EMPLOYMENT TRIBUNALS

Claimant: Dr H Enayatollahi

Respondents: 1. Forth Engineering (Cumbria) Limited
2. Mr M Telford
3. Mr M Lewis

Heard at: Manchester **On:** 22-26 January 2024

Before: Employment Judge McDonald
Mr B Rowen
Ms B Hillon

REPRESENTATION:

Claimant: In person
Respondents: Mr Price, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's complaint of direct race discrimination fails and is dismissed.

2. The claimant's complaint of race related harassment fails and is dismissed.

REASONS

Introduction

1. The claimant brings complaints of direct race discrimination and race-related harassment against the respondents.

2. The first respondent is a specialist engineering company which, at the relevant time, employed around 50 employees. The second respondent, Mr Telford, is its Managing Director. To make these reasons easier to read, we refer to him as "Mr Telford" rather than "the second respondent". Mr Lewis was the first respondent's

Commercial Director. We refer to him as "Mr Lewis" rather than "the third respondent". The claimant was seconded to the first respondent at the time of the events giving rise to his complaints.

3. The claimant represented himself. The respondents were all represented by Mr Price.

4. Having read the papers in the case on the morning of the first day we heard evidence over the first four days and the morning of the fifth day of the hearing. Having heard submissions on the fifth day, we reserved out decision. We deliberated in chambers for the remainder of the fifth day. We had set a reserved "in chambers" day on 20 March 2024 but in the event that was not needed.

The Issues in the case

5. The issues for the Tribunal to decide are as follows:

1. Harassment related to race (Equality Act 2010 section 26)

1.1 Did the respondent do the following alleged things. On or around 6 July 2022 did:

1.1.1 Scott Mattinson and Liam Moffatt play music in the claimant's language and laugh at the claimant;

1.1.2 Scott Mattinson and Liam Moffatt make fun of the claimant's family name;

1.1.3 Mr Mattinson say "it is time for you fucking Iranian to go back to your country."

1.2 If so, was that unwanted conduct?

1.3 Was it related to race?

1.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

1.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

2. Direct race discrimination (Equality Act 2010 section 13)

2.1 What are the facts in relation to the following allegations:

2.1.1 Did Mr Telford take steps to secure the claimant's resignation?

2.1.2 Did Mr Telford make false allegations of incompetence and misconduct on the part of the claimant and ask The University of Manchester to dismiss the claimant on those false grounds?

2.2 If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances of a different race was or would have been treated? The claimant relies on a hypothetical comparison.

2.3 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of race?

2.4 If so, has the respondent shown that there was no less favourable treatment because of race?

3. Remedy for discrimination

3.1 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

3.2 Should interest be awarded? How much?

Evidence and preliminary matters

Witness evidence

6. We heard the claimant's evidence on the afternoon of the first day.

7. The claimant had produced a written, signed and dated statement from Dr Dehao Wu ("Dr Wu"). Like the claimant, he was an University Manchester employee seconded to the first respondent. In his case, the secondment was from September 2016 to April 2017. Dr Wu did not attend the hearing to give oral evidence.

8. We then heard from the respondents' witnesses. On the second day we heard the evidence of Mr Telford and Mr Lewis. On the third day we began hearing the evidence from Professor Farshad Arvin. We refer to the professor as "Dr Arvin" in this Judgment, because that was his title at the time the events took place.

9. As we explain below, we had to pause Dr Arvin's cross examination evidence to resolve an issue relating to documents in the final hearing bundle. On the afternoon of day 3 of the hearing we heard the evidence from Mrs Trudy Beetham ("Mrs Beetham"), the first respondent's HR Manager at the time. We also heard the evidence of Mrs Suzanne Kirkbride ("Mrs Kirkbride"). On the fourth day we resumed and completed the evidence of Dr Arvin and heard from Scott Mattinson ("Mr Mattinson"). On the morning of Day 5 we heard the evidence of Liam Moffat ("Mr Moffat"). Mrs Beetham, Mrs Kirkbride, Mr Mattinson and Mr Moffat worked in the same open plan office as the claimant.

10. The case had been listed to be heard fully in person. At the start of the hearing Mr Price indicated that Mr Moffatt was on a training course and unable to attend in person. Mr Price indicated that the respondents wished to apply that he give his evidence remotely by CVP. The claimant objected. He pointed out that Dr Wu had not had the opportunity to give evidence remotely. After taking further instructions, Mr Price confirmed that Mr Moffatt would attend to give evidence in person on day five of the hearing. The application for him to give his evidence remotely was not pursued. The claimant did not apply for Dr Wu to give evidence remotely.

The documents in the case

11. The agreed Tribunal hearing bundle consisted of an index and pages numbered up to 355 ("the Bundle"). During the hearing it became apparent that there was some missed numbering. The claimant also had his own bundle of documents which had different numbering. Despite the Employment Judge on more than one occasion telling him that he should use the Bundle, he persisted in using his own bundle of documents. That meant that during witness evidence the Tribunal regularly had to check that all parties were looking at the same page. We are satisfied that by doing so we were taken to the correct pages in the Bundle and that all witnesses were looking at the documents they were being cross examined about.

12. During Dr Arvin's evidence on day 3 we were referred to a We-Chat social media conversation between the claimant and Dr Arvin on 6 and 7 July 2022. It was at page 193 of the Bundle. It was clear that not all of that conversation was in the Bundle. The claimant had it on his phone. The respondents did not object to screenshots of the complete conversation being added to the Bundle. The conversation was partly in Farsi. The claimant provided a translation which Dr Arvin confirmed was accurate, subject to what we find was a minor disagreement about the correct translation of a couple of words. Dr Arvin was under oath when the matter arose. We released him from that oath to enable him to confirm the translation and to allow Mr Price to take instructions on this new documentary evidence.

Submissions

13. We heard submissions on the afternoon of day five. Mr Price had prepared written submissions which he briefly supplemented with oral submissions. The claimant made oral submissions. We have taken those submissions into account in reaching our decision. We have not set out the submissions in full but have referred to them where relevant.

Relevant Law

The Equality Act 2010 claims

14. The complaints of race discrimination and race related harassment were brought under the Equality Act 2010. Section 41 prohibits discrimination against a contract worker by a principal. "Principal" and "contract work" are defined in s.41(5), (6) and (7):

> **"(5) A "principal" is a person who makes work available for an individual who is—**

(a) employed by another person, and

(b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).

(6) "Contract work" is work such as is mentioned in subsection (5).

(7) A "contract worker" is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b)."

15. The 2010 Act provides for a shifting burden of proof. Section 136 so far as material provides as follows:

"(2) If there are facts from which the Court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

16. This means that it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the 2010 Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

17. The definition of direct discrimination appears in section 13 of the 2010 Act and so far as material reads as follows:

"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others".

18. The concept of treating someone "less favourably" inherently requires some form of comparison, and section 23(1) provides that:

"On a comparison of cases for the purposes of section 13 … there must be no material differences between the circumstances relating to each case".

19. It is well established that where the treatment of which the claimant complains is not overtly because of race, the key question is the "reason why" the decision or action of the respondent was taken.

20. The definition of harassment appears in section 26 of the 2010 Act which so far as material reads as follows:

"(1) A person (A) harasses another (B) if -

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B…

(4) In deciding whether conduct has the effect referred to sub-section (1)(b), each of the following must be taken into account -

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect."

21. The Equality and Human Rights Commission gives more detail on the factors relevant in deciding whether conduct has the effect referred to in s.26(1)(b) at paragraph 7.18 of its Statutory Code of Practice on Employment ("the EHRC Code"):

"7.18 In deciding whether conduct had that effect, each of the following must be taken into account:

a) The perception of the worker; that is, did they regard it as violating their dignity or creating an intimidating (etc) environment for them. This part of the test is a subjective question and depends on how the worker regards the treatment.

b) The other circumstances of the case; circumstances that may be relevant and therefore need to be taken into account can include the personal circumstances of the worker experiencing the conduct; for example, the worker's health, including mental health; mental capacity; cultural norms; or previous experience of harassment; and also the environment in which the conduct takes place.

c) Whether it is reasonable for the conduct to have that effect; this is an objective test. A tribunal is unlikely to find unwanted conduct has the effect, for example, of offending a worker if the tribunal considers the worker to be hypersensitive and that another person subjected to the same conduct would not have been offended."

