EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr S Lwanga	**- V -**	AtkinsRealis UK Ltd

Heard at: London Central **On**: 9-14 February 2024

Before: Employment Judge Baty
Ms Z Darmas
Mr J Carroll

Representation:

For the Claimant: In person
For the Respondent: Mr D Calvert (counsel)

JUDGMENT

1. The claimant's complaints of direct race discrimination at paragraphs 13.1-13.5 of the agreed list of issues were presented out of time and it was not just and equitable to extend time. The tribunal does not therefore have jurisdiction to hear these complaints. They are, therefore, dismissed. If the tribunal had had jurisdiction to hear these complaints, they would all have failed.

2. The claimant's remaining complaints of direct race discrimination (at paragraphs 13.6-13.9 of the agreed list of issues) all fail.

3. An award of costs of £12,500 (twelve thousand, five hundred pounds) is made, payable by the claimant to the respondent.

REASONS

The complaints

1. By a claim form presented to the employment tribunal on 8 March 2023, the claimant brought various complaints. The respondent defended the complaints.

2. At a preliminary hearing held on 24 July 2023 before Employment Judge P Smith, the complaints were clarified as being of direct race discrimination and wrongful dismissal only. However the claimant accepted that he was paid in lieu of notice and therefore withdrew his wrongful dismissal complaint, which was then dismissed.

The issues

3. The issues of the claim were discussed and agreed and were set out in EJ Smith's note of the case management hearing at paragraphs 8-18.

4. At the start of this hearing, the judge asked the parties whether those issues remained the issues to be determined by the tribunal and they confirmed that they were. The judge explained that the tribunal would determine those issues and no others.

5. A copy of those agreed issues is annexed to these reasons.

6. At the start of the hearing, for the benefit of the claimant, who was a litigant in person, the judge gave a summary of the legal principles that applied in the determination of direct discrimination complaints and time limit issues. He returned to this when necessary on other occasions during the hearing, emphasising to the claimant in particular that the tribunal did not have jurisdiction to hear complaints merely about alleged bad behaviour by the respondent, but that that behaviour had to be because of race for it to found the basis of the complaints brought by the claimant.

This hearing

7. This hearing was listed for six days (9-16 February 2024) by EJ Smith at the preliminary hearing of 24 July 2023. The hearing was listed to consider both issues of liability and of remedy. However, at the start of the hearing when the judge was canvassing issues of timetabling with the parties, it appeared to be the case that it was unlikely that there would be time within the listing to determine issues of remedy (if applicable). It was agreed, therefore, that unless the evidence was in fact heard much more quickly than was anticipated by the parties, the hearing would consider liability only.

8. This hearing was listed to take place in person. However, in advance of the hearing, the respondent applied for the first day of the hearing (which was a Friday) to be held by video (CVP), on the grounds that the day would be taken up predominantly with the tribunal doing its pre-reading and it seemed disproportionate to make the parties attend for a relatively short period to deal only with any preliminary matters; this was particularly so as Mr Calvert would need to travel from Manchester to London for the day to attend in person. The tribunal received no objection to this application from the claimant. Therefore, on the afternoon before the hearing commenced, the tribunal on the judge's instruction informed the parties that the first day would be held by CVP. Having done some reading into the case, it was clear to the judge that the majority of

that day would indeed be required for the tribunal's pre-reading without the need for the parties to attend; the parties had already attended one hearing by CVP (the preliminary hearing) so they were equipped to attend by CVP; and it would be disproportionate to make the parties travel to the tribunal just to deal with any preliminary matters.

9. At the start of the hearing, the judge asked the parties if they would prefer the whole of the hearing to take place by CVP or whether they would like to keep the remainder of the hearing in person. Mr Calvert did not express a strong preference either way, although he said that on balance CVP may be better for the respondent as it would mean that neither he nor the many witnesses of the respondent would need to come to London, which would be a cost to the respondent. However, the claimant said that he would prefer the matter to be heard in person. He passionately insisted that this was because he considered that it was essential that the cross-examining of the respondent's witnesses should be done in person rather than by video. The tribunal therefore decided that the remainder of the hearing (days 2-6 of the listing) would be heard in person. The remainder of the hearing was duly heard in person.

10. As it happened, with one exception, the preliminary matters which the tribunal needed to deal with on the first day of the hearing were dealt with very quickly. That exception was the claimant's application for a witness order, which we refer to below.

11. At the start of the hearing, the judge explained that, notwithstanding the six day listing, the tribunal would not be able to sit on the morning of day five of the hearing because the judge had another work commitment. As it turned out, day five was never needed, as the hearing completed in four days.

Correct name of the respondent

12. The judge noted that the respondent appeared to have changed its name to AtkinsRealis UK Ltd since the preliminary hearing. Mr Calvert confirmed that that was the case. The parties therefore agreed that the name of the respondent should be changed on the tribunal's record from "Atkins Ltd" to "AtkinsRealis UK Ltd".

The evidence

13. Witness evidence was heard from the following:

For the claimant:

The claimant himself.

For the respondent:

Mr Stuart Bogie, who is employed by the respondent as a Principal Consultant and who line managed the claimant when he was employed by the respondent;

Mr Thomas Truman, who is employed by the respondent as Resource Manager;

Mr Shaun Thomas, who is employed by the respondent as an Associate Director and who led the Security Programme project for Heathrow Airport to which the claimant was assigned during part of his employment with the respondent;

Mr Gareth Vivian, who is employed by the respondent as a Senior Project Manager;

Mr Paul Coomber, who is employed by the respondent as a Principal Consultant and Business Analyst;

Mr David Humphrey, who is employed by the respondent as an Operations Director and who heard the claimant's grievance;

Ms Sarah Price, who is employed by the respondent as a Transformation Progress Director and who heard the claimant's grievance appeal; and

Mr Mario Profeta, who is employed by the respondent as People Operations Leader and who was present at the claimant's grievance meeting on 13 December 2022.

14. An agreed bundle numbered pages 1-318 was produced to the tribunal. In addition, the claimant produced his own supplemental bundle of documents, numbered pages 1-259; the respondent did not object to this supplemental bundle being put before the tribunal. In addition, the respondent produced a short cast list and chronology (these documents were not agreed).

15. The tribunal read in advance the witness statements and any documents in the bundle to which they referred.

Timetable

16. A timetable for cross-examination and submissions was agreed between the tribunal and the parties at the start of the hearing. This envisaged that the evidence and submissions would be completed by the end of the penultimate day of the listed hearing, with the final day reserved for the tribunal's deliberations and, if there was time, giving oral judgement. It was based on the claimant's indication, following discussion with the judge, that he would need up to 2½ days to cross-examine the eight witnesses of the respondent.

17. However, the claimant in the end decided not to put any questions at all to four of those eight witnesses (Mr Thomas, Mr Vivian, Mr Coomber and Mr Profeta) and asked fewer questions of the other four witnesses than had been anticipated. As a result, the evidence was completed almost 2 days earlier than anticipated.

Claimant's application for a witness order

18. At the start of the hearing, the claimant stated that he was surprised that the respondent was not calling as witnesses either Ms Linda Mole or Ms BW. Ms Mole was a member of the respondent's HR staff who had taken notes at the claimant's grievance appeal meeting. Ms BW was an employee of the respondent who had been assigned to assist the claimant on the Heathrow Sprint Project. There had been a delay in exchanging witness statements and witness statements had not, therefore, been exchanged until a few days before the start of this hearing.

19. The judge asked the claimant whether he was seeking witness orders in relation to these two individuals. The claimant said that he would not seek an order in relation to Ms Mole (who was out of the country on holiday at that point anyway), but he did consider that Ms BW could give crucial evidence and he therefore sought a witness order in relation to her. The judge noted that the respondent had recently applied for a postponement of this hearing, which the claimant had opposed and which the tribunal had refused; he asked the claimant if he wanted to apply for a witness order in relation to Ms BW even if that meant that the hearing needed to be postponed as a consequence. The claimant said that he did. Mr Calvert said that he did not consider that it was necessary that Ms BW was called as a witness.

20. It was agreed that there should be a break whilst Mr Calvert took instructions as to whether Ms BW was available (or whether, for example, she too was out of the country on holiday). Mr Calvert took instructions and, when the hearing reconvened, he explained that she was in the country but was away doing a particular project on site throughout the whole of the following week and that she was integral to that project.

21. The tribunal then heard submissions from both parties on the issue of whether it should make a witness order in relation to Ms BW. It then adjourned to consider its decision and, when the hearing reconvened, informed the parties of that decision.

22. The tribunal decided not to make a witness order in relation to Ms BW for the following reasons.

23. The main reason why the claimant said that Ms BW's evidence was, in his view, crucial, was because it had been alleged that Ms BW had told managers that the claimant had said to her "*if I go down, you will come with me"*; and the claimant was then asked about this alleged comment at a meeting of 17 November 2022. The claimant's case at this hearing was that he had not said it. (Indeed, the claimant appeared throughout this hearing to have a fixation about this comment and about Ms BW's absence from the hearing.)

24. However, it was clear from the documents in relation to the claimant's grievance appeal that the respondent had concluded that there was insufficient evidence of this comment having been made and therefore the grievance appeal investigation had not taken it into consideration; furthermore, it was also clear

from the preliminary reading which the tribunal had done at that stage that the reasons which the respondent gave for, for example, extending the claimant's probationary period and subsequently dismissing him, did not include this comment. Whilst the alleged comment was part of the context of the claim, its relevance was therefore tangential only and it was certainly not necessary for a fair hearing to call Ms BW. That reason alone was enough for us to decide not to make a witness order in relation to Ms BW.

25. In addition, as noted, the claimant could have sought to call Ms BW himself (albeit he maintained that he had assumed that she would be attending the tribunal to give evidence, until the witness statements were exchanged a few days before the start of the hearing), but had not taken any steps to do so until the first day of the hearing.

26. Furthermore, it was also likely to be to the claimant's advantage if Ms BW was not called as he could, if he still considered the matter relevant, make submissions that the tribunal should draw inferences about whether the comment was made from the fact that the respondent had chosen not to call Ms BW.

27. Finally, if the tribunal was to make a witness order for Ms BW to attend this hearing, that would be of prejudice to the respondent given that she would be removed from a project where her involvement was important. Alternatively, it would be entirely disproportionate to make a witness order and call her on an alternative date, which would mean a postponement of this hearing.

