Case Number: 2200461/2019

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mr B Ahmedou	**v**	**JPMorgan Asset Management (UK) Limited (First Respondent)** **Marion Mulvey (Second Respondent)** **Patrick Thompson (Third Respondent)** **James Hardy (Fourth Respondent)** **Sharon Bradley (Fifth Respondent)** **Alexander Anderson (Sixth Respondent)**

Heard at: London Central **On**: 20 – 29 November 2019

Before: Employment Judge E Burns
Ms O Stennett

Representation

For the Claimant: in person

For the Respondents: Ms Crasnow QC

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:

(1) the claimant's claims of race discrimination contrary to section 13 of the Equality Act 2010 are dismissed;

(2) the claimant's claims of harassment related to race contrary to section 26 of the Equality Act 2010 are dismissed; and

(3) the claimant's claims of victimisation contrary to section 27 of the Equality Act 2010 are dismissed.

REASONS

Claim and Issues

1. By a claim form presented on 9 February 2019, the claimant brought complaints of direct race discrimination, harassment on the grounds of race and victimisation. The complaints were brought against his employer, and five individuals. To avoid confusion in this judgment, the employer is referred to as the first respondent. The other respondents are referred to by name.

2. The presentation of the claim form followed a period of early conciliation against the first respondent between 11 December 2018 and 10 January 2019. There was a further period of early conciliation against the other respondents from 24 January to 25 January 2019.

3. The list of issues was developed over the course of two case management hearings and clarified during the final hearing. At the point of closing submissions, further clarifications were made including the withdrawal by the claimant of two of his allegations.

4. The remaining live issues were as follows:

Section 26 Equality Act 2010: harassment related to race

1. Did the respondents engage in unwanted conduct as follows:

1.1 by Patrick Thompson failing to respond to the claimant's email of 28 November 2018 (page 530);

1.2 by Patrick Thompson and James Hardy on 28 November 2018, misleading the claimant as to employment tribunal deadlines for claims;

1.3 by collusion by Marion Mulvey, James Hardy and Sharon Bradley to prejudice the grievance investigation by James Hardy reporting to Sharon Bradley about various meetings with the claimant;

1.4 by Lorraine Parry investigating the grievance based only on the respondents' statements, not seeking other evidence;

1.5 by Sharon Bradley, on 18 December 2018, threatening the claimant in front of three colleagues by telling him to communicate with Alexander Anderson; and

1.6 by Marion Mulvey, Sharon Bradley and Alexander Anderson, between 3 October - 15 November 2018, imposing multiple unreasonable deadlines for the claimant's work, and then chasing him about those deadlines as set out in the claimant's letter to the tribunal dated 31 July 2019 (page 103 - 105)

2. Was the conduct related to the claimant's protected characteristic, that is, being black?

3. 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?

4. If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5. In considering whether the conduct had that effect, the tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Section 13 Equality Act 2010: direct discrimination on grounds of race

6. Have the respondents subjected the claimant to the following treatment falling within section 39 Equality Act 2010, namely:

6.1 by Marion Mulvey, failing to promote the claimant to the role of manager of the sub ETF Operations team; and

6.2 by the respondent, Marion Mulvey and Sharon Bradley, rejecting the claimant's proposals for (1) morning check in October 2017, and (2) a spreadsheet monitoring tool in December 2017 or January 2018.

7. Have the respondents treated the claimant as alleged less favourably than it treated or would have treated the comparator? The claimant relies on Alexander Anderson as comparator. His projects were research commission and prism identification.

8. If so, has the claimant proved primary facts from which the tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic, which the claimant has identified as being black?

9. If so, what are the respondents' explanations? Can they prove a non-discriminatory reason for any proven treatment?

Section 27 Equality Act: Victimisation

10. The respondents accept that the claimant's grievance dated 20 November 2018 amounts to a protected act.

11. Have the respondents carried out any of the treatment identified below because the claimant had done a protected act?

11.1 On 19 December 2018 asking the claimant to remain at home while the grievance was investigated;

11.2 On 19 December 2018 by revoking his remote access to work email;

11.3 Sharon Bradley, on 18 December 2018, threatening the claimant in front of three colleagues by telling him to communicate with Alexander Anderson;

11.4 On a date after 5 December; by Stuart Cox reporting to Sharon Bradley that the claimant sent sexually explicit material by Grindr (a gay dating app);

11.5 Thereafter Marion Mulvey, Sharon Bradley and Alexander Anderson telling the claimant they would diffuse the sexually explicit material;

11.6 By Marion Mulvey, Sharon Bradley and Alexander Anderson on various occasions, diffusing the material, in particular:

a. Alexander Anderson asking for the glove picture after the claimant left running gloves behind;

b. Alexander Anderson joking about switching the claimant was known to have had a girlfriend), when performing a switch process;

c. Alexander Anderson making jokes about a hole, after the claimant commented on the promotion of Marion Mulvey;

d. On 11 December, Sharon Bradley putting a paper on the table at a one-to-one meeting with the claimant that appeared to be a photograph;

e. On various dates Marion Mulvey and her assistant looking at their phones and commenting "*it's disgusting*" and "*he wants me to use it.*"

f. Sharing the material with Stuart Cox and Dan Brown who made comments about sending pictures by Whatsapp, hole, and switch;

11.7 On 19 December 2018, telling the claimant he could not record office meetings with Lorraine Parry;

11.8 By implication, threatening the claimant with disciplinary action for presenting the grievance: Lorraine Parry wrote "I am concerned" that he had made unsupported allegations about colleagues (the claimant maintains they were supported in the 200 page document) and that she would consider later... how he had conducted himself.

11.9 Announcing Alexander Anderson's substantive promotion just after telling the claimant the grievance was not upheld (29 January 2018). The claimant says this should have been done on a different day, and before the outcome was given to him.

11.10 On 10 May 2019 suspending the claimant's work email account and blocking the claimant's incoming emails to respondent's staff email accounts.

Limitation

11.11 Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010?

11.12 Given the date the claim form was presented and the dates of early conciliation, any complaint against the first respondent about something that happened before 12 September 2018 is potentially out of time, and any complaint against the other respondents about something that happened before 25 October 2018 is potentially out of time.

11.13 Dealing with this issue requires consideration of:

a. when the treatment complained about occurred;

b. whether there was an act and/or conduct extending over a period;

c. whether time should be extended on a "just and equitable" basis.

5. The claimant was dismissed by the first respondent on 29 August 2019. The circumstances of his dismissal were not an issue before the tribunal at the hearing.

The Hearing

6. The hearing was held over the course of eight days. The claimant represented himself. The respondents were represented by counsel. The first day of the hearing was a reading day. Witness evidence was heard over the course of the following six days. At the request of the parties, we did not sit on the seventh day to enable them to prepare written closing submissions. The parties expanded on their written submissions orally on the morning of the eighth day which left time for deliberations that day.

7. For the first three days of the hearing, the tribunal was a panel of three. The employee panel member, Mr S Godencharle, was unable to sit from Monday 25 November 2019 onwards due to a family bereavement. The parties were given the option of postponing the hearing or consenting to proceed with a panel of two. They chose to continue with a panel of two.

8. The tribunal heard evidence from the claimant himself. For the respondents we heard evidence from eight witnesses in the following order:

   - Marion Mulvey, Head of Investment Operations for JPMorgan's Asset Management business in Europe, the Middle East and Africa ("EMEA") (Managing Director), cited as the second respondent

   - Sharon Bradley Team Manager for the Beta Office Team – EMEA (Vice President), cited as the fifth respondent

   - Alexander Anderson, Business Analyst in the Beta Middle Office – EMEA (Vice President), cited as the sixth respondent

   - Lorraine Parry, Head of Corporate Employee Relations and Diversity & Inclusion for JPMorgan Chase & Co (Managing Director)

   - Stuart Cox, Analyst in the Beta Middle Office – EMEA (Associate)

   - James Hardy, former HR Business Partner at JPMorgan Chase & Co (Vice President), cited as the fourth respondent

   - Patrick Thompson, Chief Executive Officer of JPMorgan's Asset Management business in EMEA (Managing Director), cited as the third respondent

   - Philip Myers, Global Head of Credit Markets Operations, Fixed Income Securities Trade Support and Research Operations in the Corporate and Investment Bank of JPMorgan (Managing Director)

9. At Ms Bradley's request, and with the consent of the claimant, a screen was erected between her and the claimant when she was giving her evidence. The request was made on the basis that this was an adjustment required to support Ms Bradley due to a mental health condition. As the claimant did not object, the panel agreed to this without the need to see medical evidence.

10. There was a main trial bundle of documents made up of four lever arch files (1535 pages) and an additional bundle (115) pages in a ring binder that had been prepared by the claimant. The respondent did not object to the additional bundle.

11. We admitted into evidence some additional documents from both parties with the agreement of the other. We read the evidence in the bundles to which we were referred. We refer below to the page numbers of key documents that we relied upon when reaching our decision.

12. The respondent provided a chronology and a suggested timetable at the start of the hearing. As noted above, both parties provided written closing submission which they expanded upon orally.

13. We explained the reasons for various case management decisions carefully as we went along, including our commitment to ensuring that the claimant was not legally disadvantaged because he was a litigant in person. We regularly visited the issues and explained the law when discussing the relevance of the evidence. We also sought to ensure that the claimant was not disadvantaged because French, rather than English, is his first language.

Findings of Fact

14. The tribunal's primary findings of fact are set out below. Where we have had to reach a conclusion in relation to disputed facts, we have made our findings on the balance of probabilities. The inferences that we have drawn and our overall conclusions on the specific matters are set out in the analysis and conclusions section.

15. The parties will notice that not all the matters that they told us about are recorded in our findings of fact. That is because we have sought to limit them to points that we consider are relevant to the legal issues. We have sought to consider all of the evidence and arguments put forward by the claimant, even those where we doubted the relevance of these.

16. We begin with a general background and overall chronology section and then provide our detailed findings in relation to the specific matters that are the subject matter of the claimant's complaints.

Background and Basic Chronology

17. The first respondent is part of JPMorgan Chase & Co, a large global financial services firm. The individuals named as respondents are all current or former employees of JPMorgan Chase & Co.

18. By way of background, we note that in addition to having job titles expressing what they do, employees at JPMorgan Chase & Co are also given corporate titles. The terms used represent the level of seniority of the individuals and are therefore effectively grades. For the purposes of this claim, we are concerned with four levels. The most junior is Associate. This is followed, in order of seniority, by Vice President, Managing Director and Executive Director. We have referred to these corporate titles where relevant.

19. The claimant commenced employment with the first respondent on 12 July 2017 as a member of the Beta Middle Office – EMEA. His offer letter and contract dated 14 June 2017 were contained in the bundle (145 – 165). The claimant was employed with the corporate title of Associate. There is a dispute as to his correct job title which is considered further below. We note that the job title used in his offer letter was Beta Analyst (145).

20. The claimant is black. He is also French, but does not rely on his nationality as a basis for his claims.

21. The Beta Middle Office was created in or around April 2017 to support investment desks managing beta investment strategies. One of the main financial products that the Beta Middle Office was concerned with was Exchange Traded Fund products ("ETFs"). Members of the Beta Middle Office are required to liaise with members of other teams within the first respondent's business including client facing teams such as Capital Markets and Platforms. They also work with teams carrying out support functions such as Technology.

22. The claimant reported to Sharon Bradley, Team Manager for the Beta Office Team – EMEA (Vice President). Ms Bradley reported to Denis Cohen, Head of the Beta Middle Office for EMEA (Vice President) who in turn reported to Marion Mulvey, Head of Investment Operations for JPMorgan Chase & Co's Asset Management business in EMEA (Managing Director). All three individuals were based in London and this was where the claimant was based. All three individuals are white.

23. The global Beta Middle Office was only a small part of Ms Mulvey's overall role. She had eight direct reports in addition to Mr Cohen and was partly responsible for managing four other London based managers.

24. We note here that Ms Mulvey told the tribunal that her seniority means that she did not normally get involved in day-to-day interactions with junior employees such as the claimant in her role. We accept her evidence on this point. We note, however, that her desk was located in London next to the Beta Middle Office team and therefore it was natural for her to have interaction with members of the Beta Middle Office team, when she was in the office, which included exchanging pleasantries with the claimant.

25. When first established, the London Beta Middle Office team consisted of Mr Cohen, Ms Bradley, Stuart Cox, Beta Middle Office Team Leader and two people who reported to Mr Cox. It expanded through the recruitment first of Kanelous Kanellopoulos (Associate) in June 2017 and the claimant (also an Associate) in July 2017. Mr Cox, Mr Kanellopoulos and the other two team members are white.

26. The claimant was recruited because of his experience in ETFs and his knowledge of how to put them together. The first respondent launched its EMEA ETFs offering in the autumn of 2017 and the claimant's background and experience were enormously important for this. The claimant developed a number of bespoke technical solutions which assisted with the launch.

27. In fact, the pressure of the launch meant that the Beta Middle Office team ended up with a much higher number of bespoke and manual processes and user tools than was desirable. By the end of 2017, the team was expected to introduce more scalable processes and/or make better use of the first respondent's existing technology platforms. A strategy workshop was held in February 2018 which considered, amongst other things, how this could be achieved.

28. In May 2018, Alexander Anderson, an existing employee of the first respondent, was recruited to the Beta Middle Office team in the role of Business Analyst. He had the corporate title of Associate and reported to Ms Bradley. Mr Anderson is white.

29. There is a dispute between the parties as to how the team was structured at this time which is considered further below.

30. In September 2018, Mr Anderson became responsible for supervising the day to day work of the claimant and Mr Kanellopoulos. The claimant was very unhappy about this. He believed that Ms Mulvey had decided to promote Mr Anderson over him because Mr Anderson was white and he was black. The claimant did not, however, make a complaint at this time.

31. During the course of October and into November, the claimant formed the view that Mr Anderson was harassing him by deliberating setting him unreasonable deadlines for the completion of work. He believed that the harassment was being orchestrated by Ms Mulvey.

32. On 14 November 2018, the claimant copied HR Business partner, James Hardy into an email he sent to Mr Anderson accusing Mr Anderson of harassing him (357).

33. On the same day, the claimant also emailed Patrick Thompson, Chief Executive Officer of JPMorgan's Asset Management business in EMEA (Managing Director) and Tia Counts, Global CIB and EMEA head of Advancing Black Leaders on the same day. In his email to them (375 – 376) the claimant said that he believed that the promotion of Mr Anderson constituted direct discrimination against him on the grounds of his nationality and colour. He also highlighted that he felt he was being harassed.

34. Mr Hardy met with the claimant several times in response to his email of 14 November 2018. Over the course of around a week, the claimant decided that he wanted to pursue a formal grievance. He confirmed this to Mr Hardy by an email at 07:47 on the morning of 20 November 2018 (480) and submitted the first draft of his formal grievance later that same day (479). He indicated that he believed that Ms Mulvey was responsible for discriminating against him and also that she was orchestrating Mr Anderson's campaign of harassment against him.

35. The claimant subsequently refined and added to his grievance. He produced two additional versions of it dated 1 December 2018 and 16 December 2018.

36. In addition to his original complaints, he accused Ms Mulvey, Mr Anderson, Ms Bradley and Mr Hardy of colluding to prejudice the grievance process. He also accused Mr Hardy of deliberately giving him false information (in an email dated 28 November 2018) about tribunal deadlines in an attempt to make him resign. He accused Mr Thompson of colluding in this attempt.

37. The claimant began emailing a group of around 15 senior respondent employees at around this time with regular updates on his complaints.

38. Ms Parry, Head of Corporate Employee Relations and Diversity & Inclusion for JPMorgan Chase & Co, was appointed to consider the grievance. She had a number of meetings with the claimant in December 2018 to better understand his concerns.

39. The claimant had remained working in the Beta Middle Office Team since submitting his grievance, but following events that took place on 18 December 2018 and a meeting with Ms Parry the following day, he took a period of paid leave from 19 December 2019. His remote access to the respondent's IT systems was removed from this date, but he continued to have access to emails.

40. The claimant did not return to work and continued to be on paid leave until he was eventually dismissed on 29 August 2019.

41. Ms Parry delivered the outcome of the claimant's grievance to him on 29 January 2019. The grievance outcome report ran to 12 pages (957 - 968). Ms Parry did not uphold any aspects of the claimant's grievance. She expressed concerns about the nature of some of his allegations and about some of his actions in the concluding paragraphs of her grievance outcome.

42. On 29 January 2019, JPMorgan Chase & Co released details of its annual round of promotions by way of corporate title. Mr Anderson was one of the employees that was promoted. He became a Vice President.