Findings of Fact

22. In this section we set out our findings of fact based on the witness evidence we heard and the evidential documents we read. That included the transcripts of the recorded interviews carried out by the University of Manchester ("UoM") in September 2022 as part of its investigation of disciplinary allegations against the claimant ("the Investigation").

23. In reaching our conclusions about whose version of events we prefer we have taken into account the claimant's submission that parts of the respondents' witnesses' version of events at the Tribunal were inconsistent with what was said in the Responses filed by the respondents. We decided those inconsistencies did not undermine the reliability of those witnesses' evidence in the way suggested by the claimant.

24. The same applied to the suggestion that Dr Arvin's close connection to the first respondent and Mr Telford rendered his evidence unreliable. Dr Arvin's wife worked for the first respondent from 2015 until September/October 2022. Dr Arvin was also co-director of a company with Mr Telford which had been set up for a project in 2020 but was not active. We found Dr Arvin a sincere witness and found his evidence reliable.

25. Overall, we preferred the respondents' version of events.

Background

26. The first respondent had a "Knowledge Transfer Partnership ("KTP") with the UoM. The aim of the KTP was to share expertise and knowledge between industry and academia with a view to fostering innovation. In practice, that involved a post-doctoral research associate employed by UoM being seconded to the first respondent to work on specific projects as a KTP Associate ("Associate").

27. The claimant is an Iranian national. He was seconded to the first respondent as a KTP Associate from August 2021. The first respondent had entered into previous KTPs with UoM. Dr Arvin was an Associate at the first respondent from June 2015 until May 2017 as was Dr Wu from September 2016 to April 2017.

28. Two-thirds of the funding for the KTP was provided by Innovate UK by way of a grant to the UoM. The first respondent contributed the balance of the KTP budget. Innovate UK is part of UK Research and Innovation, a non-departmental public body sponsored by the Department for Science, Innovation and Technology. Innovate's interest in the KTP was represented by Dr Andrew Kenney ("Dr Kenney"), the KTP Adviser.

29. The KTP gave Innovate the power to suspend their grant in certain circumstances, including if there was in its opinion a failure to maintain satisfactory progress on the KTP. It could terminate the grant if there was a failure to resolve the reasons for suspension.

The claimant's contract of employment

30. Throughout the events with which the case is concerned, the claimant was an employee of UoM. He was employed as a "Mechatronic Design and Control Engineer (KTP Associate)" on a fixed term contract from 29 August 2021 to 29 February 2024. The fixed term duration of the contract reflected the fixed term duration of the KTP which was also for 30 months.

31. Under the contract of employment there was a probationary period of 6 months until 28 February 2022 during which the UoM could terminate employment by giving one month's notice. The probationary period could be extended but was not in the claimant's case.

32. Once the probationary period had ended the contract could be terminated by the claimant or UoM by giving 3 months' notice. UoM reserved the right to terminate employment without notice in the case of gross misconduct, gross negligence or gross incompetence. UoM had the right to pay in lieu of notice.

33. The contract confirmed that on appointment from 29 August 2021, the claimant would immediately be seconded to the first respondent. His normal place of work would be at the first respondent's premises at Flimby in Cumbria, although he could be required to work either on a temporary or indefinite basis at any UoM premises. The claimant's working hours under the contract were 8.30am to 5.00pm Monday to Friday.

34. The claimant was subject to UoM's Code of Conduct, including its acceptable use policy for IT. Confidentiality clauses provided that any confidential or commercially sensitive information should not be disclosed to any person, company or other organisation whatsoever. That included information about the university and its subsidiaries, suppliers, customers, students or employees.

35. The contract confirmed that the claimant was covered by the UoM's discipline and grievance procedures. However, clause 65 of the contract confirmed that should the claimant have any grievance in relation to his secondment at the first respondent, he should in the first instance raise it by speaking to Mr Telford. If the grievance was about Mr Telford, he should raise the matter with Mr Lewis.

36. It was common ground that the first respondent did not have power to dismiss the claimant from his employment with UoM. Only UoM could do that because it was his employer. However, it was common ground that the first respondent could pause the KTP if they considered the Associate was not suited to the role. As we explain below, that is what happened in this case.

<u>The MSM project and the claimant's appointment as Associate for it</u>

37. The KTP was focussed on a project related to Master Slave Manipulators ("MSM") used in nuclear decommissioning, specifically in this case at Sellafield. A MSM consists of a master arm and slave arm. The slave arm is located in a hazardous area with the master arm located in a safe operating area. The arms are on either side of thick concrete walls and are connected. When an operator manually moves the handgrips on the master arm, the movement is reflected by the slave arm. It is a big piece of machinery. The purpose of the MSM project was to develop an electronic master arm solution, motorising movement of that master arm. That would eliminate

the physical and mental strain on the operator, potentially allow for the operator to be moved to a location with better vision of what was happening and reduce the risk of the operator being exposed to radioactive materials, improving safety.

38. The project plan envisaged a number of different stages. It started with a review of the current technologies, then development of a 3D model of the MSM followed by the design of a motorised controller to replace the master arm; development of the control system and then an augmented reality part of the project to focus on adding extra aid to the current system. We find it was a mixture of theoretical, design and actual mechanical work.

39. It was envisaged that at stage 2 of the project Sellafield would provide a MSM (i.e. the physical hardware) to be installed at the first respondent's premises. That was key to enabling an understanding of how the mechanism used for controlling the MSM worked so that potential solutions could be identified to motorise the master arm.

40. We find that UoM found it difficult to recruit an Associate for the project. They had to advertise twice because they could not find a suitable candidate with knowledge of mechatronics and good theoretical knowledge at the first attempt.

41. The preferred candidate for appointment decided to go elsewhere. The claimant was the second-choice candidate. We accept Dr Arvin's evidence that he and his colleagues at UoM did have concerns about appointing the claimant because he was not from a mechatronics or robotics background. He was not, in Dr Arvin's words, a 100% fit. They thought, however, that they could overcome that by providing support through regular meetings with him. There was no suggestion that the first respondent was unhappy with the claimant's appointment. It was involved in the decision to appoint. From its point of view the fact that the claimant had run his own company and had industrial experience was seen as an advantage.

<u>The claimant's terms of work at the first respondent</u>

42. The claimant started working at the first respondent's premises in Flimby on 1 September 2021. His induction was carried out by Mrs Beetham.

43. He completed an induction form which confirmed he was a secondee, that his role was KTP Project Engineer and that his "role responsibilities" were "developing the remote manipulator, helping on ad hoc projects as applicable".

44. Other terms of that induction form relevant to the issues in the case are as follows:

- Under "Data Security" it provided that "no confidential data or information is to be left unattended or passed to a third party without express permission. Breach of data security will result in disciplinary".

- Under "Computer Use" it provided "Computers are not permitted to be used for personal use during working hours. Breach of this will result in disciplinary".

- Under “Working Procedures/Equipment Use” it provided “Do not operate any piece of equipment or machinery before being provided with training and any health and safety concerns must be reported to senior management. Ensure you keep your work environment tidy and safe for those around you”.

- Under “Risk Assessments” it provided “Manual tasks often require a risk assessment before being carried out. If you feel one may be warranted approach your line manager”.

45. The induction form was signed by the claimant and Mrs Beetham. The form confirmed that the claimant's status was that of a secondee on a placement and that his line manager was “Chris Downham/Mark Telford”.

46. The form also said that the claimant’s attendance times were 8.30am to 5.00pm Monday to Friday. He was allowed 60 minutes for lunch but there was no fixed time when he had to take lunch. We find in practice that the claimant’s working hours and breaks were more flexible than suggested by the induction form. We find that in practice he would take 30 minutes for lunch and finish work 30 minutes early. We find that sometimes he would arrive after 8.30 a.m. We find his working hours were not closely monitored by the first respondent. We find that was in part because he was not an employee. He was granted more autonomy to manage his time and tasks than an employee would have been. In part it was a function of how the claimant was managed and supervised at the first respondent.

Management and supervision of the claimant

47. We find that although Mr Downham was nominally the claimant’s supervisor at the first respondent, most of the claimant’s interactions about his day-to-day work were direct with Mr Telford because Mr Downham was not an engineer and because the MSM project with Sellafield was Mr Telford’s project. We find that as the managing director of the first respondent, Mr Telford was not always present at the Flimby premises, splitting his time between the first respondent’s 3 sites. He spent around 80% of his time at Flimby. When he was at Flimby, he worked in an office separate from the main open plan office where the claimant was based. That meant he was not always in a position to know when the claimant started and finished work, took breaks or what he was doing on an hour-by-hour basis. We find he spoke to the claimant on most days but that the focus of those interactions were the projects they were working on rather than on what might be described as line management issues such as hours of attendance.