28. The claimant said that he disagreed with the tribunal's decision and asked the tribunal to revisit its decision after it had read all of the witness statements and documents.

29. When the hearing reconvened the following week after the tribunal had done all of its pre-reading, the judge informed the claimant that, having done that reading, the tribunal had discussed the matter and decided that there was nothing in that reading which altered the decision not to make a witness order in relation to Ms BW or the reasons for it.

30. The claimant continued to protest and said that he "totally disagreed" with this decision. However, the judge stated that the decision had now been taken and the hearing should move on.

Management of the hearing

31. This was a difficult hearing for the tribunal to manage. That was because of the behaviour of the claimant during the hearing. This is against the background that the claimant is an intelligent individual, with several higher educational qualifications, who has worked for many years in consultancy.

32. Right from the start, even when the tribunal was dealing with preliminary matters on the first day of the hearing, the claimant persistently cut across the judge when he was speaking and cut across Mr Calvert when he was speaking. This was a pattern that continued during the hearing. In addition, the claimant

would frequently make remarks which were rude, for example in the context of the witness order referred to above, declaring angrily *"So what is David Calvert talking about?"*, in response to what were entirely reasonable submissions which Mr Calvert had made. The claimant made comments of this nature on several occasions during the hearing.

33. During his evidence, he persistently failed to answer questions put to him, even of the most simple kind where a simple answer would suffice, and he often went off on a tangent. The judge had to remind him on numerous occasions to answer the questions put.

34. Despite numerous warnings from the judge, the claimant continually cut across the questions which were being asked of him by Mr Calvert. The judge had to remind him on many occasions not to do so and to wait for the whole question before answering.

35. Conversely, when he was cross-examining witnesses of the respondent, the claimant persistently cut across the answers which those witnesses were giving to his questions. Again, the judge had to interject on numerous occasions to tell him to stop doing so.

36. In addition, a lot of the questions which the claimant did ask those respondent's witnesses whom he chose to cross-examine were either not relevant to the issues which the tribunal had to determine or were repetitive of matters that he had already asked. The judge let a lot of this go, but on several occasions when this pattern persisted, the judge interjected to explain this to the claimant and to ask him to move on. A lot of the claimant's questions were also not clear and needed to be reformulated so that the witness in question knew what was being asked of him/her.

37. The judge had to remind the claimant on several occasions that his behaviour was crossing the boundary of what was permissible and that he was being rude, both to the tribunal and to Mr Calvert and the respondent's witnesses. The judge reminded the claimant of his duty under the overriding objective to co-operate and assist and that he was in a court of law and should behave accordingly.

38. The claimant often grinned sarcastically when things were said which he clearly did not agree with. He often "eyeballed" the respondent's witnesses who were in the room, in a manner that was intimidating and threatening. At one point whilst giving his evidence he turned round to his former managers (who were amongst the respondent's witnesses who were attending the tribunal) whilst at the same time pointing at the judge, in response to something the judge said which he appeared not to agree with.

39. At this point, the judge paused the hearing and addressed the claimant. The judge explained that the claimant could not behave in that manner and that it was very rude. He reminded the claimant that he had had to interject and warn him about his behaviour on several occasions up until that point. He warned him that it the claimant continued in that manner, it would be unreasonable

behaviour. He warned the claimant that, if the claimant conducted the hearing unreasonably, the tribunal had the power to strike out his claim; and he told him that he therefore needed to change his behaviour going forwards.

40. The claimant was (despite the judge's warnings) rude in his treatment of several of the respondent's witnesses, particularly Mr Bogie.

41. The claimant had completed his cross-examination of Mr Bogie and Mr Truman by the end of the second day of the hearing. On the third day, he was due to cross-examine Mr Thomas, Mr Vivian, and Mr Coomber. However, when each of them came to give evidence, the claimant declared that he did not have any questions for them at all. The judge initially explained that if the claimant did not challenge the evidence in their witness statements, that might put him at a disadvantage. However, he said he did not want to ask them any questions.

42. He was then particularly rude about the respondent's witnesses in general, describing them as *"putrid"*. At this point, the judge stopped the hearing. He told the claimant that it was unacceptable for him to refer to other individuals in the court as *"putrid"*. As the judge had already reprimanded the claimant about his behaviour on many occasions but the claimant had continued to behave in that vein, the judge stated that he felt that he needed to apologise to the witnesses of the respondent (most of whom were in the tribunal room at that point); he said that he had never in his many years of experience as a judge been at a hearing where someone was so rude (despite previous warnings) and he did not want any of the witnesses to think that this sort of behaviour was normal or acceptable; he said that no one should have to come to a public tribunal with an expectation that this sort of behaviour should be allowed; he explained to them that he had never previously in his experience felt the need to make such an apology to witnesses in general at a hearing.

43. Given the claimant's late decision not to cross-examine these witnesses, it was fortunate that Mr Humphrey and Ms Price were also present at the tribunal at that time. Their evidence was then heard and the claimant did ask them some questions. The remaining witness, Mr Profeta, was not due to attend until the following day. However, by the time that the evidence of Mr Humphrey and Ms Price was completed, it was only 11:10 am on the morning of the third day of the hearing.

44. The judge asked the claimant whether he had any questions for Mr Profeta. The claimant said that he did not have any questions and, having checked with the other members of the tribunal, the judge explained that the tribunal did not have any questions for Mr Profeta either. Mr Profeta was in Manchester. The judge therefore suggested, so as to avoid wasting tribunal time by adjourning the hearing until the following day, that it was simply agreed that Mr Profeta's evidence should be deemed to have been given without the need for him to come and affirm the truth of his statement (given that the claimant was not challenging it and given that Mr Profeta's statement was only just over a side long and he was only a minute taker (rather than a decision maker) at the grievance meeting). However, the claimant explained that he did not want to do anyone any favours and he would expect Mr Profeta to affirm his statement.

45. In the light of that, the judge asked whether it would be possible for Mr Profeta to join the hearing by CVP that day to affirm the truth of his evidence. The respondent made enquiries. It was possible and Mr Profeta duly attended the hearing by CVP that morning and affirmed that his witness statement was true. However, arranging this used up another half an hour of time unnecessarily.

46. Furthermore, if the claimant had informed the tribunal at the start of the hearing that he did not intend to ask any questions of Mr Thomas, Mr Vivian and Mr Coomber, as would have been reasonable, those individuals could also have either not attended the hearing at all or could have simply affirmed their statements by CVP without having to come to London; the fact that they did have to come to London and sit in the tribunal meant that they could not be charged out on work for the respondent whilst they were attending the tribunal. This therefore needlessly cost the respondent money.

47. In summary, the claimant was an arrogant individual who either would not or could not take direction from the judge or anybody else. Consequently, the hearing was very difficult to manage.

Submissions

48. For the claimant's benefit, the judge explained to him what submissions were, both at the start of and later on in the hearing.

49. At the start of the hearing, the claimant indicated that he would probably produce written submissions and then make oral submissions as well; Mr Calvert said that he would simply do oral submissions.

50. The judge revisited this with the parties at the end of the evidence, which, for the reasons above, completed halfway through the morning of the third day of the hearing. The claimant still indicated that he wished to produce written submissions but said they would only be a couple of pages long. The judge asked whether it would be possible, in the light of that, to produce them by the beginning of that afternoon so that oral submissions could take place that afternoon. However, the claimant indicated that he would need the rest of the day to prepare them. It was agreed, therefore, that the claimant should send his written submissions to the tribunal and to the respondent no later than 5 PM that day and that oral submissions would not commence until 10 AM the following morning.

51. The claimant then said to the tribunal that he would use "Chat GPT" to produce his submissions and would "see what came out". The judge said that, in his knowledge of other occasions when unrepresented parties had sought to write their submissions using Chat GPT, this had resulted in submissions which were not necessarily tailored to the issues and were of little help to the tribunal. However, the claimant nonetheless indicated that that was what he was intending to do.

52. The claimant duly produced his written submissions just after 7PM that evening, which were 8 pages long. They concluded:

"Thank you Judge Baty and his associate for their patience and attention. ALL the outbursts are just elements of frustrating that I have been carry for over twelve months and meeting my accusers was a trying and challenging moment. Please forgive my show of rudeness at times but I do respect the aims of the Employment Tribunal and it its value to the mall people such as me." (sic).

53. The following morning (the fourth day of the hearing), the tribunal read the claimant's written submissions and the hearing recommenced. The claimant confirmed that he had used Chat GPT to produce his written submissions and had then tailored what it produced himself. That was evident from the sections which were full of spelling and grammatical mistakes (such as the one quoted above) as opposed to the Chat GPT sections which were not. We mention this because the claimant's spelling and grammar are relevant to the issues of this claim.

54. The tribunal then heard oral submissions. Mr Calvert addressed us. However, the claimant then simply stated that he was exhausted and had nothing further to say; he did not therefore make any oral submissions.

Decision

55. The tribunal adjourned to consider its decision. When the hearing reconvened after lunch that day, the tribunal gave the parties its decision with its reasons orally.

56. Whilst the judge was delivering the tribunal's reasons for its decision, the claimant got out a pack of playing cards and started playing a card game on his desk. The judge paused, informed the claimant that this was extremely discourteous, and told him to stop. The claimant said that he was listening anyway, but put the cards away, although he later got them out again during the subsequent costs application.

Findings of Fact

57. We make the following findings of fact. In doing so, we do not repeat all of the evidence, even where it is disputed, but confine our findings to those necessary to determine the agreed issues. We start with an overview of the facts.

Overview

58. The respondent is a design, engineering and project management consultancy. It has around 10,000 employees in the UK.

59. The claimant was employed by the respondent from 25 July 2022 until 1 February 2023.

60. The claimant was employed as a Senior Consultant, grade P3, within the respondent's Aerospace, Defence, Security and Technology section. When he

joined the respondent, he had a six month probationary period, in common with other new starters for the respondent.

61. Mr Bogie was assigned as the claimant's line manager and remained his line manager throughout his employment with the respondent.

62. The first project to which the claimant was assigned was the Heathrow Sprint Project. This was led by Mr Thomas. The claimant's predecessor on that project was Mr X (the claimant's alleged comparator for the purposes of this claim). As was the case with his predecessor, Mr X, the claimant was responsible for two of the six "Sprint Studies" which were part of that project.