43. The claimant submitted an appeal against the grievance findings on 10 February 2019 (970 – 987). Mr Philip Meyers, Global Head of Credit Markets Operations, Fixed Income Securities Trade Support and Research Operations in the Corporate and Investment Bank of JPMorgan was assigned to deal with it, supported by a senior HR professional Mr Peter Clews (Executive Director).

44. In early May 2018, the claimant raised fresh allegations against Ms Mulvey, Ms Bradley and Mr Anderson, essentially saying that they had tried to intimidate him into withdrawing his grievance by threatening to share sexually explicit material they had obtained picturing the claimant. The claimant initially refused to provide details of this allegation, but eventually did so on 19 July 2018 (1259 – 1262).

45. The first respondent decided to remove the claimant's access to the respondent's email system in early May 2018. This decision was communicated to the claimant on 10 May 2019 (1096). The respondent also subsequently blocked emails from the claimant's personal email account and other email accounts he set up when he tried to use these to get around the block.

46. Although Mr Meyers sought to meet with the claimant for the purposes of his grievance appeal, a meeting did not take place. Mr Meyers delivered the appeal outcome to the claimant on 23 July 2019. Mr Meyers upheld Ms Parry's findings in full (1263 – 1277).

47. An investigation into the fresh allegations concerning the sexually explicit material was conducted by Beth Austin, Employee Relations, who found them to be unproven in a report dated 19 August 2019 (1302 – 1305).

Issue 6.2 - Projects

48. The first specific matter we have considered concerns projects undertaken by the claimant and his colleagues.

49. The claimant cited two projects that he says he proposed, but were initially rejected by Ms Mulvey and Ms Bradley because of his race. He says that the projects were only implemented when he proposed them to internal clients directly. He alleges that, in contrast, his white colleagues, Mr Kanellopoulos and Mr Anderson, had no difficulty having projects they proposed approved.

50. The claimant cites three further examples of projects that he put forward, which he says he was not given permission to implement. These are cited as being relevant to his claim relating to Mr Anderson's promotion, rather than as a stand-alone claim of direct discrimination. The relevance of the projects, according to the claimant, is that Mr Anderson's career progression was linked to his ability to demonstrate that he had successfully implemented projects certain projects. The claimant asserted that had he been allowed to undertake the projects he had proposed, this would have enhanced his own promotion prospects.

51. The claimant referred to the projects in his grievance (782) and provided a documentation which he asserted supported his position. Ms Parry considered both whether the respondent's actions in relation to projects constituted direct discrimination against the claimant on the grounds of race in isolation, and whether there was any link to the claimant's career progression. She rejected both complaints (957 – 960). The claimant appealed against her findings (973 – 976). Mr Meyers rejected his appeal (1267 – 1268).

52. The name given to the first project by the claimant is "Morning Check". He says he suggested this project in October 2017 to Ms Bradley who rejected it saying that Ms Mulvey was not happy for the claimant to do Capital Market work. The name given to the second project cited by the claimant is the "spreadsheet monitoring tool" which he says he proposed in December 2017 or January 2018.

53. Ms Mulvey's evidence, which we accept, is that because she would not get involved in the detail of day-to-day operations, she was not aware of the particular projects cited by the claimant. This was true of the claimant's projects as well as any of the projects proposed by Mr Kanellopoulos and Mr Anderson.

54. Ms Mulvey acknowledged, however, that she had expressed concerns about the claimant offering to doing work for the Capital Markets team. This was in July 2018. This followed the claimant sending an email, dated 3 July 2018 (page 229) to the Capital Markets team about an idea he had had while travelling into work that morning. Ms Mulvey's main concern about this email was that the claimant had not discussed his idea with his line manager before approaching the other team's manager. In addition, she questioned why the claimant was suggesting a manual process for the Capital Markets team when the priority had become automation and scalability. We do not consider this email is particularly pertinent to the rejection of the October 2017 project.

55. When giving her evidence, Ms Bradley said she believed that she understood which projects the claimant was citing, but she could not recall any conversations with him about them, however. She categorically denied that the claimant's race would have been a factor she would have taken into account when considering whether or not to approve any projects proposed by him.

56. Our finding is that the claimant was permitted to work on the projects. By his own evidence (812, 813) the projects were implemented. The only evidence before us that supported the claimant's claim that the projects were initially rejected was the claimant's witness evidence. His assertion was not corroborated by any other evidence.

57. Turning to the other projects cited by the claimant as relevant to his promotion prospects, the first of these was the project identified in the email of 3 July 2018 referred to above. The respondent's explanation for not permitting the claimant to pursue this project idea was because it was a manual process, the development of which did not appear to be in line with the desire for automation and scalability. We find this explanation to be genuine as it is supported by the evidence of the change in strategic direction from the start of 2018.

58. It is relevant to note here that Ms Bradley was very unhappy about the claimant's actions in sending this email. He sent it to directly to the managers of other teams without any prior discussion with Ms Bradley or Mr Cohen. Ms Bradley did not raise this issue as a concern with the claimant directly, but did mention it to Ms Mulvey.

59. The second project was a suggestion, made by the claimant in an email of 23 October 2018 regarding off shoring elements of the respondent's business to India with him personally supervising this (289). It is relevant to note that, as with the email dated 3 July 2018, the claimant had bypassed the normal route of communications by sending the email directly to managers of other teams without any prior discussion with Ms Bradley or Mr Cohen. On this occasion he did not even copy them into his email.

60. One of managers who received the claimant's email, responded that the claimant's suggestion represented an interesting proposition, but

diplomatically observed that that he assumed that it had been discussed with Mr Cohen, Mr Bradley and Ms Mulvey "*as per the usual protocol*". This prompted the claimant to speak to Mr Cohen later that day and to request a meeting with Ms Mulvey the next day. Mr Cohen and Ms Mulvey discussed the email using Lync (the first respondent's messaging service) later that day (292 – 293).

61. In the Lync chat, Ms Mulvey explained that the claimant had approached her the previous week and set out details of what she had discussed with him. She explained that the claimant had wanted to discuss his prospects for progression, which she presumed had been brought about by the change in reporting line into Mr Anderson. Within that conversation the claimant had raised the possibility of a move to Asia. Ms Mulvey goes on to note as follows:

"*given I knew [Ms Bradley] wanted to talk to him on performance…I said to him that he clearly has the technical smarts, but still needed to work on professional maturity, how he interacts with people, comms … and so for him to progress he needs to listen to and trust [Ms Bradley] who has his best interests at heart." (292)*

62. Ms Mulvey adds "*I also said to him that maybe a mobility might be a good answer down the road as there may not be room for more people managers etc in the team…." (292)*

63. The claimant forwarded the offending email (i.e his email sent bypassing his managers) to Ms Mulvey, the following day (299). She noted in her reply to him sending her this that she had previously spoken to him about professional maturity. She stated that in her mind, when he sent the email it was a prime example of him failing to show such maturity as he had completely bypassed the expected chain of command. She pointed out that he had now done this twice, first by sending the email to the other managers directly and then by sending it to her and bypassing Mr Cohen and Ms Bradley (299).

64. Ms Bradley spoke to the claimant on the day he sent the email (23 October 2018). She wanted to follow the discussion up in writing and prepared a draft of an email which she ran past Ms Mulvey over the course of 24 October 2018 (294 and 295). Ms Mulvey suggested some additions to the email and Ms Bradley sent it to the claimant later that same day (301). We note here, that Ms Mulvey made very few amendments to the email and we find nothing untoward about Ms Bradley seeking input from her.

65. Our finding is that, notwithstanding the fact that Ms Mulvey, Mr Cohen and Ms Bradley were unhappy about the claimant's communication of his idea, they did not reject it outright. The first respondent was prepared to explore the idea further with the claimant. He was invited to develop his initial proposal, but failed to do so. We note that the first respondent felt that his proposal was more to do with him making a request about his own mobility than a general business proposition.

66. The final (and third) project cited by the claimant as being a project proposal he had rejected was not, in our view, a project at all. In an email dated 6 December 2017 which the claimant sent to the respondent's technology team, he simply volunteered to assist them with some C++ coding work (809). The first respondent accepts that the claimant was not permitted to do this proposed work. Ms Bradley was unhappy with the claimant sending this email because he should have been focussing on carrying out work for his own team and should not have offered to help the technology Team without first speaking to her. This was an understandable reaction from Ms Bradley.

67. The claimant cites two examples of projects proposed by Mr Anderson and one example for Mr Kanellopoulos, which he says were approved. Ms Bradley was asked about these matters by Mr Meyers at the time he was conducting the appeal into the claimant's grievance, In an email written to Mr Clews on 12 May 2019 (1256), she explained that none of these so-called projects were actually projects assigned to members of her team. She thought of them as pieces of work which were business improvement suggestions put forward by Mr Anderson and Mr Kanellopoulos in support of scalability or to reduce manual risk.

68. Mr Anderson confirmed, in his direct evidence to the tribunal, that Ms Bradley's interpretation of the two matters for which he was responsible was correct. Having heard his description of the work involved and the actions he undertook, we are satisfied that the matters did not constitute projects and accept his and Ms Bradley's evidence in preference to that of the claimant on this point. We find that it is likely that this was also the case for the work undertaken by Mr Kanellopoulos.

69. We also accept the evidence of Ms Mulvey and Ms Bradley that the work Mr Anderson undertook on these matters was not taken into account when considering if he should be promoted to Vice President. This is explained further below.

70. We note that the claimant provided no explanation as to why he did not pursue an earlier grievance or claim about that he was subjected to direct discrimination in connection with the projects dating back to October 2017 and December 2017/January 2018.

Issue 6.1 - Mr Anderson's Recruitment and Promotion

Initial Recruitment to Beta Middle Office Team

71. Mr Anderson was an existing employee of the first respondent, with over 10 years' service, when he joined the Beta Middle Office Team in May 2018. He responded to an internal advert for the role of Business Analyst. The role was a new role at Associate level and was also advertised externally. We were provided with a copy of the role description used (130 – 131).

72. The decision to bring Mr Anderson into the team was made by Ms Bradley and Mr Cohen. Part of the reason for appointing Mr Anderson to the role

was his employment history with the first respondent. He had initially been employed in the Trade Support Team where he had impressed his managers. This led to him being given an opportunity, towards the end of 2016 to supervise a team of three people. It also led to him being nominated for a select leadership programme. In addition, Mr Anderson had had consistently high appraisal ratings.

73. At this time, Mr Anderson was on the first respondent's "radar" for promotion. The first respondent operates a system of identifying employees that it considers have the potential to be promoted to the next corporate title (grade). A list of potential candidates is collated in mid to late Spring each year. There are then one or two discussions called "talent reviews" among senior staff where they discuss the individuals identified and review if they are on track for promotion. Usually it takes two years from initial identification to promotion. Actual promotions are announced on an annual basis in January each year. This is a coordinated process across JPMorgan Chase & Co globally.

74. In April 2017, Mr Anderson's name had been included on the EMEA Operations promotion "radar". This followed a nomination by his manager at the time identifying him as a potential candidate for promotion from Associate to Vice President in January 2019 (142-144). His name continued to be on the first respondent's radar for promotion in March 2018 (199-202).

75. When Mr Anderson applied to join the Beta Middle Office Team, Ms Bradley and Mr Cohen informed Ms Mulvey, out of courtesy, that he was interested in joining them. Ms Mulvey was very pleased about this. She was aware of Mr Anderson though her involvement in the talent review discussions and because she had met with him once, at his request, to give him some informal careers advice. Ms Mulvey's formal approval of the appointment was not required.

76. According to Ms Bradley, Mr Anderson settled into the team and contributed very well from the beginning. He was able to grasp how ETFs worked incredibly quickly and was proactive in considering appropriate solutions to the operations issues the team were dealing with.

Was he promoted, by whom and when?

77. In August 2018, Mr Cohen and Mr Bradley asked Mr Anderson to undertake additional supervisory responsibilities over the claimant and Mr Kanellopoulos. He began to do this from mid-September onwards. The change was perceived by the claimant as a promotion of Mr Anderson to the role of manager. We find that it was correct for him to take this view.

78. The decision was prompted as a result of Mr Cohen's plan to retire in January 2019. In May 2018, Mr Cohen had reduced his working hours to three and a half days a week with a view to leaving altogether the following year. It was anticipated that Ms Bradley would take over Mr Cohen's responsibilities as Head of the Beta Middle Office. This created the

problem of how she would manage to carry out his responsibilities as well as her own, however.

79. During the course of the summer of 2018, Ms Bradley and Mr Cohen decided that they would ask Mr Anderson to pick up the additional responsibility of supervising the day-to-day work of the claimant and Mr Kanellopoulos. They anticipated that this would free up more of Ms Bradley's time to take over Mr Cohen's responsibilities. They planned to phase this in over the final quarter of 2018 so that by the time Mr Cohen retired in January 2019, the new way of working would be fully established in the team.

80. Ms Mulvey was not involved in the making the decision to give Mr Anderson additional supervisory responsibilities. This kind of change would not need Ms Mulvey's approval. Although Ms Bradley and Mr Cohen did discuss their proposal with Ms Mulvey, who confirmed that she was happy with it, we do not consider this amounted to her making the decision. It was no doubt sensible to involve her in the discussion about succession arrangements on Mr Cohen's retirement. Mr Anderson told us that all of the discussions he had about the new supervisory responsibilities were with Ms Bradley and Mr Cohen rather than Ms Mulvey.

81. Mr Anderson's new responsibilities did not come with a change in job title incorporating the word manager. In addition, they did not include taking over line management type responsibilities, such as approving annual leave requests or conducting appraisals. Instead, he simply became responsible for the day-to-day supervision of the claimant and Mr Kanellopoulos. He was, however, understood to be their manager. Ms Mulvey described Mr Anderson as becoming the supervisor/manager of the claimant and Mr Kanellopoulos when giving her evidence.

82. We find that it is accurate to categorise the decision to give Mr Anderson additional supervisory responsibilities as an "informal" promotion, to distinguish it from the subsequent formal promotion of him when he was given the the corporate title of Vice President on 29 January 2019. The formal promotion was the result of an entirely separate decision making process from the decision made to give him additional supervisory responsibilities. In fact, we were told and accept that, the additional supervisory responsibilities did not have any influence on the decision to formally promote Mr Anderson to Vice President. This was also true of the so-called projects he had undertaken since arriving in the Beta Middle Office team.

83. Although the decision to informally promote Mr Anderson was taken in August 2018, it was not communicated to the claimant until sometime in September 2018. It has been necessary for us decide if this was before or after 12 September 2018.

84. Ms Bradley's evidence was that she and Mr Cohen met with Mr Kanellopoulos and the claimant and told them of the change in person.

She believed this was in the first week of September 2018, i.e. between 3 and 7 September 2018.

85. We note that the claimant sent an email to Mr Anderson on 21 September 2018 welcoming him to his new role (240). The claimant's evidence was that he sent this about a week after finding out about the informal promotion. We prefer the claimant's evidence on this point, as it is corroborated by a contemporaneous written document. It is plausible that the email was sent shortly after after the claimant learned about the change. Our finding is therefore that the claimant learned of the informal promotion after 12 September 2018.

Process and reasons for informal promotion

86. As noted above, the respondent did not adopt a competitive process in connection with Mr Anderson's informal promotion. He was simply asked to take on the additional responsibilities by Ms Bradley and Mr Cohen. Ms Parry, in her capacity as Head of Corporate Employee Relations and Diversity & Inclusion confirmed that the first respondent would not require that this type of informal promotion would not need to be advertised, either internally or externally, and HR would not need to get involved.

87. Ms Bradley and Mr Cohen did not speak to the claimant or Mr Kanellopoulos about whether they might want to be considered for the informal promotion. They told us did not even discuss the possibility of Mr Kanellopoulos or the claimant taking on the additional responsibilities between themselves. No contemporaneous documentation was created at the time comparing the relative merits of the claimant, Mr Anderson and Mr Kanellopoulos because this exercise was not undertaken. As Ms Bradley put it, "This was because *it was obvious to us that [Mr Anderson] was the best placed person.*"

88. The claimant argued in his grievance that he should have been promoted because he was more experienced than Mr Anderson in the area of ETFs. He told the tribunal that his correct job title was ETFs Operations Specialist, rather than Business Analyst and that the respondent was seeking to reclassify him as a Business Analyst in order to try and justify Mr Anderson's promotion, when he, the claimant had the superior ETFs knowledge and experience.

89. According to the claimant, this was because, prior to Mr Anderson joining the team, he and Mr Kanellopoulos formed a sub-team of two associates who dealt specifically with ETFs within Beta Middle Office team. He saw himself and Mr Kanellopoulous, as a separate team to the staff managed by Stuart Cox and Mr Anderson as separate again.