48. We find the same applied to Mr Lewis but more so. He lived in Durham and worked from home the majority of the time. That meant he was at Flimby for a maximum of 2 days a week. Mr Lewis was not based in the main open plan office where the claimant worked. He was not directly involved in the claimant’s day-to-day work as Mr Telford was.

49. Dr Arvin was the claimant’s main academic supervisor. The other academic supervisors were Professor Lennox (lead academic supervisor) and Dr Zhang, both from UoM. We find that at least initially Dr Arvin spoke to the claimant by Zoom on at least a weekly basis and communicated with him more regularly by We-Chat,

equivalent to WhatsApp. We find that when Dr Arvin moved from UoM to Durham University that contact decreased. We find that on occasion Mr Telford would join the Zoom calls between Dr Arvin and the claimant but that was the exception rather than the rule.

Governance of the KTP - the LMC meetings

50. Formal monitoring of the KTP was by Local Management Council meetings ("LMCs") which were held every four months or so. Three such meetings took place before the claimant's secondment to the first respondent came to an end.

51. There were in effect three parts to each LMC meeting. The main LMC update meeting was attended by the claimant and representatives from UoM, the first respondent and Innovate. In that open part of the LMC the Associate gave a presentation on activities and achievements to date and proposals for future action. Mr Lewis, Dr Arvin and Dr Kenney gave reports and action points were identified for the next LMC.

52. The next part was a "reserved" meeting which the claimant did not attend. We find that the purpose of that meeting was to allow the UoM, first respondent and Innovate to freely discuss any issues or problems relating to the Associate's performance or conduct.

53. The third part was a "Coaching and Mentoring" meeting. That was an opportunity for the Associate to raise any concerns, to discuss progress on the project and matters relating to the Associate's own development. Those meetings were attended by the claimant and Dr Kenney only. They were confidential but the reports of the meetings for LMC1 and LMC2 were in the Bundle.

54. The first LMC ("LMC1") was on 26 October 2021. It was held by Zoom video conference. It was attended by Mr Lewis, Mr Downham, the claimant, Dr Kenney, Dr Arvin and three representatives from UoM: Dr Zhang; Mark Godber, who was the Knowledge Exchange Manager and Caz Latham ("Ms Latham") who was a Knowledge Exchange Officer. There were apologies for absence from Mr Telford and from Professor Lennox.

55. The second LMC ("LMC2") took place on 14 February 2022. It was held by Zoom. Mr Lewis, Mr Downham and the claimant attended. So did Dr Kenney, Dr Arvin, Dr Zhang, Ms Latham and Professor Lennox. Mr Telford gave his apologies.

56. The third LMC ("LMC3") took place in person at the Flimby premises on 29 June 2022. We set out our findings about it at paras 75-78 below.

Events up to February 2022 including LMC1 and LMC2.

57. We find that the claimant had found difficulty in finding somewhere to live when he relocated to Cumbria to take up the Associate role. There was competition for rental properties in the area and the claimant wanted to live as close as possible to work. We find that understandable given that his wife was pregnant at the time and did not speak English fluently so the claimant would have wanted to be within easy reach of her.

58. We find the claimant had been helped by Mr Telford to find some temporary accommodation. We also accept Mrs Beetham's evidence that she and colleagues at the first respondent were looking for accommodation for the claimant and sent him links to properties in September 2021. Mrs Beetham's evidence was that the claimant had said to her around that time that he didn't think that "people around here like Iranians". Mrs Beetham's recollection of her response was that she had responded that she didn't think it was that, just that the rental market was really competitive. The claimant disputed that that exchange had happened, but we prefer Mrs Beetham's evidence and find that it did. We found her a credible witness and found her evidence reliable.

59. There were no criticisms of progress on the MSM project or the claimant's performance as Associate at either LMC1 or LMC2. By LMC2 the project was behind schedule because of a delay in the MSM being provided by Sellafield. That was because of concerns raised by the manufacturers of the MSM, Carr's, about intellectual property. There was no suggestion that delay was the claimant's fault.

60. We find that in the absence of the physical MSM the claimant's work on the MSM project was initially limited to carrying out more theoretical work on the project, e.g. undertaking a literature review. By LMC2 he had been involved in various discussions with Sellafield and Carr's. He had also in November 2021 attended the first of 2 residential training courses for KTP Associates. The second was due to take place in March 2022.

61. The claimant had also been involved in working on other projects for the first respondent, in particular on an underwater camera project. We find that the issue of work on projects other than the MSM was a source of tension between the claimant and the first respondent and, to some extent, between the first respondent and Innovate.

62. We find that the claimant felt that the first respondent was exploiting him by getting him to work on projects other than the MSM project. We find that the claimant did suggest that if he was going to work on other projects he should be paid for that in addition to his Associate salary. We find that it was always envisaged that the claimant's work would not be exclusively limited to the MSM project. The induction form signed by the claimant made it clear that the claimant would also be involved in "ad hoc projects". We find that working on other projects was seen as fulfilling the underlying purpose of the KTP of sharing knowledge and expertise.

63. However, we do find that Innovate UK had had concerns that Associates on previous KTPs with the first respondent had been distracted from the main focus of their KTP projects by being involved on other projects to too great an extent. That was raised at the open LMC1 meeting, the minutes of which record Dr Kenney being happy that Mr Lewis acknowledged trying to avoid having the claimant being pulled on to other projects.

64. We find that Dr Kenney and the claimant also discussed this issue in their LMC1 and LMC2 coaching and mentoring meetings. We did not hear from Dr Kenney but the minutes of both coaching meetings were in the Bundle signed by him and the claimant.

65. The minutes of the LMC1 coaching meeting on 26 October 2021 record Dr Kenney explaining to the claimant the difficulties on previous KTPs with the first respondent to do with "other non KTP projects and company culture and lack of Ph.D. level staff". Dr Kenney advised that the claimant needed to manage that and discuss with supervisors if it was leading to delays with the core plan. The claimant in his witness statement said this "documented less favourable treatment by the respondent toward foreign national postdoctoral researchers" (para 34).

66. We do not accept that the reference to difficulties arising from the first respondent's "culture" by Dr Kenney was to its having a racially discriminatory culture. We find it wholly implausible that if Dr Kenney knew there was a culture of race discrimination at the first respondent, Innovate UK and Dr Kenney would have initiated a new KTP project with the first respondent. We also find that interpretation inconsistent with the context. It is clear from the minutes that Dr Kenney is talking about a culture which leads to a risk of delay to the MSM project, i.e. that the reference is to how the first respondent operates. We do find that Dr Kenney was warning the claimant that the first respondent might seek to take advantage of him to get him to work on other projects to its benefit rather than focussing on the KTP project which Innovate UK was funding. That view seems to us consistent with Dr Kenney's comments at the LMC2 coaching and mentoring meeting on 14 February 2022. The minutes record that the claimant had been asked to contribute to an underwater camera project unrelated to the KTP. Dr Kenney's response is recorded as saying that this was "fine" but that previous projects at the first respondent had been compromised by too much non KTP activity.

67. The position as at the end of the LMC2 meetings was that everything seemed to be proceeding smoothly. There was the acknowledged delay with the MSM project because the MSM itself had not been delivered to site, but that was outside the claimant's control. The feedback the claimant was getting from UoM and Dr Kenney and the first respondent was positive.

68. Mr Telford's evidence, which we accept, was that the claimant was reassuring him that he had plenty of "back end" work to do on the MSM project which could be done without having the physical MSM on site. We find that Mr Telford was quite content because the claimant was also working on other projects of benefit to the first respondent. We find that at this point the first respondent had raised no concerns about the claimant's conduct with him or with UoM.

<u>Events from LMC2 to LMC3</u>

69. The intellectual property issues relating to the MSM were not resolved until May 2022. Mr Telford had to get involved to sort them out. That meant the MSM was not delivered to the first respondent's premises until 18 May 2022, months after the project plan anticipated. It was a large piece of machinery and arrived disassembled into 4 parts. We find that the claimant found it difficult to re-assemble it by himself and needed the help of the first respondent's employees to do so. We find the difficulties were partly practical because the size of the MSM meant that a fork-lift was needed to move the component parts. They were partly technical because the MSM was relatively old technology and was delivered without any supporting technical documentation. We find that the claimant disassembled and reassembled the

manipulator a number of times but could not get it fully operational. By 23 June 2022 the claimant was emailing Mr Telford to say that the manipulator was still not working and raising the possibility that it was a problem with the manipulator itself rather than in the way it had been reassembled. The MSM was not fully operational by the time LMC3 took place on 29 June 2022.