63. Various complaints were made about the claimant, both internally and from the Heathrow client. This culminated in an in person meeting on 17 November 2022 between the claimant and Mr Bogie and Mr Coomber to discuss these concerns. The claimant covertly recorded this meeting.

64. Mr Bogie extended the claimant's probationary period by three months until 17 April 2023. and communicated this to the claimant at a Microsoft Teams meeting on 24 November 2022. He followed this up with a confirmation email on 25 November 2022, confirming the extension of the probationary period and the reasons for that extension.

65. On 28 November 2022, the claimant raised a grievance about the extension of his probationary period. The grievance was heard by Mr Humphrey. A grievance hearing with the claimant took place on 13 December 2022. Mr Humphrey produced an investigation report. Mr Humphrey did not uphold the claimant's grievance and wrote to the claimant to confirm this on 22 December 2022.

66. The claimant appealed against the grievance outcome. The appeal was heard by Ms Price. A grievance appeal meeting with the claimant was held on 16 January 2023. Ms Price did not uphold the claimant's appeal.

67. The claimant was subsequently invited to a probation review meeting which he chose not to attend.

68. Mr Bogie then terminated the claimant's employment summarily with effect from 1 February 2023.

69. The claimant was paid in lieu of his one week notice period.

Reliability of evidence

70. Before going on to make our further findings of fact, we need to make some findings on the reliability of the evidence of the respective witnesses, which is relevant to the findings of fact which we make.

The claimant

71. During his evidence, the claimant frequently did not answer the questions which he was asked and went off on a tangent. Whilst the judge let a lot of this go initially, when it became a pattern he interjected to remind the claimant to focus on answering the questions being asked. He did this on several occasions.

72. The claimant was frequently evasive in answering questions. He was not straightforward in his answers even to the point of appearing to change his evidence. One example of this is when he was questioned about the meetings which he had with the client at Heathrow; he accepted that he had had one meeting but then denied that there was a second meeting (although it was obvious from the contemporaneous documents that there had been a second meeting); when pushed further, he said that there had been many meetings but without giving the clarity which he so easily could have given, as it was obvious from the contemporaneous documents that there were two relevant meetings from which negative feedback was received from the Heathrow client about the claimant's presentations.

73. He was also at best careless with his assertions. One was his assertion that his alleged comparator, Mr X, had been engaged on the Heathrow Sprint Project since January 2022. In fact, that project had not even started until June 2022 (which meant that, as the respondent has asserted all along, Mr X had only been engaged on it for around six weeks before he left as opposed to the six months which the claimant had asserted).

74. Another example is that the claimant made various allegations of documents being fabricated, without any evidence of this. To make such serious allegations without a shred of evidence is indicative of someone who will say anything in their evidence, with no regard to whether or not it is true or false.

75. The claimant was cross-examined on the opening paragraphs of his witness statement, in which he maintained that he was dismissed for various alleged offences, set out at paragraph 1.3(A-C) of his witness statement. He suggested that these had been cut and pasted from a document sent to him by the respondent. However he could not point to any such document, because there was none in the bundle. These allegations did not reflect any of the reasons set out in the documents produced by the respondent as to why they extended the claimant's probationary period or why they dismissed him. In suggesting that these allegations were cut and pasted from a document produced by the respondent, the claimant was at best entirely careless with what he submitted to the tribunal and at worst dishonest.

76. The claimant also, both during his evidence and in his written submissions, alleged that there was collusion between the various witnesses of the respondent in presenting a false picture to the tribunal. He did so without any evidential basis whatsoever. This is a further indication of someone who is at best entirely careless with his attitude to the truth.

77. Furthermore, notwithstanding that this claim is exclusively one of direct race discrimination, it is notable that the claimant at no point during his employment, including during his grievance and grievance appeal, alleged that he was treated less favourably by the respondent because of his race; his claim form is entirely lacking in detail in this respect too; the only point when he even started to make more detailed allegations was in his further and better particulars, which were not produced until June 2023.

78. Furthermore, the claimant did not make any allegation of race discrimination against the respondent in his witness statement (which is over 50 pages long) and at no point put it to any of the respondent's witnesses whom he chose to cross-examine that any of their actions were because of race. This is despite the fact that no less than 9 individuals at the respondent (8 of whom were at this tribunal to give evidence) are alleged by him in the list of issues to have discriminated against him on the grounds of race.

79. Notwithstanding that, he was perfectly prepared to write to the Independent Office for Police ("IOP") in the week prior to this hearing and make unsubstantiated allegations of race discrimination against Mr Bogie. If he is prepared to go that far, it is strange in the extreme that he has not done so in his witness statement or in his cross-examination of the respondent's witnesses.

80. Furthermore, the allegations in the list of issues itself, notwithstanding that the claimant had the assistance of an employment judge at a preliminary hearing to help him particularise the issues of his claim, are still often very vague and generalised. Rather than making allegations about specific acts or omissions which the respondent is said to have done because of the claimant's race, the allegations are in general terms such as *"[setting] the claimant up to fail"* (well how?) or *"[ignoring] the claimant's concerns about the project"* (well, what concerns?). That very lack of specificity is concerning and is indicative of someone who makes generalised allegations without substance.

81. For all these reasons, therefore, we have serious concerns about the reliability of the evidence given by the claimant.

The respondent's witnesses

82. By contrast, we do not have any concerns about the reliability of the evidence given by the witnesses of the respondent. All of them sought to answer the questions which were put to them, notwithstanding the difficulties caused to them by those questions frequently not being very clear or easy to follow. Their evidence remained consistent in all material respects, both with their own witness statements, with the evidence of the other witnesses for the respondent, and with the contemporaneous documents.

83. Therefore, where there is a conflict of evidence between the claimant and the respondent's witnesses, we are inclined to prefer the evidence of the respondent's witnesses.

More detailed findings of fact

Mr X

84. Mr X was the claimant's predecessor on the Heathrow Sprint Project. At the time when he was working on that project, he was in his probationary period.

85. Mr X had only worked on that project for around six weeks in June and July 2022. He started work on the project on 13 June 2022.

86. After two weeks, Mr X said he found the project challenging. He told Mr Thomas, and Mr Vivian, another manager on the project, that his lengthy commute to work on the project was causing him anxiety and stress. Mr X also subsequently informed Mr Thomas of a medical condition which he had and which he struggled to manage around the travel. Mr X was anxious about presenting to a broader group in one meeting, with the result that Mr Thomas ended up leading all the conversations supported by other individuals on the project. On 15 July 2022, Mr X informed Mr Thomas that he was stressed with the work and that delivering his two studies and leading the team was getting too much for him. Following their conversation, Mr Thomas agreed to take the team management role away from him to allow him to focus more on the technical reports.

87. However, on 18 July 2022, Mr X emailed Mr Thomas requesting to come off the project due to the strain on his mental health and noting that he couldn't deliver what the project required. Mr Thomas was sympathetic; he thanked Mr X for his support on the project and allowed him to leave the project at the end of July 2022.

88. Mr X had done well in meetings on the project with clients. There had been no complaints about him.

89. As noted, the claimant commenced employment with the respondent on 25 July 2022. He was subsequently assigned to the Heathrow Sprint Project as a replacement for Mr X. The claimant first met Mr Thomas and Mr X on 3 August 2022, which was when he started booking time on the project. Mr X conducted a handover to the claimant for the claimant's benefit. At that meeting, the claimant was very pleasant and expressed interest in working on the project, flagging that he didn't have aviation experience but grasped the project scope.

90. The claimant then proactively followed up with a meeting arranged on 5 August 2022 to have an official handover. No complaints were made by the claimant.

Mr Bogie

91. As noted, Mr Bogie was the claimant's line manager throughout his employment. Mr Bogie was not, however, one of the managers on the Heathrow Sprint Project (it was, as noted, Mr Thomas who led that project).

92. Mr Bogie assisted the claimant in various ways at the start of his employment and throughout his employment. These are set out below.

93. Mr Bogie arranged the claimant's onboarding activities and induction training; he exchanged emails with the recruitment team and the claimant about his induction; he ensured that the claimant had the physical kit he needed to start work and to get onto the respondent's system; he asked the claimant to update his CV and then told Mr Truman, the Resources Manager, that the claimant was ready to mobilise to a client site, and the claimant was duly assigned to the Heathrow Sprint Project; whilst it isn't Mr Bogie's practice to schedule regular calls with his direct reports, he told the claimant, as he did with everyone whom he managed, that he was available on Microsoft Teams whenever he needed him; he introduced the claimant to the team by email and provided him with a "buddy" to assist with his transition into the business; when the claimant started on the Heathrow Sprint Project, he sent him (around the middle of August 2022) some related project documents from the previous phase that he thought might be useful to him; he ensured that the claimant received a cost of living uplift during his probation period, which was applied from October 2022; and he helped the claimant organise site visits and a temporary airside pass so that he could visit a control post at Heathrow to give him a greater understanding of the scope of the project.

Ms BW

94. The claimant asked for further resource to help him on the project. Mr Thomas and the other managers took the claimant's opinion very seriously and discussed the benefits of having another technology specialist on the project. This resulted in Mr Thomas contacting the business for additional resources. Ms BW, who was a graduate engineer, was identified and recommended by the practice. The intention was for her to support the claimant in his tasks as opposed to taking work from him. The claimant was very happy with this move.

95. Ms BW joined the project in late August 2022. The claimant appreciated the support provided by Ms BW.

Project deadlines

96. The claimant set the deadlines for completion of the work on his Sprint Studies. First, he set a forecasted completion date of November 2022. Then, on 23 August 2022, when Ms BW was joining the project, he sent an updated activity schedule which included a new completion date of 19 October 2022.

Meetings with the client

97. A meeting with the client stakeholder group in relation to these Sprint Studies took place on 9 September 2022. The claimant focused on the benefits of "biometrics". This was after getting feedback previously that biometric technology would be extremely difficult to achieve. However, the claimant presented biometrics as the technology to further develop and thought this was the best solution. The client team pointed out the need to refocus on the control

post infrastructure rather than the people process of border control and advised that they did not want to pursue biometric technologies. One client pointed out that he couldn't see the point of the study as all the technologies presented were either already implemented or already known and could not be deployed at the airport. He thought it would be a better use of time for the client team to go away, set the task objectives and come back. This was a very blunt response to the presentation.