90. Ms Bradley accepted in her evidence that the claimant was not known as a a Business Analyst, but always called himself an ETFs Operations Specialist and this is how she would have referred to him. She did not, however, accept that his assertions about how work was split between the Beta Middle Office staff.

91. Our finding is that the organogram created in February 2019, and contained in the bundle at page 969, accurately reflects the split in roles in the team. There was a sub-team of Business Analysts (rather than ETFs specialists) made up of Mr Anderson, Mr Kanellopoulos and the claimant whose primary focus was project work rather than business as usual tasks (BAU). The other sub team, managed by Mr Cox, was primarily focussed on BAU. The position was, however, that both sub teams did other work such that the Business Analysts did undertake various BAU tasks and the other sub team did do some project work from time to time.

92. We do not consider this finding is contradicted by the fact that Mr Anderson did not undertake some of the BAU checks undertaken by Mr Kanellopoulos and the claimant, in a rota alongside the BAU sub-team members. This was an example of an area of cross over between the sub teams. The rota had been in place for a significant period of time before Mr Anderson joined the Beta Middle Office Team. It was envisaged that the checks would become automated within a relatively short period of time and so it made sense for him not to be trained to do them.

93. When interviewed by Ms Parry as part of her grievance investigations, Ms Bradley accepted that the claimant was an ETFs specialist, but said that this was not relevant in deciding who should be for asked to become the supervisor. She considered the team needed someone with more generalist experience and a wider knowledge of the respondent's systems. She and Mr Cohen felt that the experience that Mr Anderson had gained from working elsewhere in the respondent's business, combined with his excellent record, was exactly what they needed for the role of supervisor.

94. In her mind, Ms Bradley had ruled Mr Kanellopoulos out for the role for supervisor because although she considered him to be a good, solid performer she felt he could lack confidence. She felt sure that he would have agreed with her that he was not ready to take on additional supervisory responsibilities.

95. Her reasons for ruling the claimant out of consideration for the informal promotion, were twofold. First she believed that his strength was his technical expertise and that he did not have the generalist experience of Mr Anderson. Second, she had concerns about aspects of the claimant's performance which she considered were highly relevant.

96. The particular concerns cited by Ms Bradley were the way the claimant communicated, his interaction with people and the fact that he did not always appreciate the need to meet deadlines or to communicate clearly when he knew that he was not going to meet a deadline. These concerns were not held by her alone, but were shared by Mr Cohen and Ms Mulvey.

97. In contrast, they felt that Mr Anderson was proving to be an excellent performer in all these areas, namely communication, interaction with people and meeting deadlines which they considered were key to being a good supervisor.

98. We have considered whether the shared view of the claimant's experience and performance was fair and justified, in order to explore whether it may have been tainted by conscious or unconscious racial bias.

99. With regard to the claimant's experience, we note that the respondent did not refer to his CV when making the decision to promote Mr Anderson. Had it done so, it would have realised that he had a similar length of experience of working in financial services, 11 years, as Mr Anderson. This was in a variety of different organisations and not in the first respondent's business. Although his recent experience, since 2014, was focused on ETFs products, his earlier career did include broader experience including as a trader.

100. We find that the critical experience the claimant lacked when compared to Mr Anderson, was a broader understand of the first respondent's systems and working practices. It was the fact that Mr Anderson had this particular experience, in the context of the requirement for the Beta Middle Office team to work closely with other teams within the first respondent's business, that meant he was valued so highly by Ms Bradley and Mr Cohen.

101. With regard to his performance, the claimant himself accepted that Ms Bradley had had reason to speak to him about the need to meet deadlines on various occasions during the time they had worked together. This confirms that her view that he did not always appreciate the need to meet deadlines was justified.

102. The claimant also accepted that in his early employment he had experienced difficulties arising from the way he communicated with colleagues. He believed, however, that this only arose in the first few months of his employment, while he was getting used to the way things worked at the respondent and did not continue.

103. The bundle contained a number of feedback / performance reviews of the claimant, acquired as a result of the claimant's 360 appraisal process. These are generally extremely positive. There are some critical comments in them about the claimant's communication style, but these do date back to 2017 when he was a fairly new starter. The value of such 360 feedback reports for the purposes of the tribunal process is somewhat limited as we are we did not hear from the people providing the feedback.

104. Ms Bradley and Ms Mulvey said in their evidence that they were becoming increasingly concerned about the claimant's performance during the course of 2018. They spoke of a general concern regarding the claimant's capacity and willingness to adapt to the new strategy of moving away from bespoke manual processes. The email he sent on 3 July 2018 (229) (referred to above in paragraph 54) had highlighted this as it contained suggestions about an manual process.

105. The key concern they had, however, concerned the claimant's approach to communication and team working. The email of 3 July 2018 had

highlighted this as it was an example of where the clamant had failed to have discussions with his line manager before sending an email directly to others in the business.

106. Ms Mulvey had spoken to the claimant directly in or around August / September 2018 about his communication. The conversation arose in the context of the claimant's interest in becoming a pension trustee. Ms Mulvey spoke to him about his approach. She felt that he was demonstrating a lack of professional maturity and told him this at the time.

107. Concerns about the claimant's performance led Ms Bradley and Mr Cohen to take advice from HR about how best to address their concerns about the claimant's performance. They met with James Hardy, HR Business Partner on 15 October 2018. We note that the decision to promote Mr Anderson had been taken and implemented by this time.

108. Our finding is that this meeting was likely specifically triggered by the claimant accusing Mr Anderson of harassment on 12 October 2018. However, it came about because Ms Bradley and Mr Cohen had some long standing, but low level, concerns about the claimant's approach to communication and his attitude towards team working. They had not previously sought advice from HR, because his attitude towards communication and being a team player had generally been tolerated as being just part of his personality. These qualities did not prevent him from being good at his primarily technical role.

109. When the claimant first accused Mr Anderson of harassment on 12 October 2018, Mr Cohen and Ms Bradley decided it was appropriate to include HR. Ms Bradley was also concerned about the claimant's attendance at around this time. The claimant had taken a slightly higher than normal (for him) number of days off for 24 hour /48 hour type sickness absences. Ms Bradley was aware that the claimant's relationship with his girlfriend had come to an end. She was concerned that there may be a underlying reason for the sickness absence and also, that this might be affecting his behaviour in the workplace. She wanted to support him around this because she herself has a history of mental ill health. Ultimately, the claimant's unexplained sporadic illnesses continued culminating in Ms Bradley suggesting a referral to occupational health.

110. We note that Mr Cohen makes a reference to the claimant's behaviour and team ethic improving in a Lync chat he had with Mr Anderson on 14 November 2018 which is referred to in more detail in paragraph 281. This demonstrates that Mr Cohen held long term low level concerns about the claimant's behaviour and team approach.

111. We also note that Mr Cox told the tribunal in his evidence that the claimant was not a team player and often abrasive towards his colleagues. This is discussed further at paragraph 242 below.

112. Ms Bradley met with the claimant 2018 in response to the India offshoring email which the claimant had sent earlier that day (289) referred to above

in paragraphs 59 - 65. As noted above, she followed the meeting up with an email.

113. The email (301) records the discussion between Ms Bradley and the claimant in some detail. Ms Bradley expresses her concern about the email and in particular the fact that the claimant didn't approach her first as his direct line manager to discuss his career aspirations/ideas, having first raised the idea outside of the Ops chain of command, then speaking to Ms Mulvey and Mr Cohen "*before eventually discussing with me.*"

114. The discussion had also covered the claimant's level, career progression and network. Ms Bradley provides some helpful suggestions to him and notes:

"*Yesterday was the first time that you mentioned to me that you were interested in managing a team. If this is your career goal, you should be raising this as part of our regular catch ups and adding to your objectives in "My Development" and then we can work together to set concrete objectives to help you towards that goal."*

115. The claimant responded positively to the email and thanked Ms Bradley it. He did not object to anything she said and simply requested a further discussion about the possibility of a secondment to India for 6 months (301).

116. We find that the respondent did have genuine, and justified, concerns about certain aspects of the claimant's performance. These included his ability to meet deadlines and communicate in relation to meeting deadlines and his approach to teamwork and ethics and communication in connection with this.

Issue 1.6 - Alleged harassment by Marion Mulvey, Sharon Bradley and Alexander Anderson between 3 October 2018 and 15 November 2018

117. The claimant alleges that Mr Anderson harassed him, between 3 October 2018 and 15 November 2018 by imposing multiple unreasonable deadlines on him and then chasing him about these deadlines. He also alleges that this was orchestrated / contributed to by Ms Bradley and Ms Mulvey.

118. The claimant referred to this harassment in his grievance (783 - 786) and provided documentation which he asserted supported his position. That documentation was before the tribunal and is considered below. We note that Ms Parry rejected the claimant's grievance on this point (960 – 962). The claimant appealed against her findings in his appeal (982 - 983) but his appeal was not upheld by Mr Meyers (1272).

119. Although the claimant was immediately unhappy about Mr Anderson's new role and believed that it was an example of direct race discrimination, he says he initially resolved to accept it rather than make a complaint. On 21 September 2018 he emailed Mr Anderson to welcome him to his new role

(240). He also provided information to Mr Anderson about his view of his role and expressed an interest in working more closely with him.

120. Mr Anderson had been informed by Ms Bradley that the claimant did not always keep her updated about his work and sometimes missed deadlines. She had suggested to Mr Anderson that this was something he should keep an eye on.

121. Mr Anderson accepted in his evidence that although he had worked in the same team as the claimant for around three months at this time, he had not worked with him directly. His knowledge of the claimant at this point was gleaned from his observations at weekly team meetings and on group emails. He viewed the claimant as someone who would miss deadlines or provide incomplete information to his managers.

122. Mr Anderson planned to have regular weekly catch-ups with the claimant and Mr Kanellopoulos, but also for there to be regular dialogue in between these occasions. He explained that although they may be assigned to the same project overall, they worked in relative silos in relation to particular tasks and he wanted to ensure that he could retain an overview of the sub-team's work to be able to report back to Ms Bradley and Mr Cohen.

123. Mr Anderson said that he endeavoured to treat the claimant as he would expect to be treated himself. He explained that he had found it helpful when one of his managers provided him with very clear written information with regard to deadlines and expectations of what his work should include. He therefore adopted this strategy with the claimant via the use of email.

124. Mr Anderson also created a log to capture details of the work being undertaken by the claimant and Mr Kanellopoulos, that he wanted to ensure was regularly updated.

125. Mr Anderson's evidence was that it was immediately obvious to him that the claimant was not happy with the fact that he, Mr Anderson, had been given the additional supervisory responsibilities. He said that the relationship between them began to deteriorate immediately.

126. It appears that the two colleagues were not close prior to this, in any event. When the claimant asked Mr Anderson if he recalled any times when, prior to September 2018, they had chatted in the office about non-work matters, Mr Anderson struggled to provide very many examples.

127. As noted above, Mr Cox told the tribunal that the claimant "*was abrasive, not really a team player and antagonistic towards others*" and that Ms Bradley, Mr Cohen and Ms Mulvey knew that he was like this. Mr Anderson did not express this view himself to us.

128. The first email cited by the claimant as being part of Mr Anderson's alleged campaign of harassment is an email dated 3 October 2018 from Mr Anderson to him sent at 11.10 am (246). The email was about an ongoing project (TCPT testing). Mr Anderson asked the claimant to undertake a

piece of work and said "*Can you complete this by the end of the week?*" The claimant replied at 11:18 am to say "*Yes, we need something like that and yes I can do it*." He added that from his experience working on something else he "*would expect a result more next week as it is a bit less straightforward than we naturally think it is*" and provides some explanation for his view. Mr Anderson replies "*Ok, can you provide me with you draft by the end of next week*." (246)

129. The claimant says that the email contains an unreasonable request as Mr Anderson knew that the work should take considerably longer than a few days. This is not evident from the exchange. Our finding from reading the email exchange are that Mr Anderson suggested to the claimant that he undertake a piece of work that the claimant agreed was valuable and useful. The timescale for completion of the piece of work was suggested by the claimant and agreed by Mr Anderson.

130. The next email cited by the claimant is an email of 11 October 2018 sent at 4.32 pm regarding some testing (856). Mr Anderson asked in it why a particular type of testing was not undertaken when the claimant re-reviewed the TCPT file/AP Blotter. Mr Anderson indicated that he would like to speak to the claimant separately to understand this.

131. The claimant alleges that it was unreasonable for Mr Anderson to want to speak to him about this matter and he felt intimidated by the suggestion of a separate conversation.

132. The tribunal's finding is that the email was a perfectly reasonable communication. In his email to the claimant (which we note was sent solely to the claimant), Mr Anderson specifically stated:

"Will speak to you separately on this, but wanted you to gather your thoughts first.

133. We interpret Mr Anderson's email as demonstrating a good approach to management. He was clearly concerned that the claimant had not undertaken an important task. Rather than ambush him with this concern, he emailed him privately to allow the claimant time to prepare for an essential conversation that needed to take place. Mr Anderson was giving the claimant a useful "heads-up."

134. The next exchange between the claimant and Mr Anderson about which the claimant complains is a Lync exchange that took place on 12 October 2018.

135. The claimant was on the rota to undertake early morning checks that day and working remotely from home. The practice of the team was that, as the early morning checks had to be completed before 8 am, staff could perform them at home by logging on remotely. On this occasion, there was a problem with the checks, and they were unable to be completed in the usual timeframe.

136. The Lync exchange (280 - 281) records that Mr Anderson contacted the claimant and asked him to join a short call with a colleague which the claimant did. Shortly after the call is complete, Mr Anderson asked the claimant when he was coming into the office. Mr Anderson explained in his evidence that he had suggested that the claimant should not wait until he was able to undertake the checks at home, as he did not think this was the best use of his time. Instead, the claimant was needed in the office to prepare some weekly report that only he did.

137. The claimant describes this request in his grievance document as "*brutal*" (784). The tribunal's finding is that the request was an entirely appropriate suggestion for Mr Anderson to make in the circumstances. We note that Mr Anderson did not insist the claimant came into the office, but simply asked him if he could do so and gave a reason why.

138. The claimant has a second complaint about the Lync exchange. He says that Mr Anderson asked him a question on the Lync exchange that he had already asked him during a call only a few minutes earlier. The exchange clearly shows Mr Anderson asking the question and he admits doing this. Mr Anderson's evidence is that the topic had come up during the call, but as claimant had failed to respond during the call this was why he asked about it subsequently. Mr Anderson's account is corroborated by an almost contemporaneous Lync exchange between him and the other party involved in the call (Andy Elliot) who comments on the claimant's failure to respond (282).

139. The claimant concluded the Lync chat by telling Mr Anderson that he considered that Mr Anderson was harassing him. We note that Mr Anderson's response was to reject this. He says:

"*it is by no means harassment, its just that I thought something existed and obviously it doesn't, my mistake Lync chat is by no means the best medium to do this over so lets have a chat when you get into the office. I'm sorry if you thought it was, not my intention.*"

140. Mr Anderson met the claimant later that day in an attempt to resolve the issue between them. He told Ms Mulvey in a Lync exchange later that day that he felt that he and the claimant had "cleared the air." (284) This demonstrates that Mr Anderson tried to defuse the situation.

141. It is notable that when the claimant described what occurred on 12 October 2018 in his grievance, he said the following:

"*The first case [of harassment by Mr AA] happened while I was sick at home, but still I attend a meeting. I was in a depression after my girlfriend and in a weakness position. All started from there. It was the 12/10/2018 I started by why I am not coming to the office (despite starting working from home at 7AM) and at 10:01 AM we had a call where we were 4, Alex asked me if we have a procedure X, I answered no. Then while I was still sick working from home waiting for data, he ask me again if we have that process and a second time." ( )*

142. The claimant admitted in his evidence before the tribunal that Mr Anderson was not aware that the claimant was off sick or depressed after a relationship breakdown and that he did not say this to Mr Anderson. He also acknowledged that Mr Anderson would have believed that he was working at home because he was doing the early morning data checks.

143. The next alleged incident of harassment occurred on 15 October 2018. At a meeting attended by Mr Anderson, the claimant, Ms Bradley and Mr Kanellopoulos, Mr Anderson suggested the claimant be responsible for a particular task. Following the meeting, the claimant informed Mr Anderson, via Lync message that he was offended Mr Anderson had put him forward for the task without speaking to him about it privately first. Specifically, he said:

"*please ask me before proposing me for any task. Specially in public." (*855)

144. Mr Anderson told us that the claimant did not raise any objection at the time about being put forward for the task at the meeting. Mr Anderson felt that he did not publicly humiliate or harass the claimant. In his view, given the nature of the task required, the claimant was the ideal person to complete it. We note that the claimant agreed to undertake the task and that he was the best placed person to do it.