70. We find that during this period Mr Telford began to have some doubts about whether the claimant had the relevant expertise and knowledge to fulfil the Associate role on the MSM project. That was partly because of the difficulties he seemed to be experiencing on the MSM project and partly due to his work on another project.

71. We find that a few days before LMC3 took place the claimant had supplied a circuit diagram relating to a hydraulic system. We accept Mr Telford's evidence that there was disagreement between the claimant and some of the first respondent's engineers about whether the circuit diagram would work. When Mr Telford had a look at what the claimant had proposed we find that he genuinely took the view that it was wrong on a fairly basic level and would have caused damage to machinery if it has been implemented in practice. We find that when that was explained to the claimant, he became defensive and blamed his brother in Iran who he said had done the circuit diagram for him. The claimant disputed that he had asked his brother for help and had passed information about the project to him. We prefer Mr Telford's evidence. We find the claimant did tell him that his brother in Iran had done the circuit diagram for him.

72. We find that Mr Telford's immediate concern was what this said about the claimant's technical competence. However, we find it also raised concerns for him about breaches of confidentiality and the possibility of information being passed outside the company relating to work with Sellafield and other nuclear industry projects.

73. We find that by the time of the LMC3 meetings there were also some concerns about how the claimant was using his time in the office. The claimant acknowledged that he traded in cryptocurrency and that he kept an eye on his trading account on his laptop while seconded to the first respondent. His evidence was that he only did so during his lunch break and that he did not actively trade at work either on his own laptop or the computers belonging to UoM or to the first respondent. We find that he had shown various colleagues including Mrs Beetham and Mr Lewis how cryptocurrency trading worked. There is no suggestion that he attempted to conceal what he was doing. There is also no suggestion that the issue had been raised with him as a conduct issue at that point.

74. We accept Mr Telford's evidence that by LMC3 he had challenged the claimant informally about his timekeeping, particularly on an occasion when he had arrived at work at lunchtime. The claimant had said that he had been working from home on the morning in question. Mr Telford did not pursue the matter further but we find it did raise concerns for him about what the claimant was doing with his time. We find that was not a serious concern so long as the claimant was getting on with things. The same applied to the claimant playing online games (specifically chess) online while at work.

<u>The LMC3 Meetings</u>

75. The main LMC3 meeting took place in person at the first respondent's premises on 29 June 2022. It was attended by the claimant, Mr Lewis, Dr Arvind, Dr Zhang, Ms Latham and Dr Kenney. Mr Telford, Mr Downham and Professor Lennox gave their apologies.

76. We find the meeting did not go well. We find that the claimant's Associate presentation was brief and viewed as poor. He was unable to answer some technical questions put to him by Dr Arvin and Dr Zhang. The claimant and Dr Arvin were involved in an agitated discussion about the project. Dr Kenney was not impressed. He felt that discussion should have taken place and been resolved prior to the LMC3. We find that was a criticism of both the claimant and of Dr Arvin's supervision of him. Mr Lewis and Dr Kenney in particular were alarmed at the extent to which the MSM project was behind schedule. There had been a general acceptance that the delays prior to taking delivery of the MSM were not within the claimant's control. We find, however, that there was serious concern about the lack of progress and what the claimant had been doing with his time since the MSM had arrived more than a month before LMC3.

77. Coupled with that was the concern about the claimant's non-attendance at the second residential training course for KTP Associates in March 2022. The claimant had travelled to the training with his wife who was heavily pregnant. However, when he arrived he was told that only a single room had been booked and he would have to pay if he wanted to upgrade to a double room. He was not willing to do that. He did not attend the course and returned home the following day having stayed overnight en route. We find that the LMC3 meeting was the first time that Mr Lewis or anyone at the first respondent became aware the claimant had not attended the course. Dr Kenney was also unaware he had not attended. We find Dr Arvin was aware. There was a dispute about whether the claimant returned to work at the first respondent on the next day. The claimant said he did so, but was late to work because of the time it took to travel back. We find that Mr Lewis and Mr Telford's genuinely held belief was that the claimant had not returned to work after not attending the training course.

78. We find that in the LMC3 reserved meeting Mr Lewis raised the issue of the claimant spending a lot of time in the office working on his cryptocurrency account and said that this would be raised with the claimant. We accept Dr Arvin's evidence that the issue of online gaming was also raised even though it is not specifically referred to in the minutes. Those minutes are brief and not verbatim. We find there was a discussion about the claimant's technical competence. Dr Arvin confirmed that the claimant's background wasn't ideal and that he would encourage him to keep asking questions where he didn't know things. Dr Kenney made it clear that if the claimant was overburdened it was his responsibility to raise that with his supervisors. We find that there was a significant degree of concern about how the KTP was progressing and the claimant's performance as Associate. However, there was no suggestion at that point that the KTP would be paused or the claimant removed as Associate. Mr Lewis is recorded in the minutes as saying that other than the cryptocurrency "everything else was fine". We take that to refer to the claimant's conduct. Dr Arvin's view seemed to be that with a lot of technical support the claimant could perform the Associate role.

79. We find Mr Telford took a dimmer view of things. He came across the claimant while the reserved meeting was taking place. The claimant was agitated and told him he was getting the blame for everything.

80. Mr Telford then had an ad hoc meeting with Dr Arvin which Mr Lewis later joined. They fed back what had happened at the open LMC3 meeting. We find that Mr Telford's view was that the picture the claimant had been presenting to him of what he had been doing was very different from the reality. Mr Lewis reported that the claimant's presentation had been poor and that there had been alarm at the lack of progress. We find that was an accurate reflection of the LMC3 meeting. Mr Telford also found out for the first time that the claimant had not attended the training course in March 2022. We find Mr Telford raised the issue of the claimant having discussed a project with his brother in Iran (which Mr Lewis was not aware of). That caused particular concern to Dr Arvin, who was aware of the strict export control rules on trade with Iran and the potential serious consequences for the UoM of any breach of those rules. We find the issue of the claimant spending his time on his cryptocurrency account and online gaming were also discussed.

81. We find things unravelled quickly. We find that by the time the meeting between Mr Telford, Mr Lewis and Dr Arvin had finished, Mr Telford's view was that the first respondent needed to pause the KTP because they no longer felt the claimant was suitable to continue as Associate. We find that he had doubts (shared by Dr Arvin) about the claimant's technical competence. More fundamentally, we find he had formed the view that the claimant had misled him about how he was spending his time at work and how much work he was doing. The fact that he was spending time in the office on cryptocurrency and online gaming and had failed to attend the training course added to his view that he was not suitable for the Associate role.

82. Mr Lewis emailed Dr Arvin (copying Mr Telford) at 15:30 on 29 June to record the first respondent's "serious concerns" about the claimant's suitability and capabilities. The email referred to concerns about capability and lack of progress by the claimant. It did not refer to timekeeping, cryptocurrency, online gaming or the issue of the claimant's brother. It was not entirely clear to us why the email did not simply formally terminate the claimant's secondment. On balance, however, we find it consistent with the first respondent's view that the claimant was the UoM's employee so it was up to UoM to decide on next steps. We find that the first respondent made clear to Dr Arvin that they did not want the claimant to return to the first respondent.

83. We do not accept that Mr Telford or Mr Lewis told Dr Arvin to tell the claimant to resign. Dr Arvin denied they did so and we found his evidence reliable. In any event, there was no reason for them to do so. They could pause the KTP without the claimant resigning or being dismissed. In effect, they could terminate the claimant's secondment and he would then return to UoM who was his employer throughout (which is what in fact happened).

84. We find there were 2 other relevant incidents on 29 June 2022. The first was that when Dr Arvin arrived and saw the size of the MSM he said that there should be some safety railings around it. The claimant submitted that this showed that the respondents had treated him differently by failing to carry out a risk assessment of the MSM. On balance, we prefer the respondents' case that the onus was on the claimant

to arrange a risk assessment when the MSM arrived (or at least proactively ask the first respondent to carry one out). That is what the induction form said. It was also what Dr Arvin said in evidence he would expect the claimant to do.