98. Mr Thomas caught up with the claimant after the meeting and told him that they needed to work up details of future technologies and remove the technologies already planned. He asked that the claimant should ensure that they were clear on the scope and content before going back to the client stakeholders. He noted that they needed to recover the position and ensure that they answered the client's comments before the next session. He asked the claimant that they agree on the content details between themselves and that they approach the stakeholders together with this agreed content. The claimant appeared happy with this approach and they agreed to proceed in this manner.

99. In a follow-up call which Mr Thomas had with the client, the client gave Mr Thomas further negative feedback about the presentation.

100. Mr Thomas then spoke to Mr Vivian about how they could better support the claimant.

101. There was a further meeting with the team, but in that meeting it seemed that the claimant was still very focused on pushing the biometric opportunity and not really digesting the comments back from the client; the claimant proposed that all systems implement biometrics across the campus.

102. To assist the claimant, Mr Vivian followed up the meeting by sending him a possible slide template for a presentation. However, the claimant did not take this well. In an email of 20 September 2022 to Mr Vivian in reply, he stated *"Please stop with the micromanagement, it does not bring out the best in me or my demeanour"*.

103. There was a further internal progress meeting on 28 September 2022. There were some developments in the content but there were still gaps in relation to many of the client comments raised on 9 September 2022 which had not been addressed. The meeting ended with several actions for the claimant to follow up.

104. However, without informing Mr Thomas or any of his managers (and contrary to what he had agreed with Mr Thomas previously), the claimant chose to chair and present to the same group of client stakeholders again and he did so with the same content as the last meeting. None of the actions had been completed and the claimant was unclear of the scope. The meeting ended with the client team saying that the meeting was a waste of time.

105. Mr Thomas only learned of this when various representatives of the client informed him later that afternoon. The individuals informed him that this

was having a serious impact on the reputation of his team and the business. They were shocked that Mr Thomas did not know the meeting was occurring and indicated their disappointment that the meeting followed the same level of content and details as the first meeting.

106. Following this, Mr Thomas had a short discussion with the claimant but the claimant gave no explanation as to why he had called that meeting with the client without informing Mr Thomas and he remained silent. Mr Thomas asked that he stop all stakeholder engagement until he had approved it and developed an action plan to resolve matters.

107. Mr Thomas also spoke to Ms BW (who had attended the meeting with the client with the claimant) as he wanted to understand why this client meeting had been held. Ms BW informed him that she found it odd at the time that neither Mr Thomas nor Mr Vivian were present at that meeting. She said that the claimant had told her that they were unavailable. We have no reason to doubt Mr Thomas's account (which was unchallenged by the claimant) and accept that this is what Ms BW told him. The claimant had therefore deliberately misrepresented to Ms BW why Mr Thomas and Mr Vivian were not there. It is clear that he did not want them at that meeting.

108. Mr Thomas spoke to Mr Bogie and asked him to get involved and he agreed to provide a level of cover, notwithstanding that he had a lot of other project commitments of his own.

109. There was a further internal team meeting on 5 October 2022, which Mr Bogie also attended. At that meeting, the claimant raised his voice and started hurling accusations at Mr Thomas. These accusations included that he had no integrity, that he didn't know how to manage projects, that he shouldn't turn on his team as soon as challenged by the client, and he questioned why Mr Thomas had got Mr Bogie involved. The meeting was particularly uncomfortable for everyone on the call. Mr Thomas tried to defend himself by responding as to why he had taken the actions which he had taken. The conversation went on with the claimant either personally accusing Mr Thomas of wrongdoing or dismissing any question asked of him. Mr Bogie tried to pull the conversation back to the project but it was clear that the claimant did not want to co-operate. Mr Bogie and Mr Thomas were both concerned about how the claimant behaved.

110. Conversations with the claimant after this point became tense; there was aggression in his responses and a clear lack of respect from him for Mr Thomas and Mr Vivian.

111. Mr Thomas spoke to Ms BW to check whether the claimant supported her. She told Mr Thomas that she was concerned about the claimant's management style. It was at this point that Ms BW told Mr Thomas that the claimant had told her that *"if I go down, I'm taking you down with me"*. Whilst we do not have Ms BW's direct evidence at this tribunal, we do have Mr Thomas' account, which was unchallenged by the claimant and which we have no reason to doubt. Notwithstanding that the claimant denies making this comment, we have already set out our concerns about the reliability of his evidence.

Furthermore, saying something like that is entirely consistent with the way the claimant has behaved at this tribunal in terms of the way he speaks to other people. We therefore have no doubt that Ms BW did tell Mr Thomas that the claimant had made that comment and that, in all probability, the claimant did say that to her.

112. Ms BW also told Mr Thomas of several instances where she would notify the claimant of her absence due to training or other work-related commitments, and the claimant would voice to other staff members that he didn't know where she was. She told Mr Thomas that she found this concerning and was worried that people were forming opinions about her work ethic based on wrong information. She also told Mr Thomas that she was concerned that the claimant would give her negative performance feedback due to the project's current state and possibly attribute blame to her contribution.

113. Meetings and engagement continued with the claimant but, at each opportunity, the sense of collaboration dwindled and discussion from the claimant was blunt.

114. Even at this peak of friction between the claimant and the whole team, at no point did the claimant inform anyone on the team that he was experiencing mental health issues, nor did he inform the respondent of this at any stage during his employment.

115. In the claimant's documents for the project, there were large gaps, incomplete sections, text that did not convey a message and text that seemed to have been copied from websites or product material. The claimant was asked to review the documents again in light of this and to get Mr Bogie to conduct a technical check of the documents. The claimant notified Mr Vivian and Mr Thomas on 2 November 2022 that he had reviewed the documents and would share them with them, which he did on 3 November 2022. However, there were similar concerns that the documents had incomplete sections/sentences, contained text copied from other sources, and needed a thorough review. We accept Mr Thomas' evidence in this respect and we do not find it surprising that the claimant's documentation was like this; in the written documentation which he produced for this hearing, in particular his witness statement and written submissions, there are numerous grammatical and spelling errors, repeated passages which have obviously been cut and pasted and not checked properly and passages which have been sourced from the Internet (whether using Chat GPT or otherwise).

116. However, the claimant did not appreciate concerns about the documents when they were raised and insinuated that his managers were changing the direction of the report.

117. The claimant shared his final document on 11 November 2022 but, once the practice and project team had reviewed the content and quality of the documents which he produced, it was suggested that the claimant be removed from the project and he duly was.

Meeting of 17 November 2022

118. A task review meeting was therefore held on 17 November 2022 in person between Mr Bogie, Mr Coomber and the claimant. The purpose of the meeting was to discuss the claimant's behaviours. The claimant secretly recorded the whole session from start to finish. We have seen the transcript in the bundle. The claimant later put a link to the recording on his LinkedIn page and has refused to remove it.

119. We have read the whole of the lengthy transcript. In contrast to the claimant's allegation that it somehow suggests inappropriate behaviour by Mr Coomber and Mr Bogie, it does not do so. To the contrary, it evidences managers giving him the chance to explain this behaviour without rushing to judgment.

120. Obviously, what we cannot gauge from the transcript is the tone of the meeting. However, we accept Mr Bogie's evidence, when he was asked about this meeting in cross-examination, that notwithstanding that it was Mr Coomber who was doing most of the talking with the claimant (which is clear from the transcript), the claimant spent most of the meeting staring in a threatening manner at Mr Bogie. Having seen his behaviour at this tribunal, we do not find that surprising. For this reason, and because we have no reason to doubt Mr Bogie's evidence, we accept that that is how he behaved at that meeting.

121. In advance of that meeting, the respondent had also sought written feedback from Mr Thomas, Mr Vivian and Ms BW. This was done simply by asking them to complete a feedback request form, which sought their comments. Mr Thomas and Mr Vivian's forms were completed on 17 November 2022, in advance of the meeting. Ms BW's form was not completed until 28 November 2022.

122. What is noticeable about the three forms is that all of the individuals completing them are very fair about the claimant and highlight his positive qualities, including his initial enthusiasm. However, they all set out in some considerable detail the understandable concerns about the claimant's performance and behaviour, many of which have already been highlighted above. These included time management, documentation issues and his behavioural issues. That criticism includes that the claimant does not try to understand and continues on regardless with his personal opinions rather than listening to the client direction and advice; that he does not like being managed or supported; that he is confrontational; and that what he had done had caused reputational damage to the business and friction with stakeholders.

123. In the light of this, Mr Bogie decided to extend the claimant's probation period by three months until 17 April 2023. He discussed and agreed this approach with Mr Coomber.

124. As noted, Mr Bogie held a Microsoft Teams call with the claimant on 24 November 2022 and told him that the respondent was extending his probationary period by three months. He followed that up with an email of 25 November 2022.

In it, he set out the reasons for extending his probationary period. These were: *"(1) Ability to undertake task within required time frame; (2) Quality of the report produced which was lacking in many areas such as structure, content and incomplete sentences, spelling errors, etc; (3) Language used in communications with other Atkins stakeholders which caused offence."* All of these issues were reflected in the multiple feedback which the respondent had received from those within the respondent and from the client. We accept that those were the reasons why Mr Bogie extended the claimant's probation period.

125. Mr Bogie could, of course, have simply dismissed the claimant at that point in the light of his behaviour. However, he did not do so and gave him another chance.

126. Immediately after extending the claimant's probation, Mr Bogie applied to get him a landside pass (which involved interviewing him). The reason for doing so was to widen the claimant's ability to work on other projects. Mr Bogie was, therefore, again trying to assist the claimant.

Grievance

127. On 28 November 2022, the claimant raised a grievance against Mr Bogie for extending his probationary period.

128. He also shared his covert recording in multiple emails to many members of the respondent's staff.

129. Mr Humphrey heard the claimant's grievance.

130. The letter inviting the claimant to the grievance meeting included the following:

"You can access the Employee Assistance Programme (EAP) service. They can be contacted by phone on 0800 917 5320 directly or through the web address www.guidanceresources.com (ID: SNCLavalin) This is a free, confidential and impartial support service, available 24/7.

You are also able to contact one of our Mental Health First Aiders, details of which can be found on Axis. They are there to listen, offer help and information, and when necessary, will encourage people to seek professional help and support from other charitable organisations."