145. On 18 Oct 2018, Mr Cohen emailed Ms Bradley and Mr Anderson to ask them if they had an opinion about which of the claimant or Mr Kanellopoulos should be asked to pick up some new work. Mr Anderson suggested Mr Kanellopoulos because the claimant had a relatively heavy workload at that time (288.2). This email is inconsistent with Mr Anderson wanting to subject the claimant to unreasonable deadlines.

146. The next incident of harassment cited by the claimant occurred on 6 November 2018. The claimant had emailed Mr Anderson and Mr Kanellopoulos on 5 November 2018 with a draft document (the SOP for TCPT posting) that he was working on and asked for their comments so he could finalise the document by the end of the week. Mr Anderson emailed the claimant at 11:22 the following day saying:

"As per our discussion, could you please incorporate the updates I suggested by COB Wednesday.

"Again if you need any help at all please let me know." (342)

147. "COB Wednesday" was the following day, 7 November 2018. The claimant replied thanking Mr Anderson for the offer of help and saying he appreciated it. He also explained that he did not think he would be able to finish the work in the deadline and so may need Mr Anderson's support. (342). Mr Anderson did not respond, but it is notable that he did not insist on the claimant completing the work by 7 November 2018.

148. On Friday 9 November 2018, Mr Anderson emailed the claimant at 17:08 (356). In the email, Mr Anderson set out his expectations with regard to various ongoing pieces of work and their deadlines for completion. The claimant says this subsequent email also constitutes harassment. Mr Anderson explained to us that he was due to be out of the office the following Monday (12 November 2018) and thought it would be helpful to provide the claimant with an email to which he could refer in his absence.

149. The email confirmed a new deadline for adding the updates to the SOP for the TCPT posting (that had been the subject of the email of 6 November 2018 referred to above) of COB Wednesday i.e. 14 November 2018. Mr Anderson therefore gave the claimant an additional week. In addition, Mr Anderson reminded the claimant that he had not yet started on the larger piece of work that Mr Anderson had emailed him about on 17 October 2018. Mr Anderson stated in the email:

"*You also need to start thinking about in incorporating other aspects of the TCPT process I highlighted in my initial request. This I would like to see an update on next Friday."*

150. The email from Mr Anderson then asked the claimant to update the Project Log by the start of the day on Tuesday by adding a page for TCPT (which was missing) and providing him with a list of everything else he was working on. Mr Anderson sent a similar email to Mr Kanellopoulos.

151. On Tuesday 13 November 2018, neither the claimant nor Mr Kanellopoulos had updated the project log. Mr Anderson therefore sent them both a gentle chaser email later that day. Mt Anderson did this by forwarding his email of 9 November to the claimant at 16:43 asking him how he was getting on with the below. (367)

152. When neither the claimant nor Mr Kanellopoulos replied, Mr Anderson approached them at their desks the following morning 14 November 2018 to ask them to provide a list of his projects and non-project work by 10 am that morning This was at or around 9.30 am. We note that Mr Anderson made the same request of both the claimant and Mr Kanellopoulos.

153. The claimant alleges that Mr Anderson's request constituted harassment because Mr Anderson set an unreasonable deadline, the request was made in public and because he, Mr Anderson was in a "*shouting intimidating mood*". This is denied by Mr Anderson who says he asked calmly. Our finding is that Mr Anderson did not raise his voice to the claimant, nor did he make his request in an intimidating way. We consider the claimant's perception of Mr Anderson's behaviour is likely to be exaggerated and overstated. This is a consistent theme in the claimant's behaviour.

154. The claimant emailed Mr Anderson with a list of his projects at 09:43 that morning (370). He sent a further email at 10:31 with a list of his non project activities (369). Given that Mr Anderson had first asked for the list of

projects on 9 November 2018 and sent a gentle chaser the previous day, we do not consider the deadline he set was unreasonable.

155. The claimant emailed Mr Anderson subsequently at 11.16 later that day (365 – 366) and explained to him, that he considered Mr Anderson's requests to be "harassment or intimidation." The claimant referred to them being due to have a weekly catch up meeting the following day (15 November at 10 am). The claimant explained in his evidence to the tribunal that he felt that Mr Anderson's requests for written updates were unreasonable given that they had a scheduled catch up meeting. later in the week.

156. Mr Anderson explained to us that he needed both the claimant and Mr Kanellopoulos to provide this information to him as he was due meet Ms Bradley on her return from annual leave. We accept this explanation and find that Mr Anderson was entitled to ask the claimant and Mr Kanellopoulos to provide the information he was seeking.

157. The claimant copied James Hardy, HR Business Partner into his email to Mr Anderson. This led to conversations between them about the claimant potentially submitting a formal grievance which are considered further in the next section below.

158. The next email cited by the claimant as constituting harassment is an email from Mr Anderson to him sent on 14 November 2018 at 16:20 (369). In the email Mr Anderson reminded the claimant that he had asked him for a "TCPT project 1 pager" and asked that this was available by Friday. The claimant says this request was unreasonable because the TCPT project was a major project that required meticulous care and attention and would not be finished for another month. Our finding is that Mr Anderson was not asking for the project to be finished by this date, but simply for the one page summary he had requested the previous week. This was an entirely reasonable request and was couched in reasonable and non-intimidating terms.

159. The final email about which the claimant has complained is an email that Mr Anderson sent to him on 16 November 2018 at 10.30 (397). The claimant claims that Mr Anderson chased him on 5 topics in the email and that this was unreasonable as he had only also chased him verbally and by email 3 days earlier.

160. The email concerned the ongoing work on the SOP for the TCPT Posting. The claimant had incorporated Mr Anderson's feedback (and additional feedback from Mr Kanellopoulos) into the document and sent it, on 15 November 2018, to several members of his team for final comments before the claimant sent it to Ms Bradley for approving the following week.
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161. In his reply, Mr Anderson indicated that he would be signing off the procedure rather than Ms Bradley and then provided comments on the procedure. He does not chase the claimant on other outstanding work, but focuses purely on the SOP. It is clear from the content of Mr Anderson's

email that the claimant had not incorporated some of the comments Mr Anderson had made previously. Mr Anderson concluded the email by saying:

"I *have a few other points as well, but please set up some time with me to discuss those* (397).

162. The claimant alleges that Ms Mulvey was responsible for coordinating Mr Anderson's behaviour towards him. He says that she did this by messaging Mr Anderson and instructing him to impose unreasonable deadlines on him or through indicating her approval of Mr Anderson's conduct through nodding at him. The claimant asked us to take into account the proximity of Mr Mulvey's desk to his and Mr Anderson's desks when considering this.

163. There was some minimal communication between Ms Mulvey and Mr Anderson during the alleged period of harassment.

164. The first communication took place on 12 October 2018. It followed the claimant accusing Mr Anderson of harassment as described above in paragraphs 134 - 142. As noted above, Mr Anderson had a Lync exchange with Mr Elliot following them both being involved in a call with the claimant that morning. Mr Elliot says in the call that he had pinged Ms Mulvey to tell her that Mr Anderson needed to discuss something with her. He had in mind the difficult discussion that had just taken place between Mr Anderson and the claimant.

165. In response to Mr Elliot's message, Mr Anderson contacted Ms Mulvey and sent her the Lync exchange that he had had with the claimant. Ms Bradley was not in the office that day and so it made sense for him to speak to Ms Mulvey instead. It did not appear to Ms Mulvey that Mr Anderson was guilty of harassing the claimant, but she suggested he meet with the claimant to talk the issue through. She messaged Mr Anderson later that same day to ask how their conversation had gone and advised him to discuss it with Ms Bradley on Monday (284). Ms Mulvey's exchange with Mr Anderson was reactive rather than proactive.

166. There was a further communication between Mr Anderson and Ms Mulvey about the claimant on Lync on 9 November. In Ms Bradley's absence from the office, Mr Anderson asked Ms Mulvey's advice on how he should respond to the claimant simply telling him he was leaving early that day, rather than asking if he could. Ms Mulvey told Mr Anderson that his suggested approach was perfectly appropriate. She encouraged him to be polite, but make his point (353 – 354). This again, was a reactive rather than a proactive communication.

167. Finally, on 16 November 2018, Ms Mulvey emailed Mr Anderson and recounted a discussion that she had with Mr Hardy that day and his approach to resolving the issue between him and the claimant. Ms Mulvey said to Mr Anderson:

"Focus should be around you both explaining your perspectives, I think.

You aren't micromanaging, but if he misses a deadline he needs to tell you and give you a new ETA…because otherwise he is forcing you into a position where you have to ask where things are at, which is just you managing the team work load. And he is feeling (presumably – don't know the detail) like he is being monitored differently to others on the team.

Shout if I can help – we are all here to support you." (396).

168. This too was a reactive message, triggered by the claimant's allegation of harassment made on 14 November 2020. The email does not encourage Mr Anderson to behave badly towards the claimant, but encourages Mr Anderson to discuss communication with the claimant in a positive way.

169. Our finding is that there is no evidence that Ms Mulvey was responsible for directing Mr Anderson in connection with any of the incidents about which the claimant has complained. There is also no evidence that Ms Bradley was involved either. We consider whether Mr Anderson's behaviour constituted harassment on the grounds of race below.

Issue 1.3 - Allegation of collusion between Ms Mulvey, Ms Bradley and Mr Hardy to prejudice the grievance investigation

170. The claimant has alleged that there was collusion between Ms Mulvey, Ms Bradley and Mr Hardy in connection with the grievance, in order to try and prejudice the grievance investigation. He raised this as part of his grievance (787 -789) and it was investigated by Ms Parry. She concluded that there was no such collusion (963 – 965). The claimant appealed against this finding (977 – 979). His appeal on this point was rejected by Mr Meyers (1270 – 1271 and 1272 – 1273).

171. As noted above, the first time the claimant made contact with the respondent's HR team in connection with his concerns regarding Mr Anderson's promotion and alleged harassment, was through the act of copying in Mr Hardy to his email to Mr Anderson on 14 November 2018 at 11:16 (405).

172. Having been copied in by the claimant, Mr Hardy emailed him (without including Mr Anderson) back very quickly (12:27) to ask him if he wanted to meet on a confidential basis to discuss the contents of the email (405). They met the following day.

173. Mr Hardy explained to us that his role meant that he did not get involved in considering an employee's grievance. Once an employee submitted a formal grievance, this would be passed to the first respondent's specialist Employee Relations department. However, as an HR business partner, he did play a role at the informal stage. This would not involve "taking sides", but seeking to help the individuals involved find a way to resolve their difficulties. It was not unusual, for Mr Hardy to speak to both managers and employees about concerns. He was well used to managing this balance and maintaining an employee's confidentiality.

174. In addition to making contact with the claimant, Mr Hardy also responded to an email from Mr Cohen sent to him at 12:55 on 14 November 2018 (365). Mr Anderson had forwarded the email he had received from the claimant to Mr Cohen and Ms Bradley, saying simply that he wanted to let them know about it, but without further comment (365). Mr Cohen's email (which also copied in Ms Mulvey) said:

"*Hi James, we need some HR help here. As you know this is not the first time the allegation of harassment has been made. I don't want to prejudice anything so will not respond until you give me a steer."* (365)

175. Mr Hardy's initial thinking, having reviewed the email from Mr Anderson to the claimant, was that it did not appear to constitute inappropriate or intimidating behaviour. He felt that it was likely to be possible to repair the relationship between Mr Anderson and the claimant informally.

176. Mr Hardy met with Mr Anderson later on 14 November 2018 and sought to reassure him. He told him he was going to speak to the claimant the following day to find out more about what had caused his email.

177. At the meeting with the claimant on 15 November 2018, Mr Hardy explained that the claimant could raise a formal grievance if that was what he wanted. He recommended, however, that in the first instance the claimant sat down with Mr Anderson to try and resolve their differences. Mr Hardy offered to help with this and formed the view that the claimant also thought it was a positive way forward.

178. On 16 November 2018, Mr Hardy spoke to Ms Mulvey to update her. He explained that it was likely he would arrange an informal meeting between the claimant and Mr Anderson to try to resolve the issue and work out a way to move forward. Ms Mulvey was in agreement with this approach. She updated Mr Anderson as noted above.

179. Later that day, the claimant sent Mr Hardy an email. This was at 14:16. In the email (404) he thanked Mr Hardy for meeting with him. He went on to express concern that he and Mr Kanellopoulos had not been invited to a joint meeting, organised by one of Ms Mulvey's direct reports, which they usually attended. Mr Hardy responded at 15:47 (410) to say that they would meet again on Monday.

180. Incidentally, the claimant had raised his concern with the organiser of the meeting directly, Andy Elliot prior to flagging it up to Mr Hardy. In the email exchange between the claimant and Mr Elliot, Mr Elliot confirmed that it was his decision to invite Mr Anderson to the meeting, with a view to him feeding anything relevant back to the claimant and Mr Kanellopoulos.

181. The claimant emailed Mr Hardy at 9:55 on 19 November 2018 about their meeting. He forwarded an email that he had received from Ms Bradley that morning about his sickness and holiday record. The claimant was

interpreting the email negatively and wanted to include discussion of it in his meeting with Mr Hardy. (425)

182. When the claimant and Mr Hardy met later that day, the claimant asked for more information about raising a formal grievance. Mr Hardy explained the process.

183. Mr Hardy also met with Mr Cohen and Ms Bradley on 19 November 2018. This was at Mr Cohen's request (434). Mr Cohen and Ms Bradley wanted to understand if there was anything they could do to help resolve the situation. Mr Hardy updated them with the information that the claimant was considering raising a formal grievance, but without giving any details of what his grievance would include. They also discussed the claimant's sickness record and whether they should refer him to occupational health. As noted above, Ms Bradley was concerned about the claimant's mental welfare and though, from her own personal experience of mental health issues, that there might well be an underlying issue that was unresolved. Mr Hardy emailed Ms Bradley with information about occupational health the following morning (453).

184. The claimant emailed Mr Hardy on 20 November 2018 at 07:47 that morning saying that he would like a formal investigation into allegations of discrimination by Ms Mulvey, harassment by Mr Alexander and coordination of harassment by Ms Mulvey (480). He submitted his formal grievance later, at 16:55, that day when he emailed Mr Hardy with the first iteration of his written grievance (479). On receipt the formal grievance, Mr Hardy forwarded it to the specialist Employee Relations department.

185. During the day, on 20 November 2018, the claimant spoke to Mr Anderson in the office in person and told him that he (Mr Anderson) should not contact him (the claimant) about work related matters as there was an ongoing formal HR investigation. Mr Anderson sent Ms Bradley (who was working at home on her end of year employee appraisal reports) a Lync message about this at 11:47 (465). She in turn contacted Mr Hardy (456). Ms Bradley spoke to Mr Hardy on the phone who suggested she keep herself at arms-length from the grievance process.

186. Mr Hardy and Ms Bradley have both said that Mr Hardy did not discuss any details of the grievance with Ms Bradley during their call on 20 November 2018. Our finding is that this must be factually correct. Ms Bradley emailed Ms Mulvey at 13:59 (474-475) to provide her with a general update. Ms Bradley made no mention of the fact that the claimant had indicated to Mr Hardy that he was making allegations against Ms Mulvey as well as Mr Anderson. Had Ms Bradley been aware of this at the time, we consider that she would have told Ms Mulvey. The fact that she did not mention this, means that Mr Hardy cannot have shared this information with her.

187. Ms Bradley contacted the claimant later in the day via Lync to ask him about feedback requests for the year end appraisal process. The conversation took place between 15:46 and 16:18 (472 – 473)

188. The claimant refused to provide details about his feedback requests and told Ms Bradley that this was because there were some investigations against Ms Mulvey and Mr Anderson being considered by HR. At the time, the claimant believed that Ms Bradley wanted the names of people he might approach for feedback so that she could influence them and that this was because of the grievance process he had initiated.

189. Ms Bradley was very distressed by the tone of the conversation between her and the claimant. She forwarded a copy of the Lync chat to Ms Mulvey. 16:36 (472). This prompted Ms Mulvey to contact Mr Hardy and question whether she was also being investigated (469). This demonstrates that, as soon as Ms Bradley became aware that the claimant was also complaining about Ms Mulvey, she informed Ms Mulvey.

190. The claimant has suggested that Ms Mulvey's communications of 20 November 2018 indicate that she was colluding with Ms Bradley and Mr Hardy to prejudice the grievance investigation. He points to Ms Mulvey's email to Ms Bradley sent at 16:47 in which she says "*I would just stay off communicator / email for now as it runs the risk of being mis-interpreted.*"

191. He also points to Ms Mulvey's email to Mr Hardy sent at 16:45 (469) where, having forwarded the Lynch exchange between Ms Bradley and the claimant she said:

"Bakar seems to think I am being investigated as well?