85. The second incident was that as Mr Lewis was leaving the office he walked past the claimant and saw that he was playing online chess again. We accept his evidence that that happened.

Events from 30 June to 5 July 2022

86. We find that the claimant was not told immediately of the decision to pause the KTP. On 30 June he emailed Mr Telford for authority to order some equipment for the MSM project. Mr Telford confirmed his permission, but Dr Arvin emailed to suggest pausing so he and Dr Zhang could check some calculations. We find Mr Telford was waiting for Dr Arvin to report back on what UoM was going to do.

87. We accept Dr Arvin's evidence that he discussed the situation with Dr Kenney on 4 July 2020 and relayed the concerns Mr Telford and Mr Lewis had raised. We find Dr Kenney confirmed that he supported the removal of the claimant as KTP Associate.

88. On 5 July Dr Arvin spoke to the claimant by Zoom. We find that he told the claimant that the respondents did not want him to continue working on the project. The claimant suggested that Dr Arvin expressed a desire for him to resign. We find that Dr Arvin did raise the possibility on the basis that a resignation might look better than a dismissal. From his subsequent emails with Anne O'Neill ("Ms O'Neill") of the UoM HR department we find that Dr Arvin appeared to believe (or at the very least be confused about whether) the end of the claimant's secondment also necessarily meant the end of the claimant's employment with UoM. We do not find that Mr Telford, Mr Lewis or the first respondent had instructed Dr Arvin to ask the claimant to resign or to ask that he be dismissed by UoM. We find Dr Arvin was doing what he thought best for the claimant as his postdoc. We find Dr Arvin told the claimant not to return to the first respondent's premises but to work from home. He also suggested that the claimant try and contact Mr Telford to try and resolve matters. We find the claimant did not do so.

Events on 6 July 2022 – the alleged acts of harassment

89. On 6 July 2022 the claimant went to the first respondent's premises. We find that Dr Arvin was not expecting him to. We find that the claimant's primary purpose in attending the premises was to delete any personal information on the PC which he used for the KTP at the Flimby premises. We accept Dr Arvin's evidence that when it was later checked there was no data on that computer relating to the claimant or the MSM project.

90. We find that the claimant and Dr Arvin had a Zoom call at around 10.15 a.m. It was short. The claimant confirmed that he was not going to resign and preferred to wait for a notice of termination. We find that the there was a lack of clarity at this point and later whether the notice of termination being discussed was a notice of termination of secondment from the first respondent or a notice of dismissal as an employee from UoM. Dr Arvin and the claimant sometimes communicated in English but mostly in

Farsi and it may be that the element of translation added to confusion about what "notice" and what "dismissal" were being discussed.

91. The claimant's allegation is that the acts of harassment at 1.1.1 to 1.1.3 in the List of Issues happened between the Zoom call and his email to Dr Arvin at 12:06 on 6 July. His evidence was that there was no racial harassment or discrimination or anything other than a professional relationship between himself, Mr Moffatt and Mr Mattinson prior to 6 July 2022.

92. The claimant's email at 12:06 is the first time he alleged he was being subjected to discrimination, harassment and being made fun of. He did not name the alleged harassers nor did he give specifics of what was said or done. In his email to Dr Arvin the claimant said that "colleagues in [the first respondent] are discriminating me, harassing me, and making fun of me and I cannot take this anymore". He asked Dr Arvin what he should do and at 12:28 Dr Arvin responded by email advising him to take two days of annual leave. The claimant's case is that he left the first respondent's premises on receipt of that email. He said that supported his case that the respondents' version of events was false because that version involved him still being on the premises after 13:00 when Mrs Kirkbride's birthday celebrations were said to have taken place. We find that although Dr Arvin's email gives a time before which the claimant would not have left it does not provide reliable evidence of how long after the time it was sent the claimant left.

93. The respondents' version of events (as given by Mr Moffat, Mr Mattinson, Mrs Beetham and Mrs Kirkbride) was that on 6 July it was Mrs Kirkbride's birthday. She had only recently joined the first respondent and so was not expecting any fuss. However, she said that Mr Mattinson had left the office to go into town and had returned with a bottle of wine and everyone sang her happy birthday. Mr Mattinson's evidence was that on that date he had arrived at the first respondent's premises at 8.39am. We find he knew the time precisely because it was recorded on his phone tracker. His evidence was that he left at around 12:25 to go into Cockermouth to pay cash into his bank account and while there he went into a shop and bought a bottle of wine as a gift for Mrs Kirkbride. Based on the information on his phone tracker, he arrived at Cockermouth at 12:41 and was there for seven minutes before travelling back to the office, arriving at 13:02. He said that as he returned, he intentionally caught the eye of Mr Moffatt, the claimant, Mrs Beetham and other colleagues and got them to gather round Mrs Kirkbride. He wished her a happy birthday and sang happy birthday to her. Mr Mattinson's evidence was that the claimant was present and joined in with the celebration. That version of events was corroborated by Mrs Beetham and Mr Moffatt.

94. We find that the office in which the harassment is alleged to have taken place is an open plan office. Mrs Beetham, the HR officer, sat in that office. We found her a reliable witness. We accept her evidence that if any harassment had taken place and she had witnessed it, she would have challenged it.

95. On the claimant's own case, there had been no discriminatory or harassing behaviour prior to 6 July 2022 from Mr Moffatt or Mr Mattinson. His explanation for the radical change in their behaviour was that Mr Telford had not expected that the claimant would be returning to the first respondent's premises. The claimant's case

was that when he did so on 6 July 2022, Mr Telford instructed Mr Moffatt and Mr Mattinson to racially harass and discriminate against him as a way of creating a toxic environment to force him to leave.

96. We prefer the respondents' version of events. We found the evidence given by the respondents' witnesses credible and reliable. We found Mr Moffatt's and Mr Mattinson's evidence reliable and them to be credible witnesses. We accept their version of events.

97. In contrast, we found the claimant's version of events implausible for a number of reasons.

98. First, it would involve behaviour by Mr Moffatt and Mr Mattinson which (by the claimant's own evidence) was completely contrary to the way they had behaved towards him prior to 6 July 2022. We did not accept the claimant's explanation that Mr Moffatt and Mr Mattinson behaved in that manner because they were scared of losing their jobs. We find that both had resigned and were working their notice by 6 July 2022. We did not accept the suggestion put forward by the claimant at the Tribunal that their resignation letters were fabricated. Both letters were in the Bundle. The letters are dated on different dates and the signatures are different. The wording is also different. In the circumstances we do not understand the basis on which it could be realistically asserted that they were fabricated.

99. Second, we find it implausible that Mr Telford would have taken such a convoluted approach to removing the claimant from the first respondent's premises. The claimant was not the first respondent's employee. The KTP enabled the first respondent to pause the KTP agreement if it felt the Associate was not appropriate for the role. There was no need, therefore, for Mr Telford to go about removing the claimant in such a roundabout way. If he had wanted to remove the claimant from the premises he could have contacted Dr Arvin to reiterate that the first respondent was not willing to have him on their premises and insist he leave. The UoM could not have compelled the first respondent to allow the claimant to continue to attend work at Flimby.

100. Third, we find it implausible that Mr Telford would have adopted such a high risk strategy as a way of removing the claimant. Instructing employees to explicitly racially harass and bully an employee is clearly a risk for the first respondent even if the claimant was not their employee. Even if Mr Telford wrongly thought there was no claim against the first respondent under the Equality Act 2010, he would have been aware that adopting that approach would make it extremely unlikely that UoM or Innovate UK would want to continue the KTP with it or work with it in future. That would be to risk losing a valuable partnership under which the first respondent benefitted (indirectly) from substantial government funding.

101. Fourth, from a purely practical point of view, we find that on the evidence there was no real opportunity for the alleged collusion between Mr Telford, Mr Moffatt and Mr Mattinson to have taken place. Based on our findings, Mr Moffatt and Mr Mattinson were very limited in their contact with the claimant. Mr Moffatt was only in the office for three days prior to the 6 July 2022 incident having been on a six week deployment to Sellafield. His first day back in the office was 4 July 2022. Mr Mattinson was not linked into the work or the assignments that the claimant was working on in any way.