Similar wording was also contained in the later email inviting the claimant to the grievance appeal meeting.

131. Thet grievance hearing took place on 13 December 2022.

132. Mr Humphrey also interviewed Mr Coomber on 13 December 2022 and Mr Bogie on 15 December 2022. In his meeting with Mr Bogie, Mr Humphrey specifically asked Mr Bogie whether the claimant had any neurodiverse traits (and was told that nothing had been raised by the claimant but that, if it had been raised, support would have been provided).

133. Mr Humphrey produced a thorough investigation report. He did not uphold the claimant's grievance. That is entirely unsurprising as, given the evidence before him, it was clear that it was entirely reasonable for Mr Bogie to have extended the claimant's probationary period.

134. We have reviewed the grievance documents. Mr Humphrey clearly did a thorough job and took his responsibilities seriously.

135. Mr Profeta was there to give HR support and to take notes at the grievance meeting. He was not the investigator or the decision-maker; that was Mr Humphrey.

136. The outcome of the grievance was communicated to the claimant by letter of 22 December 2022.

Grievance appeal

137. The claimant appealed against the outcome of his grievance.

138. He also sent a lengthy email on 5 January 2023 to Ms Mole, making various complaints about what he had alleged had happened to him. Despite its length, the claimant makes no allegations of race discrimination. Indeed, he made no allegation of race discrimination at any time during his employment.

139. Ms Price heard the claimant's appeal and held an appeal meeting with the claimant on 16 January 2023. She also had a meeting with Mr Bogie on the same day. She too carried out a thorough process and clearly took her responsibilities seriously.

140. Ms Mole was there to give HR support in relation to the grievance appeal and to take notes at the grievance appeal meeting. She was not the investigator or the decision-maker; that was Ms Price.

141. Ms Price did not uphold the claimant's appeal. Again, this was almost inevitable given the evidence before her.

142. As noted, Ms Price did not consider the comment about *"if I go down you will come with me"*. In relation to that, she concluded:

"The investigation has not considered the account from [BW] regarding the comment, "If I go down you, will come with me" as there is insufficient evidence of this being said. However, through reviewing the email accounts it is clear that Steven has a curt and what could be perceived as rude manner in written format, leading the investigating manager to believe this could be how Steven corresponds verbally also."

Dismissal

143. The claimant was dismissed by the respondent with effect from 1 February 2023. Mr Bogie took the decision to dismiss him.

144. Mr Bogie had sought to get the claimant engaged on another project (including by trying to obtain for him a higher security clearance to enable him to do so), but the claimant had not engaged with him.

145. Furthermore, the fact that the claimant had covertly recorded the meeting of 17 November 2022 between him and Mr Bogie and Mr Coomber had come to light and the claimant had shared his covert recording in multiple emails to other staff members of the respondent. This was deceitful and unnecessary.

146. Furthermore, in January 2023, the claimant telephoned Mr Bogie. He knew that Mr Bogie was a volunteer police officer for the Metropolitan police. He said *"you're a police officer aren't you?"*; Mr Bogie asked, *"what relevance is this to our conversation?"*; the claimant answered *"well, if you are a police officer, you need to be careful, so you need to do the right thing"*. Mr Bogie found his comments threatening. Indeed, in the light of subsequent events and the way the claimant has behaved at this tribunal, we have no hesitation in concluding that this was threatening and that the claimant at the time intended to threaten Mr Bogie.

147. The claimant also then proceeded to disclose Mr Bogie's status as a volunteer police officer on LinkedIn without his permission, naming him in full in the public domain as a serving Metropolitan police officer, despite this being unconnected with Mr Bogie's employment at the respondent. He also uploaded a clip to an old film showing an excerpt of a racist police officer; this was unjustified and offensive.

148. The claimant also failed to engage with the probation process. He failed to attend arranged meetings, changing his mind multiple times on attendance. Mr Bogie tried to engage with him, but the claimant did not engage.

149. Mr Bogie's evidence was that the business could no longer trust the claimant; he had shown poor technical competence; a lack of honesty and integrity; and an inability to follow company procedures; he had also been rude, curt and threatening. In the light of the evidence, we accept that Mr Bogie held this belief and that these were the reasons why he dismissed the claimant with effect from 1 February 2023.

These proceedings

150. The claimant commenced ACAS early conciliation on 2 February 2023. This concluded on 6 February 2023. He presented his claim on 8 March 2023.

The claimant's letter to the respondent's solicitor

151. The claimant wrote to the respondent's solicitor. Whilst the letter is dated 29 June 2023, it was obviously in fact written in the run-up to this hearing in 2024, because it references the respondent's postponement application which was made in January 2024. In that letter, he states that he would like to make a formal complaint about the conduct and behaviour of the individual at the respondent's solicitors who is handling the case and about the law firm itself,

alleging a breach of SRA standards in their handling of this case. He then goes through a list of their actions about which he complains, most of which are ordinary matters involved in the running of such a case and are nothing whatsoever to do with misconduct.

152. He concludes: *"I hope this letter makes clear my intentions and serves as a warning that I believe you are in breach of SRA standards and at the appropriate time will take matters further"*. The claimant is, consistent with his other behaviour throughout these proceedings, making an improper and unjustified threat to the respondent's solicitors, presumably to attempt to influence their behaviour through fear of him reporting them to the SRA.

The claimant's letter to the IOP

153. Furthermore, less than a week before the commencement of this hearing, the claimant wrote a letter of 5 February 2024 to the Independent Office for Police ("IOP"). In it he made a *"formal complaint"* about Mr Bogie. He accused him of lying, misinforming, and perverting the course of justice to result in his dismissal. He accused him of working in collaboration with a former police officer (whom he names but whom Mr Bogie has not even met) and Mr Coomber to engage in *"a vicious, targeted, racial, discriminatory, and subversive behaviour to undermine my career"*. He goes on to say that he considers that Mr Bogie is *"a serious concern to the community in which he serves as a police officer"*. However, there are no concrete allegations and, as set out in our findings of fact above and our conclusions below, his assertions are entirely without foundation.

154. The fact that Mr Bogie is a volunteer police officer in his spare time has nothing whatsoever to do with his work at the respondent. The claimant's decision baselessly to make these false allegations against him to the IOP is an outrageous and scandalous action on his part.

155. By contrast, having reviewed all of the evidence in this case, it is obvious that Mr Bogie behaved entirely appropriately and indeed gave the claimant every chance to improve and to succeed, notwithstanding the claimant's own poor behaviour.

The Law

Direct race discrimination

156. Under section 13(1) of the Equality Act 2010 (the Act), a person (A) discriminates against another person (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others (direct discrimination). Race is a protected characteristic in relation to direct discrimination.

157. For the purposes of the comparison required in relation to direct discrimination between B and an actual or hypothetical comparator, there must be no material difference between the circumstances relating to B and the comparator.

Burden of Proof

158. The burden of proof rests initially on the claimant to prove on the balance of probabilities facts from which the tribunal could decide, in the absence of any other explanation, that the respondent did discriminate against the claimant because of race. To do so the claimant must show more than merely that, for example, he was subjected to detrimental treatment by the employer and that the relevant protected characteristic applied. There must be "something more" to indicate a connection between the two (Madarassy v Nomura International plc [2007] IRLR 246). If the claimant can establish this, the burden of proof shifts to the respondent to show that on the balance of probabilities it did not contravene that provision and the respondent must prove that the treatment was "in no sense whatsoever" because of the relevant characteristic. If the respondent is unable to do so, we must hold that the provision was contravened and that discrimination did occur.

159. However, if the tribunal can make clear positive findings as to the respondent's motivation, then it need not revert to the burden of proof (Martin v Devonshires Solicitors [2001] ICR 352 (EAT)).

Time Limits

160. Section 123(1) of the Act provides that proceedings may not be brought after the end of (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the tribunal thinks just and equitable. The time limit is adjusted as a result of time spent in ACAS early conciliation.

161. Section 123(3) provides that, for these purposes, conduct extending over a period is to be treated as done at the end of the period. In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96, the Court of Appeal held that the burden is on the claimant to prove, either by direct evidence or by inference from the primary facts, that alleged incidents of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs covered by the concept of "an act extending over a period".

162. The tribunal has a very wide discretion in determining whether or not it is just and equitable to extend time. It is entitled to consider anything that it considers relevant. However, it is for the claimant to persuade the tribunal that it is just and equitable. There is no automatic presumption that it will be extended. The exercise of discretion is thus the exception rather than the rule (Robertson v Bexley Community Centre [2003] IRLR 434 CA).

Conclusions on the issues

163. We make the following conclusions, applying the law to the facts found in relation to the agreed issues.

164. It is again worth reminding the parties that the only issues which we are going to determine are those in the agreed list of issues. We will not therefore, determine matters which, whilst they may be of interest to one party or another, are not relevant to those issues.

165. In summary, the issues are about whether the respondent did the various things alleged at paragraph 13 of the list of issues and whether, if it did, it did so because of the claimant's race.

166. We will deal first with the nine substantive issues set out in paragraph 13, then the issue of time limits.

Substantive issues - direct race discrimination

13.1. In July 2022, Stuart Bogie, Paul Coomber, Shaun Thomas and Tom Truman set the Claimant up to fail when working on the Heathrow Sprint Project.

167. This is a particularly vague and unspecific allegation. Notwithstanding that, we have not seen any evidence, beyond the claimant's assertion, of any attempt by any of the four named individuals to set the claimant up to fail when working on the Heathrow Sprint Project.

168. By contrast, there is a lot of evidence of support given by the respondent to the claimant both in general and in relation to this project.

169. As we have found, Mr Bogie arranged the claimant's onboarding activities and induction training; he exchanged emails with the recruitment team and the claimant about his induction; he ensured that the claimant had the physical kit he needed to start work and to get onto the respondent's system; he asked the claimant to update his CV and then told Mr Truman, the Resources Manager, that the claimant was ready to mobilise to a client site, and the claimant was duly assigned to the Heathrow Sprint Project; whilst it isn't Mr Bogie's practice to schedule regular calls with his direct reports, he told the claimant, as he did with everyone whom he managed, that he was available on Microsoft Teams whenever he needed him; he introduced the claimant to the team by email and provided him with a "buddy" to assist with his transition into the business; when the claimant started on the Heathrow Sprint Project, he sent him (around the middle of August 2022) some related project documents from the previous phase that he thought might be useful to him; he ensured that the claimant received a cost of living uplift during his probation period, which was applied from October 2022; he helped the claimant organise site visits and a temporary airside pass so that he could visit a control post at Heathrow to give him a greater understanding of the scope of the project; he joined several meetings to help the claimant and Ms BW after Ms BW had joined the claimant's team; and even after the claimant's behaviour on the Heathrow Sprint Project, he gave him another chance by extending his probationary period rather than dismissing him at that point as he could have done.

