant states he is being treated differently. There is no reference therein to the difference in treatment being predicated on considerations of his age or race or other protected characteristics under the Equality Act 2010, but to the contrary, the claimant references his being treated differently because of his having submitted his proposals.
323. With regards to the claimant's reference to him "not feeling comfortable and safe and secure" this again is in respect of his "*speaking about our several ideas (1-9) that we believe will greatly improve the running of Tesco all stores ...*". Again, there is no reference to the claimant feeling uncomfortable or otherwise unsafe and unsecure because of considerations of his race or age, or otherwise any other protected characteristic under the Equality Act.
324. The tribunal does not find that the claimant has done a protected act for the purposes of section 27 of the Equality Act 2010, by his presenting his grievance of the 9 March 2015. The tribunal find no merit in the claimant's contention in this respect.

Whistleblowing

Disclosure made to David Warren and Ian Arnold on the 6 February 2015 via e-mails and orally, that the respondent was failing to identify out of duck meat which the claimant believed tended to show that the health and safety of the public was endangered.

325. On the claimant raising issue as to out of date duck meat, which was clarified to have been kosher chicken, on the 6 February 2015, the tribunal finds that the information being disclosed in respect thereof was as to the respondent saving money and reducing waste. There was no reference thereto of health or safety being an issue; the sole concern of the claimant in raising the issue being in respect of profitability for the respondent. The tribunal finds no substance to the claimant's allegation.

Disclosure to Mr Dave Lewis (CEO), Mr Alan Stewart (CFO) and Ms Alyson Horner (Head of HR) via e-mail and post of the 22 and 23 March 2015, on the claimant reporting that there was inadequate labelling of goods to indicate sell by dates. As a result, the staff was unaware whether they were selling goods which were out of date, the claimant believing that the information tended to show that the health or safety of the public had been, was being or was likely to be in endangered

326. The tribunal has not received any evidence of the claimant submitting the alleged e-mails or special delivery mail as alleged. The tribunal does not find the allegation substantiated.

On the 6 of May 2015 via e-mail to Ms Mendes, the claimant outlined that there are poor standards of hygiene in the male staff toilet. There had been no soap available in the soap dispenser for two days. As a consequence, staff working in the food department were not able to wash their hands with soap. The claimant believes that the information tended to show that the health or safety of members of the public purchasing food items had been, was being or was likely to be endangered.

327. It is not in dispute that the claimant raised the issue as to no soap available in the soap dispensers following his temporary assignment to Surrey Quays, Tesco Extra. The tribunal finds that this was a disclosure of information and sufficient to amount to a protected disclosure.

328. The tribunal does not however find the claimant to have identified any detriment that he states he has suffered as a consequence thereof, in that, on Ms Mendes in the resumed grievance meeting on the 19 May 2015 informing the claimant that his e-mail in respect of no soap in the toilets in Surrey Quays, were of no relevance to his grievance, and was not therefore being considered further, and there is no action predicated hereon complained of, the tribunal is unable to see how the claimant then argues that he has suffered a detriment as a consequence therefore. The tribunal accordingly, does not find that the claimant to have suffered a detriment on having made the protected disclosure.

On the 6 May 2015, via e-mail to Ms Mendes, the claimant reminded the respondent that he previously (2014) reported that a Store Manager and Team Leader had been stealing money and other expensive products from the store (Tesco Clapham North Express). The claimant believes that the information tended to show that a criminal offence had been committed, and that nefarious characters worked for the respondent and the impact this may have.

329. The tribunal has not been presented with any correspondence to Ms Mendes dated the 6 May 2015 referencing events in 2014, however, the tribunal notes correspondence of the 13 May 2015 to Ms Mendes from the claimant, in which the claimant states, which correspondence the tribunal sets out in full, that:

“ I would like to let you know that I also shared a few ideas with Mr Philip Hill, the Store Operations Manager around in January 2014. Then Mr Philip Hill phoned me. Problem – found in the Tesco Clapham North Express. Store Manager. Team Leader. I believe that the ideas were very useful for the company, Tesco Stores Limited. Please if you can share my all ideas with our CEO Dave Lewis and the Board of People, as my all ideas will greatly improve the running of Tesco all stores. I believe that my ideas will help to restore Tesco as the number one supermarket. Please keep me informed if you have any query about this e-mail.”

330. In addition to the above, grouped with further correspondence, there was a letter addressed to the Manager Tesco PLC raising issue as to the Team Leader *“stealing money and product from the store as following point will describe what exactly going on in the store”* following which the claimant then set out a number of incidents of food being removed from the store without appropriate payments made, or appeared to have been made, for which there is further correspondence for the then Store Manager, Mr Barkham, making arrangements to meet the claimant in January 2014 to discuss the issue, which correspondence was acknowledged by Ms Mendes, who advised that they would discuss it at the resumed grievance meeting on the 19 May 2015.
331. From the minutes of the grievance meeting on the 19 May, there is no record of this issue further being discussed and the claimant has not before the tribunal presented evidence otherwise than of his having sent the correspondence to Ms Mendes.
332. From a perusal of the documents sent circa. January 2014, for which action was then taken by the then manager, without further, the tribunal is unable to state how such correspondence impacted on actions following its disclosure to Ms Mendes on the 14 May 2015.
333. The tribunal according can find no substance to the claimant’s allegations of a protected disclosure being made in these circumstances.
334. The tribunal finds no substance to the claimant’s allegations.
335. For the above reasons the tribunal does not find there to have been a beach of any express or implied term of the claimant’s employment, so as to entitle the claimant to treat the employment relationship as at an end, either as at the 10 April 2015 or subsequent on the 19 May 2015 on Ms Mendes presenting her findings on the claimant’s grievance.
336. For the reasons above stated, the tribunal finds that the claimant has not been discriminated against on the protected characteristics of age or race, that he has not, having made a protected disclosure on 6 May 2015 in respect of health and safety, suffered a detriment as a consequence thereof, that he has not been unfairly dismissed pursuant to s.103A of the Employment Rights Act 1996, for having made a protected disclosure.
337. The claimant’s claims are accordingly dismissed

Employment Judge Henry

Date: 18.10.18.....

Sent to the parties on:

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For the Tribunal Office