We accepted their evidence that they were both unaware of what happened at the LMC3 on 29 June. The question which arises is: when did Mr Telford instruct Mr Moffatt and Mr Mattinson in the discrimination designed to get the claimant to leave? Given that the claimant himself was in two minds about whether he was going to return on 6 July, we find that the first respondent and Mr Telford could not have known until the morning of 6 July that he would be coming in (Dr Arvin assumed he would not). Even if he saw him when he first came in, Mr Telford could not know at that point whether the claimant was intending to stay or was just collecting his belongings or (as we find was the case) deleting personal information from the computer. If the alleged discrimination and harassment happened between 10:30 and 12:00, that means that Mr Telford must have decided on the strategy and instructed Mr Moffatt and Mr Mattinson to implement it first thing on the morning of 6 July when it became clear that the claimant was not following Dr Arvin's instructions to work from home and not to return to the first respondent's site. We find that timeline inherently implausible.

102. Finally, we accepted Mr Moffatt and Mr Mattinson's evidence that they were not aware of the language spoken by the claimant. They would be unlikely to be in a position to identify music in his language to play as a means of harassing him.

Events from 6 to 11 July 2022

103. In his email to the claimant on 6 July at 12.28pm Dr Arvin had told the claimant that he would receive an email from Ms Latham, presumably explaining next steps. He did not. The claimant did not return to the first respondent's premises after 6 July 2022. He was in limbo. UoM had not clarified his position but Dr Arvin had made clear the first respondent did not want him as Associate.

104. On 7 July there was an exchange of We-Chat messages between the claimant and Dr Arvin. As we have explained above, Dr Arvin and the claimant provided a translation. There was a dispute about some of the wording in that translation but we do not find the differences significant to our findings. Dr Arvin told the claimant to send an email to "everyone" asking for instructions if he had not heard anything by that evening. He also suggested that the claimant send an email to Dr Kenney telling him about the harassment by Mr Mattinson and Mr Moffatt. We find that the claimant had provided some detail about the alleged harassment in a mobile phone conversation with Dr Arvin on 6 July.

105. In the further We-Chat exchanges the claimant says that the real problem is Mr Telford. Dr Arvin said that he had talked to Mr Telford and said that no-one knows about the situation apart from Mr Lewis and him. There is a message from Dr Arvin to the claimant in which he says, "I know that the problem is Mark, but it is better to talk to him about your grievance". Dr Arvin suggested that the claimant contact Mr Telford by Zoom or in person. There was a dispute as to whether the correct translation was the "challenge" or "problem". In any event, the point is that Dr Arvin's view was that it was Mr Telford's perception of the claimant which was the issue preventing the claimant being able to continue as a KTP Associate. We find that that assessment is correct. Based on our findings, Mr Telford had formed the view that the claimant did not have the necessary attributes in terms of skill, experience and application to continue in that role.

106. At 2.50pm on 7 July the claimant sent an email to Dr Arvin, Dr Zhang and to Mr Downham attaching a fit note signing him off due to "stress at work" for 3 weeks. His covering email said that he was so distressed due to the harassment and discrimination that happened to him at the first respondent that he had seen his GP and she had assessed the situation and told him that he was not fit for work for three weeks.

107. Dr Arvin's response at 5.45pm was that he had just seen the claimant's email and he said, "good one" and sent smiley emojis. He then said that "but with this that you started no other Iranian could obtain a visa". In response at 5.51pm the claimant said, "If it was the case Chinese and Nigerian people could not get a visa too" and "If when this happened to the first person you stood by the right side they wouldn't become so rude to continue". Dr Arvin did not respond for some 45 minutes. When he did, he said "I was thinking that what is going to happen in the end". He then pointed out that the claimant's contract was with UoM and they would continue with him on that.

108. On 8 July the claimant emailed Dr Kenney saying that Dr Arvin had told him that the first respondent was not happy with him being at its premises and wanted to initiate the process of termination of the contract. He confirmed that he had discussed with Dr Arvin and made it clear that he preferred that the first respondent trigger the termination process. He claimed in that email that he had noticed some discriminating behaviour by Mr Telford and some of their employees "after the LMC". He alleged he had returned to work at the first respondent premises because his contract had a three month notice period but that Mr Telford, Mr Mattinson and Mr Moffatt started an "organised discrimination and harassment process against me to create a toxic environment and force me to leave". He did not provide details of the discrimination and harassment.

109. In the final paragraph of his email the claimant said that Dr Kenney knew that "this is not the first failed KTP project of Forth Engineering and you mention that this company has a history of dragging KTP associates to their other projects and they have already forced two more highly qualified internal associates to resign". On that basis he said he wondered "on what basis Dr Kenney had evaluated their competence for getting the KTP project and whether they had performed any investigation about the previous project before signing a contract with them". We note that in that final paragraph the claimant does not allege that there were incidents of discrimination or harassment relating to the previous associates but rather that the associates had been "dragged onto their other projects". We have found that that was an issue, and it was an issue that Dr Kenney was aware of and had himself warned the claimant about in the LMC1 coaching and mentoring meeting.

110. On 11 July the claimant wrote to Mr Lewis to "raise a formal grievance". In the email he alleged he had faced discrimination and harassment by Mr Telford, Mr Mattinson and Mr Moffatt and that he believed they did that to force him to resign. He reported he had discussed that with Dr Arvin and that he had requested that he take two days' annual leave. He repeated that they had caused him extreme distress such that he was signed off and that their behaviour "violated my dignity and it is totally unacceptable to me". He asked for a meeting to talk about his grievance within one week. He did not set out the specific allegations which he makes as part of his claim

in that email. Mr Lewis was on holiday but responded that evening to confirm that he was back in the office on 18 July but in the meantime he had spoken with UoM who (as the claimant's employer) had their own grievance policies and procedures. He said he would await clarification from them as to the best way forward. We find the grievance was not progressed by the first respondent. To the extent there was any investigation of the claimant's allegation we find that involved Mr Telford asking round the office whether there was anything he had done which could amount to harassment or discrimination. We find the first respondent's attitude was that the claimant was the UoM's employee and not their problem any more.

The allegations of misconduct against the claimant

111. On 11 July Dr Arvin emailed Ms O'Neill asking her to "trigger the contract termination" of the claimant. He confirmed the claimant had been asked to stop working on the KTP on 5 July 2022 and that they would start the recruitment process as soon as possible to find another Associate.

112. We find that Ms O'Neill was not clear from Dr Arvin's email whether it was the claimant's employment with the UoM which was being terminated and, if so, why. Initially she thought the claimant had resigned but Dr Arvin confirmed that was not the case and that he had been asked to leave after the LMC3 progress meeting. Ms O'Neill suggested the first respondent provide more information and on the afternoon of 11 July spoke to Mr Telford and Mr Lewis. She asked them to send all the information they had on the case before she could advise further.

113. She explained to Dr Arvin that she could not just issue a letter of notice of dismissal without having gone through a proper process. She needed to establish whether this was a case potentially involving a redundancy, capability or disciplinary dismissal. She asked him to confirm the reasons for the decision that the claimant should no longer be working on the project so she could decide which route to follow.

114. Dr Arvin replied late on 12 July. He asked Ms O'Neill not to share the email with the claimant but copied in Dr Zhang, who was going to be the claimant's supervisor going forward. He said that based on the LMC3 meeting and the first respondent's concerns, he would say it was both a capability and a disciplinary. He confirmed that the first respondent had already reported that:

(1) "Most importantly" the claimant played online games everyday and spent time on cryptocurrency using (a) the first respondent's internet and (b) the University of Manchester's computer. These are prohibited by the company and the UoM's regulations.

(2) That the claimant should have attended a one week training in Ashorne Hill; however without informing the company he did not attend the training and he did not go back to work the next day. (We find that the training course was actually a three day rather than one week training course).

(3) The first respondent did not see that the claimant was a capable person to deliver the project and able to help them in knowledge exchange which was promised in the proposal.

(4) That the first respondent's team informed the university that the claimant had several times mentioned that his brother, who lived in Iran, was helping him deliver the tasks, designs and technical and theoretical contents he presented to us. Dr Arvin said that raised two issues, which was:

(i) That it was not right that the university pay someone who is not capable of doing the job, but

(ii) "Export control" (i.e. the restrictions on exports to Iran).