Sharon is apparently incredibly upset at the moment – crying her eyes out to Denis.

We will need some "rules of the road" with [the claimant] on how he continues to do his role and answering questions….as we can't have the below type of interactions continuing for another 1-2 months."

192. We find that there was no collusion aimed at prejudicing the grievance investigation. All that Ms Bradley, Ms Mulvey and Mr Hardy discussed was the fact of the grievance. Ms Mulvey's suggestion for rules of the road, was a perfectly sensible and appropriate response to the fact that an interaction had occurred between the claimant and Ms Bradley that had upset Ms Bradley.

193. On 21 November 2018, the claimant emailed Mr Hardy at 07:41 to express concerns about the conversation he had had with Ms Bradley the previous day regarding feedback. In the course of the email exchange (492) the claimant said:

"*I am not sure if I am allowed to ask, pardon me if not, but may I ask you to not involve Sharon Bradley in this process following the below and the probability of coercion close to 1*"

The claimant says that this was a request to Mr Hardy not to share details of the grievance process with Ms Bradley and that Mr Hardy's failure to comply with this request is evidence of him colluding with her and Ms Mulvey to prejudice the grievance investigation.

194. Mr Hardy did not address the request in the email he sent in reply (492). He replied simply by saying that the claimant had indicated in his grievance what matters he would like to have investigated and the first respondent would proceed on that basis.

195. Mr Hardy met with Mr Anderson on 21 November 2018. This was in response to an email from Mr Anderson to him sent at 08:46 (486). Mr Anderson was concerned that he had heard about the formal grievance directly from the claimant the previous day rather than from HR. Mr Hardy met with Mr Anderson briefly to confirm that a formal grievance had been submitted, explain that it was now in the hands of the specialist Employee Relations Team and that he would endeavour to update him where appropriate.

196. The claimant alleged as part of his grievance, that Mr Hardy met with Ms Mulvey, Mr Anderson and Ms Bradley to discuss the possibility of the claimant resigning. Mr Hardy denied this, and we accept his evidence. It is not implausible that managers and HR might have some preliminary discussions about the possibility of a negotiated exit for an employee in the similar circumstances. Our finding in this case is that such discussions did not take place. Had they done so, we consider there would be some reference to them in the comprehensive documentation before us or, at the very least, evidence of redactions having been made within the documentation. This is not the case.

197. Mr Hardy had regular meetings with Ms Mulvey between 20 November and 19 December 2018. These were general meetings to discuss a variety of HR matters. He told us that he did not discuss the claimant's grievance with her in any detail at these meetings. We accept his evidence. Having passed the grievance on, Mr Hardy was not being kept up to speed with how the grievance investigation was progressing. We note that after the exchange of the various emails concerning legal deadlines which is covered in the section below, the claimant resolved not to have any further contact with Mr Hardy. This was on 28 November 2018. There was no further contact between them after this date.

198. One subsequent email exchange between Mr Hardy and Ms Bradley, Ms Mulvey and Mr Cohen that took place between 10 and 12 December 2018 (712 to 714). The claimant had refused to participate in team group emails which was causing some difficulty in team communications and Ms Bradley sought Mr Hardy's advice.

199. The claimant's reasoning was that participating in the group emails would force him to have interaction with his alleged harasser. The email exchange discussing this problem provides evidence of the managers collectively working with Mr Hardy to try to develop an appropriate work

around solution while the grievance investigation was ongoing. Mr Hardy and Ms Bradley recall meeting briefly to discuss the situation, but no specific steps were taken. Matters were then superseded by the events of the following week.

200. Taking the above into account, we find that there is no evidence that Mr Hardy, Ms Mulvey and/or Ms Bradly took any steps individually or in collusion to seek to influence or prejudice the grievance investigation.

Issues 1.1 and 1.2 - Emails with James Hardy and Patrick Thompson / Legal Deadlines

201. JPMorgan Chase & Co runs an initiative called Advancing Black Leaders. It is said to be a "firmwide diversity strategy which focuses on attracting, hiring, retaining and advancing black leaders at all levels across the firm." It is led by Tia Counts, Global CIB and EMEA head of Advancing Black Leaders. Her role was created for the purpose of leading the programme.

202. On 29 October 2018, Ms Counts delivered a presentation for staff about the initiative. Patrick Thompson, Chief Executive Officer of the Asset Management business in EMEA (Managing Director) hosted the presentation. The claimant attended the presentation.

203. As noted above, on 14 November 2018, the claimant emailed Ms Counts and Mr Thompson to alert them to tell them that he believed that he was a victim of race discrimination and harassment. He selected them as the recipients of the email because of their involvement in the presentation. The claimant added that he had arranged to meet HR to discuss the matter (375 – 376).

204. Ms Counts emailed Mr Thompson shortly after receipt of the claimant's email, to say that she had referred the email to the Employee Relations Team, headed by Lorraine Parry. She indicated that she did not think it was necessary for Mr Thompson to reply directly (375). Mr Thompson did, however, reply directly to the claimant on 15 November 2018 (436) thanking him for raising the concern to him and reassuring him that such allegations were taken seriously. He advised the claimant that escalating the matter through HR was the appropriate course of action. Mr Thompson also took the time to check with a senior HR Business Partner that the claimant was meeting with HR and referred to this meeting in his reply.

205. Between 20 November and 28 November 2018, the claimant continued to copy Ms Counts and Mr Thompson into emails between himself and Mr Hardy concerning his grievance. The claimant also copied in a senior member of the first respondent's HR team, Jocelyn Harris, Executive Director, HR Business Partner for Asset Management – EMEA. None of Ms Counts, Mr Thompson or Ms Harris replied to the claimant (487 – 500 and 531-532).

206. Until 21 November 2019, following submission of the claimant's grievance, Mr Hardy also copied Mr Thompson, Ms Counts and Ms Harris into his emails to the claimant. However, on 21 November 2018 (534) Mr Hardy

replied solely to the claimant. When the claimant replied on 23 November 2018, the claimant added Mr Thompson, Ms Counts and Ms Harris back in. Mr Hardy replied on 26 November 2018 (534) to say that he had removed Mr Thompson from the email chain, but confirmed that he would continue to keep Mr Thompson updated. Mr Hardy had also removed Ms Counts, but not Ms Harris.

207. When replying on 27 November 2018, the claimant added Mr Thompson and Ms Counts back into the email chain (532) saying "*The below point is relatively important, therefore I hope you would allowed me to Cc our colleagues that are kind to follow this point.*"

208. The claimant went on to set out in the email his understanding of various legal deadlines that might apply to his case including deadlines that he believed applied in the UK, the US and France. In the case of the UK deadline, the claimant said he believed "*the time limit for an external resolution …. is 3 months minus one day*". The claimant asked Mr Hardy if he was aware of the deadlines (532).

209. The claimant was himself aware of the relevant legal deadlines and was not asking Mr Hardy to comment on them because he needed advice from his HR Business Partner on his possible courses of action. The claimant emailed Mr Hardy about the deadlines and asked him if he was aware of them as the claimant wanted him (and the other respondents) to acknowledge that he was contemplating formal legal action.

210. Mr Hardy replied on 28 November 2018 (531) saying:

"*I would clarify that you submitted your formal grievance on 20 November 2018. I would also clarify that JP Morgan has an onus to investigate grievances in a reasonable time frame, but the time limit you reference …. are for former employees to raise complaints against their previous employer."*

211. Mr Hardy accepts that this information was incorrect and that a current employee can pursue an employment tribunal claim for discrimination. He has denied that in sending this reply he was deliberately trying to the get the claimant to resign. As noted above, Mr Hardy was not involved in having any discussions about potentially exiting the claimant.

212. Mr Hardy also indicated in his email to the claimant that Werda Gill (whom he copied in) from the Employee Relations team would be contacting the claimant with regard to his grievance (531).

213. The claimant believed that Mr Hardy was deliberately trying to mislead him with regard to his response on legal deadlines. He therefore emailed Mr Thompson on the same day (530-531) to express his concern. The claimant wrote in French to Mr Thompson as he, correctly, believed that Mr Thompson spoke French.

214. In his email to Mr Thompson, the claimant stated that the email from Mr Hardy constituted a breach of confidentiality. He stated that the information provided by Mr Hardy was completely false and questioned whether it was HR's way of getting him to resign. The claimant also emailed Werda Gill making a similar allegation. He questioned the impartiality of HR during the process. Ms Gill replied to say that the points raised in his email would be reviewed as part of the grievance process.

215. The claimant included this allegation in the final iteration of his grievance report dated 15 December 2018 (787). He stated that:

"*I consider it as a breach of trust, misleading an employee a push to resign and an attempt to intimidation to cover a case of racial discrimination and harassment."*

216. Mr Hardy told the tribunal that he made a genuine mistake regarding the legal deadline. At the time it was a point of law that he had forgotten. He explained that he was more focussed on the internal process as his approach, as an HR professional, would be to want to investigate any serious concern raised by an employee within a reasonable timeframe regardless of the legal deadline. He denied that he was deliberately trying to mislead the claimant and expressed disappointment that the claimant did not simply reply to him to say that the information was incorrect instead of immediately escalating the issue to Mr Thompson.

217. We note that Mr Hardy held a level 7 CIPD qualification in Human Resources Management, which will have included studying UK employment law, at the time of sending the email. In addition, at the time he had 9 years' experience of working in HR, although this was not as an employee relations specialist and was instead in a mixture of recruitment and as an HR Business Partner.

218. Our finding is that, notwithstanding Mr Hardy's experience as an HR professional, he did indeed make a genuine mistake about the legal deadlines for bringing employment tribunal claims. It is entirely plausible, given the nature of the HR roles he had undertaken, that he would not have remembered that discrimination claims can be brought while an employee is in employment.

219. We also accept that Mr Hardy's focus, when sending the email, was on trying to reassure the claimant that the first respondent takes allegations of discrimination seriously in all circumstances. We find that he was not trying to deliberately mislead the claimant.

220. In addition, in light of the claimant's knowledge of the relevant legal deadlines, the mistake Mr Hardy made in his email did not result in the claimant being misled.

221. Mr Thompson did not reply to the email from the claimant. He forwarded it to Mr Hardy within two minutes of receiving it. Mr Thompson did not make any comment in his forwarding email, but did flag the email as being of

"high" importance. Mr Hardy replied to say that he would find out what it meant (i.e. have it translated from French to English) (530). Mr Hardy emailed Mr Thompson later that same day (540) to say that a member of staff from the HR Employee Relations team (Werda Gill) would respond to the claimant on the point raised.

222. Mr Thompson's explanation for why he did not reply directly to the claimant was because he felt assured that the matter was being dealt with appropriately and he was therefore satisfied that no further action was required on his part. He explained to the tribunal that as a result of holding a senior position, the scope of his responsibilities is very broad. He said it would not be appropriate for him to get involved in the specific details of an HR matter when it is being dealt with by specialists. He said that he had no knowledge of the deadlines for bringing legal claims and relied on the specialist expert knowledge within HR for matters such as this. We accept Mr Thompson's evidence on this point.

223. We note that Ms Parry, during the course of meeting with the claimant to investigate his grievance, acknowledged that the claimant had been given inaccurate information by Mr Hardy. She provided him with the correct information, albeit that he already knew it.

Issues 1.5 and 11.3 – Allegation that Sharon Bradley threatened the claimant on 18 December 2018

224. The claimant has made a specific allegation that relates to the behaviour of Ms Bradley on 18 December 2018, namely that she threatened him the in front of three colleagues by telling him to communicate with Alexander Anderson.

225. The claimant was part of a conference call that took place on 18 December 2018 which included Ms Bradley and Mr Anderson. All three were present in the respondent's offices at their normal desks when the call took place.

226. The claimant dropped out of the call, part way through. He acknowledged when giving his evidence to the tribunal that he voluntarily joined the call initially, but when he did so he did not know that Mr Anderson was on the call. It had been organised by an external contact who was responsible for determining who should be invited to joint it. This was notwithstanding the close proximity of their desks to one another. The claimant says he only became aware Mr Anderson was on the call when he introduced himself.

227. As there was an item on the agenda which the claimant needed to deal with after he had dropped off the call, Ms Bradley approached him at his desk. The claimant covertly recorded the conversation between them, and it was played during the tribunal hearing. A transcript was also included in the bundle (740).

228. We know from the recording and transcript that Ms Bradley told the claimant that questions were being asked on the call. He said in response that he was not going to do it. Ms Bradley did not challenge his decision

and simply asked him if one the items on the list can be closed. The claimant confirmed that it could be closed and Ms Bradley returned to the call.

229. Following the call, the claimant emailed Ms Parry at 15:40 (727). He sent her the recording of the call. In his email he said:

"I just received my second indirect violent pressure from Sharon, requesting me hardly why I don't assist a call where Alex is."

He explained that he felt that the people he had accused in his grievance were putting him under direct and indirect pressure and that this conversation was part of that.

230. The reference to this being the "second" indirect violent pressure refers back to the exchange of emails between the claimant and Ms Bradley that had taken place in December regarding his involvement in the team's group email. This is referred to above in paragraph 198.

231. Ms Parry replied to the claimant and told him she would consider the complaint as part of her investigation and would let him know if she could hear the recording (727). He replied at 15:48 saying:

"Thanks all the team here hear that violent request. We are all here except Denis Cohen. It was literally a public intimidation."

The claimant then listed the names of members of his team who were present in case, Ms Parry could not hear the recording.

232. In his evidence during the tribunal hearing, the claimant conceded that the use of the phrase "*public intimidation*" about the exchange with Ms Bradley was an exaggeration. He maintained, however, that Ms Bradley made a "*violent request*" of him because she was forcing him to have contact with Mr Anderson (his accused harasser). Our finding is that there was nothing violent whatsoever about the way Ms Bradley spoke to the claimant, nor did she force the claimant to have interaction with Mr Anderson. Ms Bradley did not arrange the call with both Mr Anderson and the claimant, nor did she ask the claimant to re-join the call when he dropped off the call. It is erroneous of the claimant to describe her as making a request of him at all.

233. The claimant also emailed Ms Bradley about the exchange directly. This was at 16:53 later the same day (728). The claimant copied two senior members of the respondent's HR team into the email, Lauren Tyler and Robin Leopold, but not Ms Parry.

He said in his email:

"This is the second that you try to force me to be in contact with [Mr Anderson] in the context that we are. First time was via email …..., you wanted to force me to send him emails.

Second time was in public just now below what I tried to record where in another external call you wanted also to be there while [Mr Anderson] is in the call.

This is inadmissible and intolerable. I will stay in my ETFs ops role in my place and I will never surrender to any pressure, the investigations will go until the end of whatever happened. The fact that you are in a strong socio cultural solidarity with [Mr Anderson] and [Ms Mulvey] in this context don't impress me. From now on, if you have any request regarding work, BAU or meeting with me please contact JPM Human Resource department or our manager Denis Cohen." (728).

234. Ms Bradley was very upset to receive the email from the claimant and went to speak to him about it. She told us that she approached the claimant but he refused to engage with her and told her that she would need to speak to HR. Ms Bradley found the email and the interaction very distressing and decided to go to see HR straight away. She broke down in tears with Mr Hardy who had to call her husband to collect her. She was subsequently off work for the rest of that week and into the following week.

235. The claimant alleges that Ms Bradley threatened him during the interaction including saying "*we don't mess with Sharon, that is my nickname.*"

236. The claimant emailed Ms Parry at 18.31 about this second incident (730) and later that same evening reported it to the police. He revealed this to the respondent in an email sent to a large group of recipients at 23:35 in which he told the group that he had made a report to the police (730). We do not know precisely what he reported to the police. It is accepted that he made a report, but that the police took no action.

237. Ms Parry later investigated the incident when investigating the claimant's grievance. Unfortunately, she did not appreciate that the claimant was alleging that there had been two incidents on that day. Ms Parry thought that the incident that the claimant had reported to the police was the interaction which he had recorded rather than the later interaction.

238. Ms Parry interviewed the claimant (742.2) Ms Bradley (759), Mr Anderson (741) and Mr Cox (756) about the initial incident. She concluded in her grievance outcome report (967) that Ms Bradley had not behaved in an unreasonable manner. She felt it was wholly unjustified to report the conversation to the police and that the claimant was also unjustified in recording the conversation.