170. The claimant had the benefit of a handover from Mr X, his predecessor on the Heathrow Sprint Project.

171. When the claimant asked for assistance on the project, Mr Thomas contacted the business for additional resources and Ms BW was identified and recommended and brought in to assist the claimant (which he appreciated at the time).

172. Mr Vivian offered him assistance with his presentation in September 2020 by sending him the slide template. Although this was not well received by the claimant and resulted in his email to Mr Vivian indicating that he did not like to be micromanaged, it was intended to be of assistance to him.

173. The above are all instances of the respondent, and indeed various of the individuals against whom the claimant has made this allegation of race discrimination, offering him support and assistance. That is inconsistent with the respondent or those individuals "setting him up to fail".

174. Furthermore, there was no reason for anyone at the respondent to "set the claimant up to fail". The respondent would have no reason to do so. It was in the interests of the business and everyone working on the project for the claimant and the two studies which he led on the project to succeed.

175. Finally, if these individuals had been setting the claimant up to fail, surely they would have taken the opportunity to fail the claimant on his probationary period and to dismiss him in November 2022. However, Mr Bogie did not do that; rather, he extended the claimant's probationary period and gave him another chance.

176. For these reasons, we find that neither the respondent, nor any of Mr Bogie, Mr Coomber, Mr Thomas or Mr Truman set the claimant up to fail when working on the Heathrow Sprint Project. As the allegation has not been made out on the facts, it fails at the first stage.

13.2. In July 2022 Paul Coomber and Shaun Thomas ignored the Claimant's concerns about the project.

177. This is another particularly vague allegation. However, we have seen no evidence that any concerns were raised by the claimant in July 2022. This is perhaps unsurprising as the claimant's employment with the respondent only commenced on 25 July 2022. The claimant only officially started booking time to the Heathrow Sprint Project when he had an introductory catch up with Mr Thomas and Mr X on 3 August 2022. Even in that meeting, the claimant was very pleasant and expressed interest in working on the project, flagging that he didn't have aviation experience but grasped the project scope, and the claimant then proactively followed up with a meeting arranged on 5 August 2022 to have an official handover. No complaints were made by the claimant.

178. The claimant questioned Mr Truman about an email which he alleged that he had sent to him asking to come off the project. Mr Truman recalled that he had received such an email from the claimant, that he thought that the claimant had talked about the integrity of people on the project, but that he didn't

remember the specifics. He said that he had mentioned this email to Mr Coomber and his boss, probably at one of their regular Microsoft Teams calls. However, there is no such email in the bundle. We have no idea of whose integrity was called into question by the claimant (or indeed whether the claimant specified whose integrity was called into question and, as noted, the claimant has a tendency to be very unspecific about such details).

179. Furthermore, there is no indication of when this email was sent (the claimant did not ask Mr Truman about this), let alone whether it was sent in July 2022. It is inherently unlikely that it could have been sent in July 2022, given that the claimant was not in a position at that stage to make any judgments about the people on the project, because he had not even met them by that stage. We therefore, find that this email was not sent in July 2022 and that there was, therefore, no complaint made by the claimant in July 2022.

180. This allegation (which is of unaddressed complaints in July 2022) is not, therefore, made out on the facts and it fails at the first stage.

181. To return to the email to Mr Truman, however, the claimant chose not to cross-examine Mr Coomber (who gave his evidence after Mr Truman), so we have not had the opportunity to hear from him about whether Mr Truman mentioned this to him and, if so, what he did about it. For completeness, therefore, there is insufficient evidence for us to conclude that the email, whenever it was sent, was a complaint and that it was a complaint that was ignored, let alone that it was ignored because of the claimant's race.

182. In terms of any other complaints raised by the claimant but which were not addressed at a later stage after July 2022, none have been identified with any degree of clarity, even by the claimant. The only suggestions he made at this tribunal of complaints made by him were in relation to the project deadlines; however the project deadlines was set by him and not by the respondent.

13.3. In June to October 2022, Stuart Bogie, Paul Coomber, Shaun Thomas, Tom Truman and Gareth Vivian set the Claimant an unrealistic deadline for the Claimant to complete work.

183. As already noted, it was the claimant who set the deadlines for completion of work. First, he set a forecasted completion date of November 2022. Then, on 23 August 2022, he sent an updated activity schedule which included a new completion date of 19 October 2022.

184. The respondent did not therefore set the claimant an unrealistic deadline to complete work; it didn't set a deadline at all; he set the deadlines.

185. This complaint is not therefore made out on the facts and fails at the first stage.

13.4. In June to October 2022, Stuart Bogie, Paul Coomber, Shaun Thomas and Gareth Vivian failed to adequately support the Claimant and caused him anxiety.

186. This is another very vague allegation. The claimant does not state what support any of these four individuals should have offered him but failed to offer him. Furthermore, as set out in our analysis of allegation 13.1, the various individuals at the respondent did offer him support.

187. This allegation is not, therefore, made out on the facts and fails at the first stage.

13.5. In August to October 2022 Paul Coomber and Shaun Thomas failed to care for the Claimant's mental health by displaying empathy, compassion and consideration.

188. First, there is no medical evidence before us to indicate that the claimant was suffering from mental health issues at any stage during his employment. Furthermore, the claimant himself has not adduced evidence showing that he had mental health issues, or even asserted with any clarity that he had mental health issues during this period.

189. Secondly, as the claimant accepted in cross-examination, he did not tell anyone at the respondent that he had mental health issues. As nobody was aware of the claimant having mental health issues, they could not have made any adjustments in relation to them.

190. Thirdly, there is evidence that, if the respondent thinks that an individual may have mental health issues, it does take measures to assist. Several of the respondent's witnesses indicated this. Furthermore, the letters/emails inviting the claimant to his grievance meeting and to his grievance appeal meeting both referred the claimant to the respondent's Employee Assistance Programme and to its Mental Health First Aiders. Furthermore, in the course of his grievance investigation, Mr Humphrey specifically asked Mr Bogie whether the claimant had any neurodiverse traits (and was told that nothing had been raised by the claimant but that, if it had been raised, support would have been provided). The fact that he asked is indicative that the respondent takes neurodiversity and mental health issues seriously and that, had it been aware that the claimant had any mental health issues, it would have given assistance, as indeed it did in the case of Mr X when it became aware of his mental health difficulties.

191. Finally, there is no evidence beyond the claimant's assertion that either Mr Coomber or Mr Thomas failed to display empathy, compassion or consideration. We have already set out above the examples of assistance given by various individuals at the respondent to the claimant. We would add that, in relation to the lengthy meeting of 17 November 2022, which the claimant covertly recorded, Mr Coomber was clear that he was not leaping to judgement and gave the claimant every chance to give his account in the face of the concerns which had been raised by others about his performance and behaviour; in this interaction, therefore, Mr Coomber was empathetic, compassionate and considerate.

192. This allegation is therefore not made out on the facts and it fails at the first stage.

13.6. In deciding that the Claimant had not passed his probation given his being perceived as confrontational.

193. In November 2022, the respondent decided that the claimant had not passed his probation; as noted, it did not dismiss him at that point, as it could have done, but rather extended his probationary period.

194. However, the reasons why it extended his probationary period are clearly evidenced in the contemporaneous documentation in the bundle. There were three headline reasons: *"Ability to undertake the task within required timeframes; quality of the report produced which was lacking in many areas such as structure, content and incomplete sentences, spelling errors etc; language used in communications with other Atkins stakeholders which caused offence"*.

195. There was documentary evidence at the time from Mr Thomas and Mr Vivian, and evidence from Ms BW, which corroborated this. In addition there were the complaints from Heathrow about the quality of the claimant's presentation on two separate occasions.

196. Furthermore, we have seen plenty of examples in the documentation produced by the claimant for this tribunal which evidences the issues about his written style, incomplete sentences and spelling errors. In addition, the way that the claimant has behaved at this tribunal demonstrates someone who is confrontational, at times aggressive, is rude to those with whom he interacts and does not take direction when given (be it from one of his former managers or from an employment judge). If he is prepared to be like that in a court, it is even more likely that he would be like that in the workplace. We have no hesitation, therefore, in accepting that the concerns which the respondent identified as being the reasons why it extended the claimant's probationary period and did not pass his probation in November 2022 were real and genuine.

197. We therefore find that, if the claimant was perceived as confrontational by others at the respondent, that is because he was indeed confrontational.

198. More significantly, we can make a clear factual finding that the reason that the claimant did not pass his probation was the reason given by the respondent and was nothing whatsoever to do with his race. This complaint therefore fails.

199. Even if we had instead chosen to apply the burden of proof, there is no evidence whatsoever that would shift the burden of proof.

13.7. In deciding that the Claimant had not passed his probation despite the fact he had produced work when his predecessor had produced nothing.

200. This allegation is, in reality, a repeat of the previous allegation; in other words, that the less favourable treatment alleged is the respondent not passing the claimant's probation. It fails for the reasons set out above.

201. For completeness, we should add that we make no findings as to whether or not the claimant's predecessor, Mr X, "produced nothing" or not. That is because we have no evidence other than the claimant's assertion of this, and we have already indicated our concerns about the reliability of the claimant's evidence. Even if Mr X did not produce anything, that is perhaps unsurprising given that he was only assigned to the project for six weeks and had mental health issues which resulted in him leaving the project. Clearly none of that is anything to do with the claimant's race so, whilst we have addressed this part of the allegation for the claimant's benefit, these findings are in reality irrelevant to the issues we have to determine.

13.8. In dismissing the Claimant, effective 1 February 2023.

202. The claimant was dismissed by the respondent with effect from 1 February 2023. Mr Bogie took the decision to dismiss him.