115. In the week of 22 July 2022 Ms O'Neill met with the claimant to talk through his options. She confirmed he was off sick and seemed unwilling to return to the first respondent. Her view was that it would be good if the matter could be resolved informally so that they could get the claimant back to work. She contacted Mr Lewis to ask what had been said to the claimant about him returning to work. She asked whether anyone had said he could not return to the first respondent. She also asked whether any of the concerns regarding the claimant's performance and conduct had been raised with the claimant directly. Mr Lewis' response was to say that it would be better if she asked Dr Arvin as he was not certain. Mr Lewis confirmed that his understanding was that the claimant would not be returning.

116. On 26 July 2022 Mr Lewis responded to Ms O'Neill's email of 22 July asking for clarification of the position. Mr Lewis confirmed he was not certain what Dr Arvin had said about the claimant returning to the first respondent. He confirmed, however, that after the LMC3 meeting and subsequent discussions, several concerns had come to light that would impact on the claimant returning to continue his work at the first respondent.

117. Mr Lewis confirmed that up until the LMC3 meeting the first respondent had no grounds for concern because they believed from discussions with the claimant that despite not having the MSM the project was still progressing. However, during LMC3 it had become apparent that the project was a long way behind schedule and that the claimant had misled the first respondent regarding his progress. Mr Lewis confirmed that the MSM had been on site for some time but that the claimant had not worked on it.

118. Mr Lewis also confirmed that the first respondent had learned that the claimant had been sending details of some Forth projects he was involved with back to his brother in Iran for guidance as he was lacking in the competencies required to deliver the project. He confirmed that the projects that the first respondent was aware of were non nuclear but their concerns were that he may very well be sending details of nuclear projects back to Iran which would raise concerns for national security. Knowing that, the first respondent (he said) was in no doubt that the client would not allow any further work on the MSM project via the claimant. That coupled with the unfounded accusations of discrimination against two members of Forth had made it clear that the claimant could not return to Forth in any capacity.

119. The letter also confirmed that the first respondent's Projects Director, Graham Cartwright, and Mr Lewis himself had spoken to the claimant regarding various concerns about his timekeeping and his activities within the workplace, which included

cryptocurrency dealing and online gaming which in an open workspace was unacceptable and disrespectful to other employees.

120. By 3 August 2022 the university had instigated the Investigation. It was into allegations of serious misconduct by the claimant. These were based on six bullet points. They were:

- Unsatisfactory timekeeping.
- Cryptocurrency dealing during working hours using company property.
- Online gaming during working hours using company property.
- Not attending a one week residential training course without explanation or return to work.
- Misleading Forth management about progress on the MSM project.
- Relaying information on Forth project to his brother overseas.

121. There was confusion during the Investigation about the source of those six bullet points. We find that 4 of those allegations were based on Dr Arvin's email to Ms O'Neill on 12 July 2022. Those were the playing of online games, cryptocurrency dealing, failing to attend the training course and relaying information to his brother overseas. The issue of capability in Dr Arvin's email was not included. The remaining allegations were based on the information provided by Mr Lewis, in particular in his email of 26 July 2022. We find that Mr Lewis provided that information in response to the UoM asking for the reasons for terminating the claimant's role as Associate. We did not find any evidence to support a finding that Mr Lewis, Mr Telford or the first respondent actively wanted the UoM to take disciplinary action against the claimant. Their only concern was to ensure that the claimant be replaced as Associate on the KTP. They did not really care what UoM did in relation to the claimant once his association with them was at an end.

122. On 5 August 2022 the claimant nitiated ACAS early conciliation. The Investigation was carried out in September 2022. Those who gave evidence included the claimant, Dr Arvin (twice), Mr Telford and Mr Lewis. The Investigation did not look into the allegations of harassment because those allegations were made by rather than against the claimant.

<u>The Investigation report and the claimant's resignation</u>

123. We did not have the final version of the Investigation report in the Bundle. However, we had a near final draft. Its conclusions were that there was little or no evidence of any concerns of poor working before the move to "dismiss" the claimant. There was no evidence of dissatisfaction expressed in the formal project or probationary reviews. We find that is correct to the extent that there were no concerns expressed at LMC1 and LMC2 but do not accept it reflects what happened at LMC3.

124. The report found that if there was concern, that was not evidenced by active intervention or good management practice. It found that the non technical

management of the claimant was passive – small issues had been allowed to fester and had subsequently been used adventitiously to raise a disciplinary issue. We agree with that to the extent that the matters which ended up being the basis of the UoM's disciplinary procedure did not become an issue until the extent of problems with the MSM project became clear at LMC3. Based on our findings, however, it is not accurate to say that it was the first respondent which had "raised disciplinary issues". They had set out their factual concerns about the claimant's conduct but it was Dr Arvin (in his email of 12 July 2022) and UoM which had categorised those as disciplinary matters.

125. The report said the first respondent's motivation seemed to be to remove the Associate but the fundamental reasons for that were not clear. It noted that Dr Arvin when asked about the decision to dismiss the claimant said that the decision was a "crazy" decision and said, "I don't want to sack him". We find that because the Investigation was into alleged misconduct, it did not address the concerns raised by the first respondent about the claimant's capability and did not reflect comments made by Dr Arvin in his investigatory interviews which were very critical of the claimant's capability and knowledge. It seems to us those concerns, which were the primary reason why the first respondent no longer wanted the claimant as Associate, were lost when the Investigation was framed by UoM as one into misconduct rather than capability.

126. The report concluded that none of the individual accusations suggested moving to a formal disciplinary action would be appropriate. Neither, taken collectively, was that the case. The report concluded that the claimant needed better management and more communication between the first respondent and the UoM. A key finding in many of the complaints raised against the claimant concerned ongoing behaviours. It found that there was no evidence of any attempt by management to identify performance issues for the claimant or provide opportunities to improve his performance before the critical meeting (i.e. the LMC3 meeting). A particular issue was that neither the claimant nor the first respondent had an appropriate sensitivity to or knowledge of export control issues. In those circumstances it recommended that no further action was taken but that if the IT team identified wrongdoing after the examination of the claimant's computer was complete, that issue should be re-examined. It also recommended that the UoM review management procedures for KTPs and did not make assumptions concerning the quality of local management practices.

127. On 10 January 2023 the claimant resigned from his position as KTP associate at the University of Manchester. He said that he resigned because of the racial discrimination that happened to him by employees of the first respondent during the knowledge transfer partnership. His last day of work was 11 January 2023.

128. Carr's had contacted the UoM because of their concerns that information regarding the MSM had been shared with a third party in an unauthorised manner and potentially in breach of export controls. On 7 December 2022 Ms O'Neill wrote to them to confirm that the Investigation had found no evidence that the claimant had shared information about the MSM project with his brother abroad. The first respondent had never alleged he had done so. The issue it had raised was the claimant sharing information about a non-nuclear project with his brother in Iran.

<u>The treatment of Dr Wu and other findings relevant to the burden of proof</u>

129. It was not disputed that there were very few ethnic minority employees at the first respondent. One exception was Dr Arvin's wife, who is Chinese and was employed from 2015-2022. Dr Arvin is Iranian and had been an Associate at the first respondent and, as the claimant himself pointed out, was a co-director of a company (albeit a non-trading one) with Mr Telford. The evidence was that most Associates had been foreign nationals including Chinese, Nigerian and Iranian nationals.

130. The claimant alleged that there was evidence that Dr Wu had been racially harassed and discriminated against when seconded to the first respondent as an Associate. Dr Wu's written statement alleged he had encountered "pervasive discrimination and racial hostility" at the first respondent. As examples he said he was given dog food to eat and told it was home cooking and that employees had made disparaging comments directed at food he brought to work. His statement said that the first respondent "fosters an environment replete with racial animus and toxicity, particularly towards post-doctoral employees who hail from foreign nations". He claimed he had resigned to extricate himself from that environment.

131. Dr Wu did not attend to give oral evidence. When asked about what he said in his statement, Dr Arvin's reaction was genuine shock. He said he did not believe it. We find his reaction was sincere. We find that Dr Wu and Dr Arvin were close and had been contemporaries at the first respondent. We accept Dr Arvin's evidence that because his wife was Chinese and also worked at the first respondent, if there had been any issues Dr Arvin would have been aware of them. We also accept Mr Telford and Mr Lewis's evidence that Dr Wu would have been dismissed for a serious capability issue had he not resigned. For those reasons we did not find Dr Wu's evidence reliable and did not accept the version of events set out in his statement.