239. When submitting his appeal, the claimant asked Mr Meyers to reconsider the conclusions reached by Ms Parry. He stated that he felt that Ms Parry had not investigated the incident fully as she had not interviewed Mr Kanellopoulos and another colleague who were also witnesses to the second incident. The claimant did not clarify that there had been two incidents on 18 December 2018, only one of which was recorded (976 – 978). Unsurprisingly, like Ms Parry, Mr Meyers did not appreciate that the

claimant was referring to a second incident. He took the view that it was entirely appropriate for Ms Parry not to have interviewed anyone else as she had a recording of the call (1269).

240. Mr Cox attended the tribunal hearing and was able to tell us first-hand what he witnessed on 18 December 2018. He was present when Ms Bradley approached the claimant about the email. He recalled the claimant being dismissive of Ms Bradley and telling her that he would not speak to her and that she would need to speak to HR or Mr Cohen. He had no recollection of Ms Bradley using the words quoted by the claimant. He confirmed that she did not shout at the claimant and that, having known her for approximately 8 years, he had never heard her shouting at anyone so that had she done so on this occasion, it would have been very out of character.

241. The claimant suggested that we should disregard the evidence of Mr Cox as he was biased against him. The claimant relied on a Lync chat between Mr Cox and Mr Anderson from 15 November 2018 in which Mr Cox commented on the allegations of harassment that the claimant had made against Mr Anderson the previous day (383).

242. In the chat, Mr Cox told Mr Anderson that their managers knew what the claimant was like and they must be on his (Mr Anderson's) side. He offers him support. When questioned about this chat under cross examination, Mr Cox said that he considered the claimant was abrasive, not a team player and often antagonistic towards his colleagues and that his managers were aware of this behaviour. He confirmed that he was supportive of Mr Anderson as he believed Mr Anderson had done nothing wrong and was confident that their managers would recognise this.

243. Our finding is that it we can rely on the evidence of Mr Cox. Although Mr Cox formed a view that Mr Anderson was not responsible for harassing the claimant, he was not obviously colluding with Mr Anderson and biased against the claimant. His view of Mr Anderson's behaviour was based on having seen the messages involved and having worked with both him and the claimant.

244. Turning to the incident on 18 December 2018, we prefer the evidence of Ms Bradley, Mr Anderson and Mr Cox. We find that Ms Bradley did not threaten the claimant by saying "*we don't mess with Sharon, that is my nickname.*" Instead when she asked him about the email, she did so in a calm manner and was informed by him that she should not speak to her and that she should speak to HR or Mr Cohen. This led to her becoming very upset.

245. Our finding is that, consistent with his characterisation of other incidents, the claimant has embellished this incident. Ms Bradley's reaction is consistent with the type of reaction she had following the email of 23 October 2018 concerning the claimant's proposal regarding India and to the Lync chat of 20 November 2018. Both of these were occasions when the claimant challenged her and not the other way around.

Issue 11.7 - 19 December 2018 – Allegation that Ms Parry told the Claimant he could not record office meetings.

246. On 19 December 2018, Ms Parry and the claimant met to discuss the incident that had occurred the previous day. The claimant covertly recorded the meeting (742.1-742.4).

247. As the claimant had sent Ms Parry a covert recording made of his initial conversation with Ms Bradley the previous day, Ms Parry asked the claimant if he was recording the meeting. The claimant told her that he was not even though this was not true. The claimant accepted that this was a lie when giving evidence to the tribunal.

248. Ms Parry told the claimant that he should not record conversations in the office. He emailed her later that day to say that he understood that recording at work was permissible in cases of harassment and discrimination. In his subsequent appeal against the grievance outcome, the claimant alleges that the information given to him by Ms Parry about recordings was incorrect. The claimant states:

"In the extreme pressure and intimidation context of end of December, I started recording meetings or any time when there is a chance that accused person to threaten me. Once my manager Sharon Bradley, threatening me, I have a proof where Lorraine Parry, informed me that recording is not allowed. If you disagree with that, let me know and I will bring it.

In Harassment case at work in UK, recording is it not only allowed but can (and will in my case) be bring to court." (1218)

249. We note that the explanation above, which was repeated in the claimant's witness statement, is not accurate as the claimant began recording his conversations with Ms Parry from the start of December 2018. He did not consider Ms Parry to be subjecting him to pressure or intimidating him. In fact, he sent an email to a large group of recipients on 16 December 2018 saying Lorraine Parry had taken over the internal investigation in which he described her as acting "*with a great professionalism, listening and understanding issues and context after our first interview*." (717)

250. The claimant told the tribunal (not in his evidence but when asking Ms Parry questions during her evidence) that legislation in the UK allows employees to record conversations where there are allegations of harassment. The claimant was unable to cite the legislation which he relied upon. Our finding is that he was not relying on legislation but some guidance he had found on the internet which said that in some employment cases, covert recordings have been treated as admissible evidence.

251. JPMorgan & Chase does not have a written policy that states that covert recordings are prohibited. Covert recording of colleagues is, however,

considered to be unacceptable and we find that the information Ms Parry told the claimant was consistent with the first respondent's practice.

252. The claimant included a complaint that Ms Parry had informed him that he was not allowed to record meetings when submitting his grievance appeal (984). Mr Meyers considered this complaint and rejected it (1275 - 1276). His finding was that Ms Parry had provided the claimant with correct information, based on her considerable experience in Employee Relations. We agree with the view of Mr Meyers.

Issues 11.1 and 11.2 - 19 December 2018 – Allegation regarding Ms Parry asking the claimant to remain at home and removal of his remote access

253. As noted above, the claimant sent an email to a large group of recipients within the first respondent's group on 18 December 2018 at 23:55 indicating that he had reported an incident with his line manager to the police.

254. This prompted Lauren M Tyler, a senior member of the HR team based in the US and a recipient of the claimant's email, to email Lorraine Parry. Her email was sent on 19 Dec at 02:39 (GMT) and stated that she and another senior colleague would like to put the claimant on "administrative leave." She asked Lorraine to confirm when it could be done. (743)

255. As Ms Parry agreed with this suggestion, she raised this possibility with the claimant at their meeting held on 19 December 2019. We have very clear evidence of what she said from the transcript of the covert recording of the meeting.

256. Ms Parry said that she was concerned about the claimant and suggested that he remain on leave while she completed the investigation. Specifically, according to the transcript she said:

"*I think that, you know, things are upsetting you a lot. I think that there's a lot of things that are going to, in the course of running a business, could be said, I think that there's a high risk that people will say things to you that maybe they don't intend to be specifically about you [indiscernible] so I would like you to stay on leave, I can be fine authorising it, I will inform your managers. I think it is in your best interest."* (page 742.2)

257. The transcript records that in response the claimant said, "*Okay, I mean, I respect your decision*." Ms Parry did not impose a decision on the claimant, however, and actively sought his agreement to her suggestion. He confirmed that she had his agreement and that he would use the time to visit Paris and "*do sports*". He also thanked Ms Parry in the meeting for her patience in listening to him.

258. Ms Parry confirmed the claimant's status by email later that day, sent at 12:28, in which she said "*We agreed that whilst I investigate your grievance you will remain on leave and that you would not come back to the office, I will inform your management so leave that with me and no need for you to contact them*" (744). When the claimant responded on 21

December 2018, he did not challenge this statement. He did however query why he had received a message telling him his remote access to the first respondent's systems had been removed (751). The claimant queried who was responsible for taking this decision.

259. Ms Parry replied to say that "*Remote access is not necessary as you are remining on leave whilst I complete the investigation, with no requirement to perform any work duties. This decision was taken at senior level, not James or Sharon. This should not impact on you whilst you are on leave and again thank you for your patience while I complete my investigation."* (751)

260. The claimant asked Ms Parry a similar question again in January 2019, following receipt of the grievance outcome. Specifically, he asked her if the decision to remove his remote access had been taken by Ms Mulvey (941). Ms Parry reiterated that the decision had not been within his team and this included Ms Mulvey (943)

261. Ms Parry confirmed to us that the decision to remove the claimant's remote access was taken by Lauren Tyler, Global Head of HR for JP Morgan's Asset Management business in discussion with Julie Harris, Global Head of Asset Management and herself. We note that the claimant continued to be able to access his work emails at this time via his Blackberry.

262. The claimant confirmed to us that not having remote access did not prevent him from accessing documents that were relevant to his grievance or the appeal. He had taken relevant copies of all documents with him. He also understood that if he needed any additional documents he could have asked Ms Parry or Mr Meyers to provide access. The only difficulty he experienced was that it was more fiddly to access emails on his mobile phone.

263. The claimant included a complaint about the removal of his remote access as part of his appeal (983 -984). He said:

"*When I called the police after being threatened by my manager [Sharon Bradley], [Ms Parry] proposed me to stay at home until the end of the investigation. I accepted.*

The following day under the request of [Mr Hardy] (HR accused of breach of trust) and approved by my manager [Ms Bradley] (accused of collusion), my remote access has been stopped. I have a very precise technology report revealing that. It is available on request….

I tried to explain to Ms Parry that this is the definition of victimisation without success. …..

The immediate consequence of this is that my access to reports and all proofs was no more possible. As since the beginning of the process and in an environment of extreme collusion, I was expecting that I printed and

bring back home every proof and report. Therefore the target looked by the people that organise this administrative shutdown was not reached." (983 – 984)

264. Mr Meyers considered this complaint and concluded:

"[*Ms Parry] responded [to you] confirming that remote access was unnecessary whilst you were on leave, this suspension was administrative in nature and that the decision to cease access was not taken within your team, including by [Ms Mulvey].*

In my view, an employee who is not required to work does not need access to work systems. It is common practice to therefore suspend their remote access. I consider that [Ms Parry's] explanation to you on this issue was reasonable and there is nothing sinister or untoward to be read into this. I do not find any evidence to suggest that you were being victimised in relation to this issue." (1274)

265. The "precise technology report" referred to by the claimant above is a printout which shows that Mr Hardy was responsible for submitting the request to suspend the claimant's remote access to the first respondent's IT department. It also confirms that the request was approved by Mr Bradley. (R21). Ms Parry confirmed in her evidence that Mr Hardy was responsible for implementing the decision to suspend the claimant's remote access. He needed authorisation from Ms Bradley as the claimant's line manager to satisfy the first respondent's IT protocols.

266. This period of paid leave was not imposed on the claimant, but was put in place with his agreement. The decision was taken at a senior HR level.

267. The reason the respondent suggested paid leave was because the first respondent genuinely believed that it was in everyone's best interests for the claimant not to be in work while the grievance investigation was ongoing. This included the claimant's best interests as well as the interests of his colleagues.

268. The first respondent was concerned that the claimant's behaviour had become erratic. This was due to him having, as far as Ms Parry believed, reported an entirely innocuous exchange between himself and Ms Bradley to the police. He was also covertly recording conversations with his colleagues. Ms Parry was concerned about that the claimant was reacting badly to the pressure of the ongoing grievance.

269. In addition, the first respondent had a duty of care to the claimant's colleagues. The exchange with Ms Bradley had upset her a great deal and she had gone off sick as a result.

270. The respondent did not seek the claimant's agreement to the remove his access to its remote IT systems, nor did Ms Parry warn him that this would happen. Our finding is that the primary reason the first respondent did this

was because of security concerns arising because of the claimant's erratic behaviour.

Issue 1.4 - Ms Parry investigating the grievance based only on the respondents' statements

271. The claimant has alleged that Ms Parry investigated the grievance based only on the respondents' statements (by this he means the oral testimony of Mr Anderson, Ms Bradley, Ms Mulvey and Mr Hardy) and did not seek other evidence. The claimant has alleged this, of itself, constitutes harassment related to race.

272. This complaint was not included in the claimant's grievance appeal document as a separate complaint. It is, however, found throughout the appeal document as a reason why the claimnt objects to the various findings made by Ms Parry. In Mr Meyer's appeal conclusion, he includes a number of specific comments about the approach taken by Ms Parry to the grievance investigation (1266).

273. Mr Meyer's notes that Ms Parry considered the 180 pages of documentary evidence provided by the claimant as well as "*related 360 feedback, performance reviews Lync messages and emails.*" He observes that Ms Parry reviewed the material, but took a different view to the claimant of what the material indicated.

274. The first respondent had decided on 2 December 2019 that Lorraine Parry should take direct responsibility for the grievance because the grievance included allegations of discrimination and harassment and raised concerns about HR (555). Ms Parry led the Employee Relations team for EMEA as well as having responsibility for leading and driving diversity initiatives. She had considerable experience of managing employee relations issues and investigating and hearing formal grievances.

275. Ms Parry told the tribunal that in her 23 years of experience in this area she had been personally involved in conducting at least one or two investigations into allegations of discrimination each year. She found it difficult to recall the number of times she had upheld allegations of discrimination, but thought it was likely that she had done so on six or seven occasions.

276. Ms Parry confirmed to us that she did rely solely on what she was told by Mr Anderson, Ms Bradley, Ms Mulvey and Mr Hardy. She met with each of them and took into account what they told her, but she also did other investigative work. This included meeting with Stuart Cox and Mr Cohen.

277. Ms Parry met the claimant several times to go through the issues contained in his grievance. Ms Parry took notes at the meetings and the claimant covertly recorded them. The meetings took place on 4 December 2018 (629 – 630) (630.1 – 630.21), 10 December 2018 (684) (684.1-684.9) 17 December (721) (721.1 – 721.5) and 19 December 2018 (page 742.2).

278. Ms Parry also considered the contents of the various iterations of the claimant's grievance dated 20 November, 1 December and 15 December 2018 together with all of the attachments he had provided. This also included further emails received by her from the claimant between 3 and 21 December 2018, additional documents provided by the other interviewees and the claimant's 360 feedback and performance reviews.

279. In addition, Ms Parry requested that a number of searches were undertaken of the first respondent's messaging systems. Specially, she made two requests of the first respondent's cyber security team that they search for email and Lync messages (697 – 700 and 705 – 707) between 14 November and 8 December 2018. This included searching the communications of Mr Hardy, Mulvey, Ms Bradley, Mr Anderson, Jocelyn Harris and Patrick Thompson for the words 'Bakar', 'resignation', 'Patrick', 'performance', 'discrimination' and 'harassment.'

280. One specific criticism that the claimant makes of Ms Parry's investigation is that she relied too heavily on Mr Cohen's views. He was not accused of anything in the grievance and so Ms Parry did consider him to be a reliable source of evidence. The claimant suggested that she should not have done this because Mr Cohen was biased in favour of Mr Anderson against him. The claimant relies on two Lync chats between Mr Cohen and Mr Anderson as evidence of this.

281. The first took place on 14 November 2018 (379). Mr Cohen asked about Mr Anderson's conversation with Mr Hardy regarding the claimant's allegation of harassment. Mr Anderson described the approach Mr Hardy had suggested (an informal meeting at that stage). Mr Cohen commented that Mr Anderson had had a "*baptism of fire*" as a manager and added:

"Thing is I'd started to notice improvements in his behaviours and team ethic. So today was a shock. What doesn't kill you makes you stronger mate."

Mr Cohen then reassured Mr Anderson that "*we will get this sorted*."

282. The second exchange took place on 16 November 2018 (403). Mr Cohen told Mr Anderson "*everyone is on your side*" and that he hoped Mr Hardy had told the claimant that Mr Anderson's behaviour could not be construed as harassment.

283. Our finding is that it was appropriate for Ms Parry to rely on the evidence of Mr Cohen. He had not been named in the claimant's grievance, but was close to the people and events involved. The fact that Mr Cohen formed the view at an early stage that Mr Anderson was not responsible for harassing the claimant did not mean he was colluding with Mr Anderson. It reflected his view of Mr Anderson's behaviour, having seen the messages involved and having worked with both him and the claimant.

Issue 11.9 – Announcing Mr Anderson's substantive promotion just after telling the claimant the grievance was not upheld (29 January 2018)

284. Ms Parry emailed the claimant to invite him to attend a meeting with her in order that she could provide him with the grievance outcome. The invitation was most likely sent on Friday 25 January 2019 for a meeting on Tuesday 29 January 2019 in the morning.

285. At the meeting, Ms Parry handed the claimant the grievance outcome in an envelope. As she did not want to keep him in suspense, she explained to him that she had not upheld any of his allegations. Ms Parry's told us that she offered to go through the report with the claimant, but he did not want her to do this. She explained the appeal mechanism to him and agreed with him that he should remain on paid leave for the time being. Following the meeting, Ms Parry emailed her outcome to the claimant at 12:38 (956). In her email she confirmed that he should continue to remain out of the office on full pay while the process was ongoing.

286. The claimant alleges that when he asked Ms Parry about the next steps at the meeting, she replied saying that it would depend on the mood of his colleagues. She denies using these words. We have not found it necessary to resolve this evidential dispute for the purposes of deciding the claim.