203. As we have found, Mr Bogie had extended the claimant's probationary period until 17 April 2023 (which he confirmed to the claimant in his email of 25 November 2022 to him). Mr Bogie had sought to get the claimant engaged on another project (including by trying to obtain for him a higher security clearance to enable him to do so), but the claimant had not engaged with him.

204. Furthermore, the fact that the claimant had covertly recorded the meeting of 17 November 2022 between him and Mr Bogie and Mr Coomber had since come to light and the claimant had shared his covert recording in multiple emails to other staff members of the respondent. This was deceitful and unnecessary.

205. Furthermore, in January 2023, he telephoned Mr Bogie. He knew that Mr Bogie was a volunteer police officer for the Metropolitan police. He said *"you're a police officer aren't you?"*; Mr Bogie asked, *"what relevance is this to our conversation?"*; the claimant answered *"well, if you are a police officer, you need to be careful, so you need to do the right thing"*. Mr Bogie found his comments threatening and, in the light of subsequent events, in particular the claimant's decision to write his letter of 5 February 2024 to the IOP making, amongst other things, unspecified and unfounded allegations of race discrimination against Mr Bogie, they were indeed threatening.

206. The claimant also then proceeded to disclose Mr Bogie's status as a volunteer police officer on LinkedIn without his permission, naming him in full in the public domain as a serving Metropolitan police officer, despite this being unconnected with Mr Bogie's employment at the respondent. He also uploaded a clip to an old film showing an excerpt of a racist police officer; this was unjustified and offensive.

207. The claimant failed to engage with the probation process. He failed to attend arranged meetings, changing his mind multiple times on attendance. Mr Bogie tried to engage with him, but the claimant did not engage.

208. Mr Bogie's evidence was that the business could no longer trust the claimant; he had shown poor technical competence; a lack of honesty and integrity; and an inability to follow company procedures; he had also been rude, curt and threatening. As we have found, in the light of the evidence, we accept that Mr Bogie held this belief and that these were the reasons why he dismissed the claimant with effect from 1 February 2023.

209. We are, therefore, able to make a clear finding that the reasons for the claimant's dismissal were nothing whatsoever to do with his race; rather they were the reasons set out above. This allegation therefore fails.

13.9. In December 2022 to February 2023, David Humphrey, Linda Mole, Sarah Price and Mario Profeta carried out a biased and irregular appeal.

210. We have reviewed the contemporaneous documentation in relation to the handling of the claimant's grievance and grievance appeal. Furthermore, we have heard the evidence of Mr Humphrey, Ms Price and Mr Profeta.

211. First, contrary to the claimant's assertion, the investigators and decision-makers were clearly Mr Humphrey, in relation to the grievance, and Ms Price, in relation to the grievance appeal. Mr Profeta and Ms Mole were members of the HR team who were present at the meetings and who took notes; however they were not the decision makers.

212. Secondly, that documentation and evidence indicates that both Mr Humphrey and Ms Price conducted a thorough investigation, took their responsibilities seriously, and made conclusions which, in the light of the evidence which we too have now seen, were not merely reasonable but were almost inevitable. Neither the grievance nor the appeal were either biased or irregular.

213. Although the claimant made much in his cross-examination of Mr Humphrey and Ms Price of whether they should have interviewed vast numbers of additional witnesses, we remind ourselves, as Mr Calvert quite rightly submits, that this is not an unfair dismissal claim and we are not judging the fairness of what they did, just whether or not it was motivated by the claimant's race. However, in any event, it was not unreasonable not to interview all the additional witnesses whom the claimant suggested at this hearing that they should have interviewed; interviewing the witnesses whom they did, particularly in the light of the large amount of documentary evidence which was also before them, was entirely reasonable.

214. As the carrying out of the grievance and the grievance appeal were not biased and not irregular, this allegation is not made out on the facts and it therefore fails.

215. In any event, there is no evidence whatsoever to suggest that anything which Mr Humphrey or Mr Price did was in any way motivated by the claimant's race. The complaint fails for this reason too.

Comparator

216. Whilst that disposes of the complaints, we nonetheless address the issue of the comparator named by the claimant, Mr X. A comparator is only an appropriate comparator for the purposes of a direct discrimination complaint if that comparator's circumstances are not materially different from those of the claimant. However, whilst Mr X was the claimant's predecessor on the Heathrow Sprint Project and, like the claimant, he was on his probationary period at the time when he was assigned to that project, his circumstances were in many other respects materially different.

217. First, Mr X asked to be taken off the project and the respondent acceded to his wish; the claimant, by contrast, was removed from the project. Secondly, there were no complaints made about him; by contrast, there were a number of complaints made about the claimant, as detailed above. Thirdly, the claimant said that he knew what was required in relation to the project and, even when given support, he rejected it. By contrast, Mr X told the respondent that he did not want to continue with the project and this was predominantly because of mental health reasons; it was these mental health reasons which were the main reason why he left the project.

218. For all these reasons, his circumstances were materially different and he is not a valid comparator.

Summary of substantive issues

219. In summary, all of the claimant's complaints fail on their substantive merits.

<u>Jurisdiction - time limits</u>

220. The claim was presented to the tribunal on 8 March 2023. ACAS early conciliation commenced on 2 February 2023 and ended on 6 March 2023. Therefore, any alleged act of discrimination which was alleged to have taken place earlier than 3 November 2022 would be prima facie out of time.

221. That means that the complaints at paragraphs 13.6-13.9 of the agreed list of issues were presented in time; however, all of the complaints at paragraphs 13.1-13.5 are prima facie out of time.

222. As none of the complaints have succeeded, there are no successful in time complaints to which any of the out of time complaints could be connected as part of conduct extending over a period such that they are deemed to be in time. The complaints at paragraphs 13.1-13.5 were therefore presented out of time.

223. We therefore need to consider whether or not it would be just and equitable to extend time in relation to those complaints. The burden of proof is on the claimant to show that it would be just and equitable to extend time.

224. The claimant admitted in cross-examination that he considered that the various allegations at paragraphs 13.1-13.5 were acts of race discrimination at the time they were allegedly done; if so, he was, therefore, aware of these allegations of race discrimination at the time. However, he has given us no explanation as to why he delayed in bringing them as complaints before the tribunal. The claimant has not therefore provided any reason as to why it would be just and equitable to extend time; nor have we seen anything in the evidence in front of us which leads us to conclude that it would be just and equitable to extend time. We do not, therefore, extend time.

225. The tribunal does not, therefore, have jurisdiction to hear the complaints at paragraphs 13.1-13.5 of the list of issues and they are dismissed.

226. If the tribunal had had jurisdiction to hear them, they would have failed for the reasons which we have already set out above.

Written reasons

227. After the judge had delivered the reasons for the tribunal's decision orally, he explained that he would, in a moment, ask the parties whether they wanted the written reasons for the decision and that they would be able to request them either now at the hearing or within 14 days of the judgment being sent to the parties.

228. Before doing so, the judge explained, for the claimant's benefit, two things. First, he said that, if a party wished to appeal the tribunal's decision, that party would need the written reasons in order to do so, although he stated that an appeal could only be founded if there was an error of law by the tribunal or if its decision on the facts was perverse; there were no grounds for appeal if a party simply disagreed with the factual findings that the tribunal had made. Secondly, he explained that, if written reasons were produced, they would be published online on the tribunal's website and that the tribunal had no discretion as to whether or not to do this. He added that the reasons were searchable by name and that the tribunal was aware that potential future employers might carry out such a search. He noted that the tribunal's reasons had included various findings about the claimant's job performance, reliability of evidence, honesty and character. The judge made these remarks because he was concerned about whether it was in the claimant's own best interests for the written reasons to be produced and consequently published online.

229. The judge then asked the parties whether they wanted the written reasons. Mr Calvert said that the respondent was not seeking written reasons. When asked, the claimant said *"absolutely, I am game"*. The judge asked him if he was absolutely sure, given that the tribunal's findings would go online. The claimant said *"absolutely, yes"*.

230. In the light of the claimant's request, the written reasons have been provided.

231. The claimant also asked for a transcript of the cross-examination. The judge explained that that part of the hearing which had taken place in person (and which included all the evidence and cross-examination) had not been recorded and it was not therefore possible to produce a transcript. If the whole hearing had taken place by CVP, the situation would have been different.

232. The claimant subsequently looked threateningly at both Mr Calvert and at the few remaining individuals from the respondent who were still present at the hearing at that stage and made threats to put the decision on LinkedIn and, effectively, to keep arguing his case via LinkedIn.

Costs application

233. Mr Calvert then made an application for costs.

Law

234. The tribunal's powers to make an award of costs are set out in the Employment Tribunal Rules 2013 at rules 74-84. The test as to whether to award costs comes in two stages.

235. First, has a party (or a party's representative) acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted or did the claim or response have no reasonable prospect of success? If that is the case, the tribunal must consider making a costs order against that party.

236. Secondly, should the tribunal exercise its discretion to award costs against that party? In this respect the tribunal may, but is not obliged to, have regard to that party's ability to pay.

237. Before Mr Calvert made his application, the judge took time to explain for the claimant's benefit what the law in relation to costs in the tribunal was, as summarised above.

Application

238. Mr Calvert's application was both on the grounds that the claim had no reasonable prospect of success and on the grounds that the claimant had behaved unreasonably in the bringing of and the conducting of the proceedings.

239. Both parties then made their submissions on the application. During the course of the claimant's submissions, the judge asked the claimant a number of questions about his financial means. The tribunal then adjourned to deliberate.

240. When it returned, it gave the parties its decision on the application and its reasons for that decision.

First stage of the test

241. In terms of the first stage of the test, we find that the duty to consider whether to exercise our discretion to make an award of costs is triggered for each of the three reasons submitted by Mr Calvert; namely, that the claim had no reasonable prospect of success; that the bringing of the proceedings was unreasonable; and that the conducting of the proceedings was unreasonable.

242. None of the nine allegations of race discrimination had any reasonable prospect of success. Most of them failed because the factual allegations were not even made out. Of those where the factual allegations were made out (and were never disputed by the respondent), such as extending the claimant's probationary period and dismissing him, there were clear reasons which were objectively apparent from the start as to why the respondent had acted in the way in which it acted and which were nothing whatsoever to do with race. Even before he brought the claim, the claimant had a great deal of documentary evidence as to why the respondent did not pass his probation but extended it, which was the central issue in the claim. These were extremely poor complaints which should never have been brought right from the very start.