Discussion and Conclusion

132. The Tribunal decided the following:

1. <u>Harassment related to race (Equality Act 2010 section 26)</u>

    1.1 Did the respondent do the following alleged things. On or around 6 July 2022 did:

        1.1.1 Scott Mattinson and Liam Moffatt play music in the claimant's language and laugh at the claimant;

        1.1.2 Scott Mattinson and Liam Moffatt make fun of the claimant's family name;

        1.1.3 Mr Mattinson say "it is time for you fucking Iranian to go back to your country."

133. For the reasons given at paras 96-102 above, we find that the alleged acts of harassment did not happen. The other issues in the List of Issues relating to this complaint do not arise. The complaint fails.

2 <u>Direct race discrimination (Equality Act 2010 section 13)</u>

2.1 What are the facts in relation to the following allegations:

2.1.1 Did Mr Telford take steps to secure the claimant's resignation?

2.1.2 Did Mr Telford make false allegations of incompetence and misconduct on the part of the claimant and ask The University of Manchester to dismiss the claimant on those false grounds?

134. We find it helpful to deal with these allegations in reverse order. In relation to 2.1.1 we find that Mr Telford did not make false allegations of incompetence and misconduct on the part of the claimant. We find that Mr Telford had genuine concerns about the claimant's capability and genuinely believed that he had been misled about the extent of work done on the MSM project and the claimant's ability to fulfil the Associate role. We understand that the claimant takes a different view but that does not mean that Mr Telford's concerns were not genuine. We find his views on the claimant's competence were shared by Dr Arvin and Dr Kenney in light of the claimant's performance at the LMC3 open meeting.

135. We do not find that Mr Telford made false allegations of misconduct. We say that for 2 reasons. The first is that we find he genuinely believed that the claimant had done the things which crystallised into the 6 allegations in the Investigation. We find there was a basis for that belief. The claimant accepted that he had actually done some of the things alleged, e.g. online gaming, not attending the training course without telling the first respondent, monitoring cryptocurrency at work. We found the claimant had asked his brother for help and that he had been spoken to about his timekeeping. As we have already said, we also found Mr Telford believed the claimant had misled him about the extent of work he was doing on the MSM project. Those were allegations made genuinely even if the Investigation report decided there was insufficient evidence to support them.

136. The second reason the allegation fails is that we found that it was not Mr Telford nor the first respondent who identified those things as "misconduct". They provided information about their concerns to UoM (direct or via Dr Arvin) when Ms O'Neill was trying to establish what steps the UoM should be taking in relation to the claimant's employment with UoM. It was not the first respondent which labelled them as "misconduct" but the UoM. We do not find that Mr Telford asked the UoM to dismiss the claimant, assuming by that it means terminating his employment with the UoM. The first respondent's view throughout was that the claimant was the UoM's employee so it was up to UoM to decide on next steps. There was no reason for Mr Telford to ask UoM to dismiss him as an employee because the first respondent had already made it clear it did not want the claimant to return to the first respondent as Associate and UoM could not refuse that.

137. The same applies to allegation 2.1.1 There was no need for Mr Telford to take steps to secure the claimant's resignation as an employee of UoM and we find he did not do so. We accept he told Dr Arvin that the claimant was not to return to the first

respondent's premises but we do not accept that he told Dr Arvin that the claimant should resign.

138. Both allegations 2.1.1 and 2.1.2. fail on the facts – the alleged treatment did not happen as alleged.

139. There has been in this case at times confusion about whether "dismissal" related to the claimant's employment by the UoM or his secondment as Associate to the first respondent. We have, in fairness to the claimant, considered whether our conclusions would be different if by "resignation" and "dismissal" what was meant was resignation or termination of the claimant's secondment. We have decided that our conclusions would be the same.

140. When it comes to 2.1.2, we have explained above that we did not find that Mr Telford made false allegations. When it comes to 2.1.1. we found as a fact that Mr Telford did not tell Dr Arvin to tell the claimant to resign. He did not do so because he could pause the KTP and bring the Associate role to an end that way. Even on this alterative interpretation of "resign" and "dismiss" these allegation fail.

141. That does not mean that we think the first respondent acted well. We would echo the Investigation findings regarding the management of the claimant. It seems to us that the first respondent had taken the view that as he was not their employee they would not manage his performance as strictly as they would other employees. They had therefore let certain matters of conduct like timekeeping, online gaming and cryptocurrency slide. They became issues when the first respondent became unhappy about the claimant's performance as an Associate and his capability to perform that role. They might not have done had they been addressed earlier or closer supervision undertaken. We also find that Dr Arvin's supervision of the claimant was somewhat lax (perhaps because of other matters going on in his life, including his move to Durham). The combined effect was that when problems came to light at the LMC3 meeting relating to the MSM project they caused alarm leading to matters unravelling quickly. The claimant could be forgiven for wondering why things had changed so significantly between the positive feedback at LMC2 and events on 29 June 2022. We have explained in our findings why we found they did.

> 2.2 If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances of a different race was or would have been treated? The claimant relies on a hypothetical comparison.
>
> 2.3 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of race?

142. In case we are wrong in our conclusions that the alleged treatment did not happen, we have gone on to consider whether there was less favourable treatment because of race. We find there was not. We find Mr Telford would have acted in the same way in relation to an Associate about whose capability and conduct he had

concerns, regardless of race. We accept that the claimant genuinely attributed the criticism of his capabilities to race but do not find that that was the true reason for it.

143. In reaching that decision we took into account those matters which the claimant suggested led to the burden of proof shifting to the respondents. We did not accept the claimant's suggestion that the burden of proof had shifted because he was not provided with a risk assessment of the MSM. We accept the submission on the part of the respondents that as the person in charge of the MSM project the onus was on the claimant (as his induction documentation said) to raise any questions about risk assessments with the respondents. In any event, there was no evidence about how others in a comparable situation had been treated which could support the conclusion that any failure by the first respondent to carry out a risk assessment of the MSM was related to race.

144. We accept that the first respondent's premises in Flimby was not a racially diverse workplace. On the other hand, there was evidence of some ethnic minority employees working there for a number of years, including Dr Arvin's wife. It is also the case that the first respondent was involved in the decision to appoint the claimant, an Iranian, as Associate.

145. We do not find that the references to Iranians, Nigerians and Chinese in the claimant's WeChat conversation with Dr Arvin on 7 July 2022 supported a conclusion that there had in the past been discrimination because of race. We find that it is dangerous to attribute too much weight to an exchange of messages between two colleagues. It seems to us that messages could be seen as Dr Arvin suggesting that it would be difficult for the first respondent to engage Iranians on future projects without feeling that there was a risk of an allegation of discrimination. That, we find, does not necessarily provide weight to the argument that discrimination has actually happened.

146. When it comes to the reference to "if when this happened to the first person you stood by the right side they wouldn't be so rude to continue", we find difficult to interpret. We take that it might be a reference to the allegations made by Dr Wu about discrimination. We did not accept those allegations or Dr Wu's evidence about the first respondent's culture.

147. We also did not accept the claimant's suggestion that the reference by Dr Kenney to the difficulties with the first respondent's "culture" in the LMC1 coaching and mentoring meeting was a reference to a discriminatory culture. As we said in our findings, we find it wholly implausible that if there had been evidence of previous discrimination Innovate UK and Dr Kenney would have continued to enter into KTP projects with the first respondent.

148. In relation to the failure by the first respondent (as the claimant said) to properly investigate his grievance, we find the situation was that there was little investigation of it. We find that was due to the fact that the claimant was not the first respondent's employee. We accept that they could have done more but given that he was not an employee then it is understandable they took the view that the secondment having ended it was not a matter for them. We do accept it would be good practice for an employer to investigate seriously allegations of discrimination even if it relates to a secondee who has left. We do not find the failure to do so is enough to pass the burden of proof by itself to with our other findings. That is particularly given that the claimant's

own evidence was that he did not encounter discrimination or harassment because of race at the first respondent until 6 July and then only, on his own account, because it had been engineered to create a toxic environment to force him out rather than being a manifestation of a more endemic discriminatory culture.

149. If we are wrong about that and the burden did pass, we find the respondents discharged the burden of proving a non-discriminatory explanation for their actions. They were based on genuine concerns about the claimant's capability, competence and conduct.

150. In summary, we do not find that there was any less favourable treatment of the claimant nor that if there was any it was because of race.

3 Remedy for discrimination

151. We have found that all the claimant's complaints fail. In those circumstances there is no remedy to be awarded.

Employment Judge McDonald
Date: 25 April 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
30 April 2024

FOR THE TRIBUNAL OFFICE

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