287. Within an hour and a half of the meeting, the claimant received a message from a colleague who told him that the annual promotions had been announced. The announcement, which was made by email globally across JPMorgan & Chase (944), included reference to Mr Anderson (and Mr Hardy) being promoted to Vice President.

288. The claimant believed that Mr Parry deliberately arranged the timing of the meeting with him to deliver the grievance outcome so that it fell on the same date as the global announcements of the promotions. Ms Parry denied this.

289. Ms Parry told us that she had no control over the timing of the announcements and did not know on what day they were due to be made. She was aware that they were likely to be due that week, as the announcements are usually made at the end of January each year, but this did not in any way influence the timing of when she delivered the claimant the outcome.

290. She explained that the timing of the announcements were not part of her thinking when arranging to meet with the claimant. Her primary concern was to meet with him as soon as possible after she had completed the grievance investigation. She was conscious that the claimant had been away from work for just over a month at that time. She considered that while the grievance investigation had taken the time that it needed to take and was not delayed, it was important to inform the claimant of the outcome as soon as she could. We accept her evidence on this point.

Issue 11.8 – By implication, threatening the claimant with disciplinary action for presenting the grievance

291. Ms Parry's grievance outcome is contained in the bundle in full at pages 957 – 968.

292. Towards the end of her grievance outcome letter, Ms Parry sets out her overall conclusion in three paragraphs (967). She states:

> "*I recognise that you are likely to be disappointed with my findings as set out above. Accordingly I would like to offer you the reassurance that I have considered each of your complaints in detail and that I have carried out an objective assessment of whether they should be upheld based on all of the available information (and relying on my extensive experience of evaluating such issues in other cases).*
>
> *Whilst I appreciate that you have strong feelings about how you consider you have been treated, I am concerned that you have been prepared to make very serious allegations about your colleagues in circumstances where there is no factual basis to support your contention that you have been less favourable treated because of your race, or otherwise subject to victimisation for raising a complaint of discrimination. I say this as many of the examples which you have put forward in support of your allegations can only be considered ordinary day to day business communications, and I am troubled by your interpretation of the motive or real reason for the communication.*
>
> "*I am also concerned by your judgment in deciding to report a conversation with Sharon Bradley to the police as a potential criminal act, and your actions in recording at least one conversation on the desk without the consent of those involved. As stated above, I do not consider your actions in this regard to be justified. I anticipate that it will be appropriate to consider aspects of how you have conducted yourself in due course*."

293. The claimant says that he felt threatened by Ms Parry's overall conclusion and, in particular, the content of the last paragraph which he interpreted as a threat of disciplinary action.

294. Ms Parry told the tribunal that she wanted to include reference to the claimant's conduct and the possibility of further action being taken because she wanted to flag this possibility up to the claimant. This was not intended as a threat. It was just that she did not want it to come as a surprise to him if further action was taken at a later date. We accept her evidence on this point.

295. Ms Parry explained that this was in part due to the action taken by the claimant when he contacted the police on 18 December 2018. She was also concerned about the claimant's activity undertaking covert recordings.

296. Her concern also in part due to descriptions that the claimant had used in the grievance, which she considered were embellished. She said that, for example, that having been sent the recording of the interaction between

him and Ms Bradley on 18 December 2018, she found his description of this as a "violent request" and "public intimidation" wholly unjustified. In addition, having reviewed the relevant correspondence, she formed the view that the emails were simply ordinary day to day business communications that revealed no evidence of harassment. Ms Parry felt that some of the allegations may potentially have been made malicious.

297. We note that the first respondent did not subsequently take disciplinary action against the claimant, but did take further action against him which culminated in his dismissal.

Issue 11.10 – On 10 May 2019 suspending the claimant's work email account and blocking the claimant's incoming emails to respondent's staff email accounts

298. The first respondent does not dispute that it blocked the claimant's access to the respondent's email system on 10 May 2019 and subsequently sought to blocked emails from the claimant's personal email account and other accounts he created sent to some of its members of staff. The claimant alleges that this amounted to victimisation.

299. As noted above, the claimant had started to email senior members of the respondent's staff as early as 14 November 2018 when he copied Mr Thompson, Ms Counts and Ms Harris into his emails with James Hardy about his grievance.

300. This behaviour escalated however, at the end of November 2018. The claimant explained to the tribunal that he created an email group which he called his "Anti-Collusion" group and adopted a deliberate policy of sending all his emails to this large group. Hi reason for creating this group was because he had lost trust and confidence in the first respondent's HR team. This was due to the email he had received from Mr Hardy with incorrect information about deadlines for submitting tribunal claims on 28 November 2018.

301. On 1 December 2018, when sending Mrs Parry a copy of his original grievance document, he had copied in a large circulation group (559). He had emailed the same group with the final iteration of his grievance on 15 December 2018 and on 18 December 2018 he sent the large group the email telling them that he had reported Ms Bradley's behaviour to the police.

302. Ms Parry suggested to the claimant that he did not need to copy so many people into his emails when they spoke on 19 December 2018. Rather than heed this suggestion, the claimant added to the email circulation group when Ms Parry rejected his grievance. By the time the claimant submitted his appeal, he was copying his emails to a range of other senior people that worked for the first respondent's group. This was around 15 people in total.

303. When Mr Clews subsequently emailed the claimant about the appeal he addressed the claimant's practice saying:

"*I don't think it is necessary or productive for you to copy a long list of senior people on every email you send – particularly when it is about something like the timing of a meeting*" (1021)

304. The claimant replied saying he understood Mr Clew's point of view and respected it, but indicated that he did not intend to change his approach. Specifically, he said:

"I am not looking to be <<productive>> or <<necessary>>, neither then being well seen by anyone here. I am looking for something much simpler, there is a a list of questions that I provide you. I am looking for answers to this questions. If you think that I am looking to come back to JPM, you are on the wrong way. Those people play with my future, either they are all fired or I will receive a compensation or we will go to the tribunal. Things are extremely clear for me, there is no other choice. Senior people like you are tired of receiving emails of me, let's make it simple.

Therefore I will Cc everyone here for every email. With all the respect, I can't let another HR playing my future again." (1021)

305. The respondent did not take any action at this point.

306. The claimant later sent several emails to the large circulation group in early May 2019. It was these emails that caused the first respondent the greatest concern.

307. The first email was sent to Ms Mulvey at 08:40. The claimant referred in this email to the influence Ms Mulvey had had over the email Ms Bradley had sent the claimant on 24 October 2018 (301) and accused her of collusion and race discrimination (1027).

308. The second email was sent to Ms Mulvey at 09:40. In this email, the claimant accused Ms Mulvey of trying to intimidate him with sexually explicit material in coordination with her assistant, Mr Anderson, Ms Bradley, Mr Cox and others. (1042) The claimant forwarded this email to Mr Clews and Mr Meyers at 11:18. This was followed by an email sent at 11:58 telling the large circulation group to be aware that Ms Mulvey was, following receipt of his earlier email, meeting with her assistant and suggesting that the purpose of the meeting was further collusion (1058).

309. On the same day, the claimant also emailed Mr Thompson at 09:40 (copying in the large circulation group) with questions about why he had not responded to the claimant's email of 28 November 2018 (1034). He followed this up with emails on the same subject on 5 May 2019 addressed to Ms Counts (1067) and Ms Harris (1087). Again, he copied in the large circulation group.

310. On 8 May 2019, Mr Clews emailed the claimant (without copying anyone in) to say that the respondent took allegations of sexual misconduct very seriously and requested that the claimant provide him with more

information (1097). The claimant replied (copying in the large circulation group) refusing to do this on the basis he did not trust Mr Clews because he was a member of the first respondent's HR team. He said that the allegations would come to light in court (1096)

311. Mr Clews responded to the claimant on 10 May 2019 reiterating that the first respondent wished to investigate the allegations and asking him to provide details. In addition, Mr Clews stated:

"*Please note that we have temporarily suspended your JPMC account. You have previously been asked to send any emails relating to the matters which are the subject of your grievance appeal to me alone to ensure that there is a clear line of communication. You have not complied with that request. Going forward, please send all emails regarding the grievance appeal …. solely to me. I will be responsible for disseminating your emails to our CEO and a senior member of the HR executive as appropriate. You should use your personal email account for this purpose. This will ensure your concerns are still visible to to senior management whilst allowing us to meet our duty of care to other colleagues while we investigate your grievance appeal. Nothing in this step will prevent you from raising issues via our Code of Conduct reporting line, raising matters externally (as permitted by law, regulatory requirements or in line with your contractual obligations to the firm) or indeed, directly to me." (1096)*

312. The claimant did not send further similar emails for just under a month. However, on Saturday 15 June 2019, he sent a number of emails from his personal email address.

313. The first email was to a member of staff called Daniel Brown and was sent at 11:32, copying in a large group. (1184) In the email, the claimant said that he believed that Mr Brown was aware of Ms Mulvey, her assistant, Ms Bradley and Mr Anderson intimidating him using sexually explicit material in the weeks commencing 10 and 17 December 2018. He asked him to respond to the question why he didn't inform HR or the police about such activity by 23 July 2019.

314. The second email was to Mr Anderson at 11:34, again copying in a large number of people. In the email the claimant accuseed Mr Anderson of trying to intimidate him with sexually explicit material in coordination with others. He said:

"*I know you don't have the stature neither than the courage to do such activity. Therefore I have a question, who ask you to take such a risk for a father of a family in the beginning of his career? Would you mind answering me by the 23rd of July 2019?"* (1183)

315. The next email was to Mr Cox and also sent at 11:34, again copying a large group of people. (1187.2) The email said:

"*You are aware of [Mr Anderson] and [Ms Bradley] intimidating me with sexually explicit material after my grievance for colour discrimination and*

harassment. This happened at least twice daily in the weeks of 10th and 17th of December. You are father of a family, you know what could have been the consequences of such harassment on someone less stable. Why didn't you inform HR?"

Again, he asked for a response by 23 July 2019.

316. On 16 June 2019, the claimant sent an email directly addressed to the large group from a different personal email address. In the email he explained that he had learned that his personal emails were being blocked and wanted them to be aware of this. He explained why he was copying them into the emails as follows:

"*The only reason I Ccc is not to make a scandal but the extremely high level of collusion within EMEA, in NY with HRs and others …… since the beginning in November 2018."* (1181).

317. On 1 July 2019, the claimant sent an email to the large group from a second different personal email address. He reiterated his allegations regarding the sexually explicit material against Ms Mulvey. (1251.2)

318. This was followed by further emails on 19 July (1259), 23 July (1278 - 1284) and 14 August (1300) sent to the large email group. In order to ensure the emails reached the intended recipients, the claimant created new email addresses. The first email on 19 July 2019 was in the name "Jean-Claude Dhuss" and attached details of the allegations regarding the sexually explicit material.

319. The claimant then sent several emails using an email address in the name of "Ho Chi Minh" as well as in the name of Jean-Claude Dhuss on 23 July 2019. These appear to have been prompted by him receiving the grievance appeal outcome. In one of these emails, the claimant refers to a meeting that Ms Mulvey and Mr Anderson are "*having now*" and says he wants to know what the meeting is about. He adds "*Those are serious charge (public interest is definitely something that I will involve) we can't leave any chance to those people to coordinated more than it has already been done.*"

320. Although the respondent was blocking some of the claimant's emails from his personal email address, it was not blocking all of his emails. The respondent was keeping open a channel of communication for the claimant to use with the members of HR staff dealing with his ongoing complaints. Following receipt of the details of the allegations concerning sexually explicit material on 19 July 2019, the respondent engaged in email correspondence with the claimant about how it proposed to investigate the concerns using his personal email address.

321. On 14 August 2019, the claimant created yet more email address, this time in the names of "Jean Moulin" and "Simon Wisenthal" in order to send various emails to members of the respondent's staff copying in the large circulation group (1300 – 1310).

Issues 11.4 – 11.6 - Sexually Exploitive Material Allegations

322. As noted above, the claimant made fresh allegations against a number of his colleagues in May 2019. He did not, however, provide full details of those allegations to the first respondent until 19 July 2019. On this date, he emailed the large email group he had created from an email address he had created in the name of Jean Claude Dhuss. The subject of the email was "*Details of intimidation by Marion Mulvey using Gay sexually explicit material*". (1259) The claimant attached a three page document to the email providing further detail of the allegations (1260 – 1262). In addition to Ms Mulvey, there were allegations against Ms Bradley and Mr Anderson. The claimant also named Mr Cox and another of his colleagues in the document saying that they personally did not try to intimidate him, but were aware of the intimidation.

323. The first respondent assigned a member of its HR Employee Relations team, Ms Austin to investigate the allegations. She met with Mr Anderson, Ms Bradley and Mr Cox between 12-14 August 2019 (1291-1298). Lorraine Flemming, a more senior member of the HR Relations team met with Ms Mulvey and emailed Ms Austin with notes of their discussion (1299). Ms Austin prepared an investigation report on 19 August 2019 (1303 – 1305) which she sent to the claimant by email that day (1302).

324. For the purposes of the employment tribunal claim, the claimant has particularised these allegations as set out in the list of issues above in numbers 11.4, 11.5 and 11.6.

325. The claimant says that Ms Mulvey, Ms Bradley, Mr Anderson had discovered that he, the claimant was active on the Grindr app. He said that they led him to believe that they had somehow obtained sexually explicit material consisting of one or more photographs of him from the app which they were threatening to circulate more widely.

326. The claimant was not "out" as either bi or gay at this time. He had previously been in a relationship with a woman. Ms Bradley was aware of this and that the relationship had broken down. The claimant does not allege that any express threats were made. Instead, he says that threats were implicit from his colleagues' behaviour that took place between 5 December and 19 December 2018. He says that he understood the threats as constituting threats to "out" him as well as to breach his privacy rights and that they were designed to intimidate him into withdrawing his grievance.

327. In the case of Mr Anderson, the claimant said that his threatening behaviour manifested itself through Mr Anderson having telephone calls twice a day (or appearing to do so) at around lunch time and towards the end of the working day. During the calls, Mr Anderson allegedly referred to photographs and looked pointedly in the direction of the claimant and then towards the other side of the third floor. The claimant took this to be suggesting that whomever he was speaking to was somewhere on the

third floor, looking at a sexually explicit photograph of the claimant and laughing with Mr Anderson about it.

328. In addition, the claimant said that on one occasion Mr Anderson made a pointed joke at his expense, in the presence of Ms Bradley, when discussing a process called "switch". The claimant took this to be a comment about the claimant switching from having a girlfriend to having gay relationships.

329. In the case of Ms Bradley, the key accusation the claimant made against her is that during a one to one meeting with him on 11 December 2018, she deliberately had a photograph on the table at all times, but covered it up so that the claimant could see it was a photograph, but not what exactly what it was.

330. In the case of Ms Mulvey, the claimant claims she was fully aware of Mr Anderson's and Ms Bradley's behaviour. Her own alleged threatening behaviour was manifested by her looking at her phone and discussing what she could see on it with her assistant close to the claimant and commenting "*it's disgusting*", and "*he wants me to use it*" and laughing.

331. The allegations have been denied in their entirety by Ms Mulvey, Ms Bradley and Mr Anderson. They have each said that they were not aware that the claimant had ever used the Grindr app and in fact, Ms Bradley said she did not know what it was until Ms Austin explained it to her. Mr Cox corroborated their evidence and said that he also was not aware that the claimant had ever used Grindr.

332. In her defence, Ms Bradley also highlighted to us that she was a Site Lead for the first respondent's Pride EMEA initiative which aims to provide support for the LGBT+ colleagues. This is because she has friends and family members who are gay and it is an issue she has felt strongly about since the 1980s. As such she would never countenance using a person's sexual orientation as a means of threatening them.

333. The claimant accepts that he has provided no evidence, other than his oral testimony, to support these, very serious allegations. He told us that he did his best to try and discover evidence, but the three people involved were too clever to create any evidence trail.

334. Given the claimant was recording his meetings with Ms Parry and says that the incidents with Mr Anderson happened with a degree of regularity for two weeks, we find it surprising that he did not record any of the occasions where Mr Anderson was said to be discussing pictures of him.

335. There is no evidence that there were any discussions between Ms Mulvey, Ms Bradley or Mr Anderson on the first respondent's email or Lync chat systems. Had there been this would have been revealed by the electronic searches undertaken by Ms Parry.

336. In addition, the claimant made a request for specific disclosure for text and WhatsApp messages between Ms Mulvey, Ms Bradley and Mr Anderson. This did not result in any evidence to support the claimant's allegations. In fact, it confirmed that there had been very little contact between them using their mobiles and Ms Mulvey did not even have Mr Anderson's mobile number in her telephone.