243. Certainly by the disclosure stage (which took place long before any of the costs sought by the respondent were incurred), the claimant had all of the documentation which should have made it clear to him that these complaints had no reasonable prospect of success.

244. That the complaints were so poor was exemplified further by the fact that: the claimant did not even raise allegations of race discrimination during his employment; the claim form was entirely unparticularised; there were no allegations of race discrimination made in his witness statement (notwithstanding that it was over 50 pages long); and the fact that he never put it to any of the respondent's witnesses that any of their actions were because of his race. That was despite the fact that he had named in the list of issues no less than nine individuals at the respondent as alleged discriminators.

245. The whole claim therefore had no reasonable prospect of success.

246. It was unreasonable for the claimant to have brought these proceedings from the start. The claimant is an intelligent man who was quite capable of making a judgment as to the likelihood of these complaints succeeding. He had in his possession enough evidence as to why they were such weak claims before he even brought them.

247. It follows, therefore, that it was unreasonable for him to have brought these proceedings in the first place and, further, to have continued with them all the way up to this hearing.

248. The claimant's conduct of the proceedings was unreasonable for a whole variety of reasons. Indeed, as the judge indicated to the parties during the hearing, he had never experienced a hearing where a party had behaved as badly as this claimant behaved at this hearing. The examples of unreasonable

conduct are set out in full in the earlier sections of these reasons, particularly at paragraphs 16-56. However, to summarise a few of them:

1. the claimant's letter to the respondent's solicitors, making trivial and unjustified complaints about their conduct of the proceedings;

2. the claimant's letter of 5 February 2024 to the IOP, making unspecified and unfounded allegations of race discrimination against Mr Bogie. The fact that Mr Bogie volunteered as a police officer in his spare time is nothing whatsoever to do with his employment with the respondent and the claimant's letter was a particularly vicious and unjustified attack on him;

3. the claimant's rudeness to the tribunal, to Mr Calvert and to the respondent's witnesses;

4. the claimant persistently talking over the judge, Mr Calvert and those witnesses of the respondent whom he was questioning;

5. the claimant's eyeballing of the respondent's witnesses and lack of respect to the tribunal in turning his back on them and pointing at the judge at a point where he appeared to disagree with something that was said;

6. the claimant's persistent failure to take direction from the judge;

7. the claimant's insisting on an in person hearing which meant that the respondent's witnesses needed to take time to come to London and then, at the last minute, to declare that he did not have any questions for four of the respondent's witnesses after all, which cost the respondent money unnecessarily and wasted those witnesses' time;

8. the complete failure to pursue the complaints of race discrimination through not addressing the issue of race discrimination in either his witness statement or in cross-examination;

9. the disrespect shown by the claimant in starting to play cards whilst the judge was giving the tribunal's oral judgement at the hearing; and

10. the ongoing threats to the respondent to pursue matters further on LinkedIn.

249. The claimant's suggestion in his submissions in relation to the costs application that it was the respondent's decision to call eight witnesses and that, if that put it to cost, that was therefore its own fault and not his is nonsensical. It was he who chose to bring allegations of race discrimination against nine different individuals at the respondent. He does not appear to appreciate the seriousness of allegations of race discrimination being made. It is entirely unsurprising that the respondent called eight of those nine individuals as witnesses to defend the allegations against them; the reason that it was forced to

do so was because of the claimant's actions in naming them as alleged discriminators. The only alleged discriminator whom the respondent did not call was Ms Mole, and this was presumably because she was merely a note taker at the grievance appeal and the allegation of race discrimination against her in terms of the conduct of the grievance appeal was so obviously doomed to fail that the respondent did not deem it necessary in the end to the call her, especially in light of the fact that she was out of the country on holiday at the time of the hearing.

250. The claimant's apparent apology for his rudeness in the last paragraph of his written submissions was an entirely empty gesture; as soon as he had been told the outcome of the tribunal's decision on liability, that he had lost, he reverted to his rude and unreasonable behaviour by starting to play cards when the judge was giving the reasons for that decision.

251. For these reasons, the claimant's conduct of the proceedings was unreasonable.

252. Therefore, as a result of all three of the grounds of the application, we are obliged to consider whether to exercise our discretion as to whether to make an award of costs.

Discretion

253. Mr Calvert's application for costs was limited to £12,500, which was the amount of his counsel's fees for the hearing (being a brief fee of £8,000 plus three refreshers of £1,500 each). The application did not include the VAT on these sums, as the respondent would be able to recover the VAT. Nor did he make an application for the solicitors' fees which were incurred by the respondent in defending the claim and which would have been likely far to exceed the counsels' fees.

254. Mr Calvert is a barrister of 25 years' call. For a barrister of this experience, the amount of his brief fee and refreshers for a six day hearing does not surprise us and we do not consider it to be unreasonable. In any event, it is only one part of the costs that will have been incurred by the respondent as a result of the claimant's unreasonable pursuit of this claim. We therefore consider that the amount of the costs sought by the respondent is entirely reasonable.

255. Furthermore, the costs sought were incurred entirely as a result of the unreasonable behaviour of the claimant in bringing and continuing to pursue this claim.

256. As noted, the judge had asked the claimant some questions about his financial means. The claimant said that he was not working and had not been working since he left the respondent, but maintained that he was looking for work; that he earned jobseeker's allowance of £325 a month (and then sarcastically said that he could therefore afford to pay one penny a month going forwards); that he had no savings, as he had ploughed his savings into his degrees (£35,000 for an MBA which was completed in 2018 and further money

for a Masters completed in 2015 and he said that he had just done a further course some two weeks ago which cost him £1,000; that he did not own his own home but lived with his partner and their child at a rent of £1,200 per month but that his partner, who has a salary of around £26,000 - £27,000 per annum, paid the rent and the bills.

257. Mr Calvert reminded us that the claimant had been in full employment for many years before he joined the respondent, that he was intelligent and educated, and that he therefore had considerable earning potential, which we accept. He also submitted that we should treat with caution anything which the claimant told us about his financial means, in the light of the unreliability of the claimant's evidence in general during this hearing.

258. We decided not to take the claimant's financial means into account. We acknowledge that, if what the claimant said about his means was true, he would struggle to pay the costs sought at least initially. However, we do not feel that we can rely on anything that the claimant tells us in this respect. Furthermore, this was a claim that was so weak and the claimant, as an intelligent individual, had no excuse for bringing it and continuing to pursue it; in addition, his behaviour both before and at the hearing was of such an unreasonable level that it would be unjust if we did take his alleged financial means into account and did not award the full amount of the very reasonable costs sought by the respondent. We do not, therefore, take the claimant's financial means into account and we make an award of costs in the full amount sought of £12,500.

259. Even if we had taken the claimant's financial means into account and, in addition, accepted what he told us about his financial means, we would still have made an award of £12,500. This is because, even if the claimant had struggled to pay the costs initially, he is someone with intelligence, qualifications, and experience, who has the potential to obtain employment at a salary which would enable him to discharge those costs in full within a reasonable period.

_____
Employment Judge Baty

Dated: 16 February 2024

Judgment and Reasons sent to the parties on:

28 February 2024
…….....

…….....
For the Tribunal Office

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Annex

Agreed List of Issues

Time limits/limitation issues

8. Were all of the Claimant's discrimination complaints presented within the time limits set out in the Equality Act 2010 section 123?

9. If not, were any complaints presented outside that time limit nevertheless part of a course of conduct extending over a period with a complaint presented within the time limit?

10. If not, should the Tribunal extend time for bringing the claim because it is just and equitable to do so (in respect of a claim under the Equality Act 2010)?

11. Based on the date that the Claimant presented the claim to the Tribunal and the period of early conciliation, it appears that any complaint about things that happened before 3 November 2022 is out of time and the Tribunal therefore cannot consider it.

Equality Act 2010 section 13: direct discrimination because of race

12. The Claimant describes his race as Black British, of Ugandan origin.

13. Did the Respondent subjected the Claimant to the following treatment:

13.1. In July 2022, Stuart Bogie, Paul Coomber, Shaun Thomas and Tom Truman set the Claimant up to fail when working on the Heathrow Sprint Project.

13.2. In July 2022 Paul Coomber and Shaun Thomas ignored the Claimant's concerns about the project.

13.3. In June to October 2022, Stuart Bogie, Paul Coomber, Shaun Thomas, Tom Truman and Gareth Vivian set the Claimant an unrealistic deadline for the Claimant to complete work.

13.4. In June to October 2022, Stuart Bogie, Paul Coomber, Shaun Thomas and Gareth Vivian failed to adequately support the Claimant and caused him anxiety.

13.5. In August to October 2022 Paul Coomber and Shaun Thomas failed to care for the Claimant's mental health by displaying empathy, compassion and consideration.

13.6. In deciding that the Claimant had not passed his probation given his being perceived as confrontational.

13.7. In deciding that the Claimant had not passed his probation despite the fact he had produced work when his predecessor had produced nothing.

13.8. In dismissing the Claimant, effective 1 February 2023.

13.9. In December 2022 to February 2023, David Humphrey, Linda Mole, Sarah Price and Mario Profeta carried out a biased and irregular appeal.

14. Was that treatment "less favourable treatment", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?

14.1. The Claimant relies on the following comparators:

14.1.1. In relation to allegations 13.1 to 13.7, Mr X.
14.1.2. In relation to allegation 13.8, Mr X and a hypothetical comparator.
14.1.3. In relation to allegation 13.9, a hypothetical comparator only.

15. If so, was this because of the Claimant's race and/or because of the protected characteristic of race generally?

16. Has the Respondent nevertheless shown that it took all reasonable steps to prevent its employees from discriminating against the Claimant under section 109(4) of the Equality Act 2010?

Remedy

17. If the Claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the Claimant is awarded compensation and/or damages, will decide how much should be awarded.

18. Specific remedy issues that may arise and that have not already been mentioned include:

18.1. If it is possible that the Claimant would still have been dismissed at some relevant stage even if there had been no discrimination, what reduction, if any, should be made to any award as a result?

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

18.3. Did the Claimant unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to decrease any award and if so, by what percentage (again up to a maximum of 25%), pursuant to section 207A?