337. The claimant said that he did not challenge the behaviour at the time it occurred or raise it with Lorraine Parry because to do so would have involved discussing his sexuality openly and he was not ready to do this in December 2018. While we accept this provides a plausible explanation for why the claimant did not raise the allegations in December 2018, it does not demonstrate the conduct actually took place. It may, however, provide an alternative explanation as to why the claimant perceived the behaviour was happening when it was not. This may have been due to him feeling sensitive about his sexuality at the time. This was put to the claimant during the hearing, but he denied it.

338. Our finding is that the conduct did not take place. There is no evidence that supports a finding that it happened.

THE LAW

Time Limits

339. The relevant time-limit is at section 123 Equality Act 2010. According to section 123(1)(a) the tribunal has jurisdiction where a claim is presented within three months of the act to which the complaint relates. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable as provided for in section 123(1)(b).

340. By subsection 123(3)(a), conduct extending over a period is to be treated as done at the end of the period.

341. By subsection 123(3)(b), a failure to do something is treated as occurring when the person in question decided on it. In the absence of evidence to the contrary. A person is taken to decide on a failure to do something when that person does an act which is inconsistent with doing it or, in the absence of such an inconsistent act, on the expiry of the period on which that person might reasonably have been expected to do it.

342. The normal three month time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.

343. The tribunal has a wide discretion to extend time on a just and equitable basis. Nevertheless, tribunals should not extend time unless the claimant convinces them that it is just and equitable to do so: the exercise of discretion should be the exception, not the rule (*Bexley Community Centre (t/a Leisure Link) v Robertson* [2003] EWCA Civ 576).

344. Factors that the tribunal should consider, when deciding whether or not to extend time, were considered in the case of *British Coal Corporation v Keeble* [1997] IRLR 36, and include:

- the length of and reasons for the delay;
- the extent to which the cogency of the evidence is likely to be affected by the delay;
- the extent to which the respondent has co-operated with any requests for information;
- the promptness with which the claimant acted once they knew of the possibility of taking action;
- the steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

The Protected Characteristic of Race

345. Race is a protected characteristic under section 4 of The Equality Act 2010 (the Act). According to section 9(1) of the Act, race includes colour, nationality and ethnic or national origins.

Discrimination/Harassment/Victimisation in Employment

346. Section 39(2)(b) of the Act provides that an employer (A) must not discriminate against an employee of A's (B) in the way A affords B access to, or by not affording B access to opportunities for promotion. Section 39(2)(d) prohibits discrimination by A subjecting B to any other detriment.

347. Discrimination includes direct discrimination as defined in section 13 of the Act.

348. Section 39(4)(d) of the Act provides that an employer (A) must not victimise against an employee of A's (B) by not affording B access to opportunities for promotion.

349. The definition of victimisation is contained in section 27 of the Act.

350. Section 40(1)(a) of the Act provides that an employer (A) must not in relation to employment by A, harass a person (B) who is an employee of A's. The definition of harassment is contained in section 26 of the Act.

Direct discrimination

351. Section 13 of the Equality Act 2010 provides that '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'.

352. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

353. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.

354. We must consider whether the fact that the claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

355. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the claimant was treated as he was.

356. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination.

357. At the second stage, discrimination is presumed to have occurred, unless the respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the claimant's race. The respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

358. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd* v *Wong [2005] EWCA Civ 142; [2005] IRLR 258* and we have followed those as well as the direction of the court of appeal in the *Madarassy* case. The recent decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the Equality Act 2010.

359. The Court of Appeal in *Madarassy*, states:

'*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination*.' (56)

360. It may be appropriate on occasion, for the tribunal to take into account the respondents' explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (*Laing v Manchester City Council and others* [2006] IRLR 748; *Madarassy v Nomura International plc* [2007] IRLR 246, CA.) It may also be appropriate for the tribunal to go straight to the second stage, where for example the respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (*Efobi v Royal Mail Group Ltd* [2019] ICR 750, para 13).

361. We are required to adopt a flexible approach to the burden of proof provisions. As noted in the cases of *Hewage v GHB* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, they will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they may have little to offer where we in a position to make positive findings on the evidence one way or the other.

Harassment

362. Section 26(1) of the Equality Act 2010 provides:

> "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."

363. A similar causation test applies to claims under section 26 and to claims under section 13. The unwanted conduct must be shown "to be related" to the relevant protected characteristic.

364. The shifting burden of proof rules set out in section 136 of the Act can be be helpful in considering this question. The burden is on the claimant to establish, on the balance of probabilities, facts that in the absence of an adequate explanation from the respondent, show he has been subjected to unwanted conduct related to the relevant characteristic. If he succeeds, the burden transfers to the respondent to show prove otherwise.

365. Harassment does not have to be deliberate to be unlawful. If A's unwanted conduct (related to the relevant protected characteristic) was deliberate and is shown to have had the *purpose* of violating B's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, the definition of harassment is made out. There is no need to consider the effect of the unwanted conduct.

366. If the conduct was not deliberate, it may still constitute unlawful harassment. In deciding whether conduct has *the effect* of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, we must consider the factors set out in section 26 (4), namely:

(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that affect.

367. The shifting burden of proof rules can be also be helpful in considering the question as to whether unwanted conduct was deliberate.

Victimisation

368. Section 27(1) of the Act provides that:

'A person (A) victimises another person (B) if A subjects B to a detriment because (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.'

369. The claimant must show the detriments, if they happened, occurred because he had done a protected act.

370. The analysis the tribunal must undertake is in the following stages:

(a) we must first ask ourselves what actually happened;

(b) we must then ask ourselves if the treatment found constitutes unfavourable treatment;

(c) finally, we must ask ourselves, was that because of the claimant's protected act.

371. The test for unfavourable treatment was formulated in the case of *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11 where it was said that it arises where a reasonable worker would or might take the view that they had, as a result of the treatment complained of, been disadvantaged in the circumstances in which they had to work.

372. The shifting burden of proof found in section 136 of the Equality Act sets applies. Initially it is for the claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the respondent, that the reason for any unfavourable treatment was because of the claimant's protected act. If the claimant succeeds, discrimination is presumed to have occurred, unless the respondent can show otherwise.

Analysis and Conclusions

Limitation

373. As noted in the issues, given the date the claim form was presented and the dates of early conciliation, any complaint against the first respondent about something that happened before 12 September 2018 is potentially out of time. In addition, any complaint against the other respondents about something that happened before 25 October 2018 is potentially out of time.

374. The only complaints where this is potentially the case are the complaints of direct discrimination identified in the list of issues at 6.1 and 6.2.

375. The decision to promote Mr Anderson was taken in August 2018, but we have found as a matter of fact that the claimant only learned about it after 12 September 2018. This claim is in time against the first respondent, but not against the other respondents.

376. The claimant provided no explanation as to why he did not initiate the early conciliation process against the individual respondents at the same time as the first respondent. As the claimant has a valid claim against the first respondent, his position is protected and there is no need for us to consider any extension of time on a just and equitable basis.

377. The complaint of direct discrimination relating to the claimant having his two projects rejected dates back to October 2017 and December 2017 / January 2018. It is therefore out of time against all of the respondents.

378. We do not consider that this is a case where there there was an act and/or conduct extending over a period. In our judgement, the alleged rejection of the projects are isolated complaints.

379. The claimant provided no explanation as to why he did not pursue a grievance or claim in relation to his concerns about these projects within the legal deadlines. Our judgment is that time should not be extended on a "just and equitable" basis in relation to this claim of direct discrimination. The claim is significantly out of time (10 months) and it would not be just and equitable in all the circumstances to allow the claim to proceed. The circumstances surrounding the projects can be considered as background facts relevant to the main direct discrimination claim, however.

Section 26 Equality Act 2010: harassment related to race

Issue 1.1 - Patrick Thompson failing to respond to the claimant's email of 28 November 2018 (page 530)

380. It is not disputed that Mr Thompson failed to respond to the claimant's email of 28 November 2018.

381. There is no evidence that Mr Thompson's failure to reply to the claimant's email was connected to the protected characteristic of race.

382. His reason for not responding was because he forwarded the email to HR for them to deal with it. He did not know whether the allegation in the email (that Mr Hardy had provided inaccurate information to the claimant about legal deadlines) was correct or not and we would not expect him to know. It was sensible for him to forward to HR who would know and who would be able to address the issue, rather than get involved himself. Indeed, Ms Parry later confirmed the correct position to the claimant.

383. There is also no evidence that Mr Thompson's purpose, in not replying to the claimant's email, was in order to violate the claimant's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for him. He was simply acting efficiently and appropriately for a senior manager at his level.

384. Nor is there any evidence that Mr Thompson's failure to reply to the claimant's email had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. If the claimant felt that it did, our judgment is that it was not reasonable, in all of the circumstances, for it to have that affect.

385. This allegation therefore fails.

Issue 1.2 - by Patrick Thompson and James Hardy on 28 November 2018, misleading the claimant as to employment tribunal deadlines for claims

386. Mr Harding does not dispute that he sent the claimant an email with incorrect information about the legal deadline for pursing a discrimination claim in an employment tribunal. We have found that he made a genuine mistake when he sent the email and was not trying to deliberately mislead the claimant.

387. Mr Thompson was not responsible for sending the email and was simply copied into it. He did not know that the information in the email was inaccurate.

388. Although the email had the potential to result in the claimant being misled, he was not in fact misled. The claimant was fully aware of the correct deadlines and had not referred to them in the email in order to seek advice from either Mr Hardy or Mr Thompson. He referenced them purely to demonstrate that he intended to take legal action against the first respondent in the event that they rejected his grievance.

389. There is no evidence that the approach of either Mr Hardy or Mr Thompson to the email was connected to the protected characteristic of race.

390. There is also no evidence that Mr Hardy's purpose, in sending the email or Mr Thompson's purpose in failing to react to the email, was to violate the claimant's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for him. The evidence is the reverse that, Mr Hardy was trying to be helpful and provide the claimant with information about the respondent's grievance procedure.

391. Nor is there any evidence that Mr Hardy's email, and Mr Thompson's failure to react to it, had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. If the claimant felt that it did, our judgment is that it was not reasonable, in all of the circumstances, for it to have that affect.

392. This allegation therefore fails.

Issue 1.3 - by collusion by Marion Mulvey, James Hardy and Sharon Bradley to prejudice the grievance investigation by James Hardy reporting to Sharon Bradley about various meetings with the claimant

393. Our finding, as a matter of fact, is that there was no collusion between Ms Mulvey, Ms Bradley and/or Mr Hardy to prejudice the grievance investigation. This allegation therefore fails on the facts alone without the requirement for any further analysis.

Issue 1.4 - by Lorraine Parry investigating the grievance based only on the respondents' statements, not seeking other evidence

394. Our factual finding is that when considering the claimant's grievance, Ms Parry did not rely solely on the statements made by Ms Mulvey, Ms Bradley, Mr Anderson or Mr Hardy. She met with the claimant and reviewed all of his documents. She also arranged to search for additional documentary evidence and interviewed Mr Cox and Mr Cohen who were not named as so called "respondents" in the grievance.

395. Our finding is that she undertook a thorough investigation. If we were required to view it through the well-known lens of the range of reasonable responses of a reasonable employer test, we would have no difficulty forming the view that it fell squarely within the range.

396. This allegation therefore also fails on the facts alone, without the requirement for any further analysis.

Issue 1.5 - by Sharon Bradley, on 18 December 2018, threatening the claimant in front of three colleagues by telling him to communicate with Alexander Anderson

397. Our finding is that there were two interactions between Ms Bradley and the claimant on 18 December 2018.

398. The claimant does not allege that Ms Bradley threatened him during the first interaction. He says, however, that by requiring him to interact with Mr Anderson during a conference call, she made a "violent request" of him as she was asking him to communicate with his alleged harasser.

399. Our factual finding is that although Mr Anderson and the claimant were on the same conference call, this had not been arranged by Ms Bradley. When the claimant dropped off the call, Ms Bradley did not ask him to

return to the call. She did not therefore request that the claimant communicate with Mr Anderson.

400. The claimant alleges that Ms Bradley did expressly threaten him during the second interaction and that the threat was so severe that he reported it to the police. We do not accept his evidence that Ms Bradley behaved in this way.

401. There was an interaction between the claimant and Ms Bradley which was initiated by Ms Bradley. There is no evidence that Ms Bradley's conduct was connected to the protected characteristic of race. We judge that, having received an email from the claimant about the fact that he had complained to Ms Parry about her behaviour during the conference call, Ms Bradley approached him simply to get a better understanding of the claimant's concerns.

402. There is also no evidence that Ms Bradley's purpose was to violate the claimant's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for him.

403. The claimant says that Ms Bradley's conduct had the effect of creating an intimidating and hostile environment for him. In our judgment there is no evidence to support a finding that it was reasonable, in all of the circumstances, for her conduct to have this effect on him.

404. This allegation therefore fails.

Issue 1.6 - by Marion Mulvey, Sharon Bradley and Alexander Anderson, between 3 October - 15 November 2018, imposing multiple unreasonable deadlines for the claimant's work, and then chasing him about those deadlines as set out in the claimant's letter to the tribunal dated 31 July 2019 (page 103 - 105)

405. We have reviewed the correspondence that the claimant says constituted harassment of him by Mr Anderson carefully and in detail.

406. In our judgment, Mr Anderson's conduct towards the claimant was not connected to the protected characteristic of race. In reaching this conclusion we have considered and compared how he managed Mr Kanellopoulos and the claimant. We note that he met with them both at the same frequency and required them both to update the project log that he had developed. We note specifically that he asked both the claimant and Mr Kanellopoulos to provide details of their work on 9 November 2018, chased them both for the information on 13 November 2018 and set them the same deadline for completion of this task on 14 November 2018.

407. Mr Anderson accepted that his management of the claimant was slightly different to the management of Mr Kanellopoulos, in some respects. In particular, he was more explicit in his instructions to the claimant and would put these in writing in emails to the claimant more often than to Mr Kanellopoulos. This was because he had been told by Ms Bradley (and had observed) that the claimant often missed deadlines (a matter which

the claimant did not challenge) and Mr Anderson therefore thought it would be helpful for both of them (him and the claimant) to be very clear around expectations.

408. Our conclusion is that any difference in treatment between the claimant and Mr Kanellopoulos was not because the claimant was black, but because the claimant needed to be managed differently to Mr Kanellopoulos.

409. In our judgment, all of the email exchanges between Mr Anderson and the claimant are polite, courteous and written in business appropriate language. There is nothing in their content which suggests harassment at all. We have also found that Mr Anderson's personal interactions with the claimant were conducted in the same vein. We do not think it was inappropriate for Mr Anderson to suggest the claimant for a piece of work in a meeting where work allocation was being discussed. Nor do we think it was unreasonable for Mr Anderson to email the claimant to give him a "heads-up" that there was something they needed to discuss.

410. With regard to the deadlines referred to in the correspondence, in most cases, Mr Anderson suggested rather than set deadlines. On more than one occasion, he sought the claimant's input about the reasonableness of the suggested deadline and showed himself happy to accommodate the claimant's views about when he would be able to complete work. We do not consider that the deadlines suggested by Mr Alexander were multiple or unreasonable.

411. We note that Mr Anderson tried to ensure that he was not overloading the claimant and tried to diffuse the developing tension between them.

412. We have found that there is no evidence that supports the claimant's allegation that Ms Mulvey or Ms Bradley instructed Mr Alexander to impose unreasonable deadlines on the claimant or to otherwise harass him as alleged.

413. In light of these findings, there is no evidence that any of Mr Anderson, Ms Mulvey or Ms Bradley acted with the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

414. The claimant says that Mr Anderson's conduct had the effect of creating an intimidating and hostile environment for him. In our judgment there is no evidence to support a finding that it was reasonable, in all of the circumstances, for Mr Anderson's conduct to have this effect on him. This is the case when the emails and events that took place between 3 October 2018 and 14 November 2018 are viewed in isolation and when viewed cumulatively.

415. This allegation therefore fails.

Section 13 Equality Act 2010: direct discrimination on grounds of race

Issue 6.1 - by Marion Mulvey, failing to promote the claimant to the role of manager of the sub ETF Operations team

416. In our judgment, Mr Anderson was given an informal promotion when he was given additional supervisory responsibilities over the claimant and Mr Kanellopoulos. The decision to informally promote him was not made by Ms Mulvey, but was made by Ms Bradley and Mr Cohen. Ms Mulvey agreed to it, but was not required to formally approve it.

417. Mt Anderson did not become the manager of a "sub ETF Operations Team". He became, for all day to day purposes, the manager of a Business Analyst sub team within the Beta Middle Office Team. This was a step towards him potentially becoming the manager for all purposes of the claimant and Mr Kanellopoulos, following the retirement of Mr Cohen.

418. There is no evidence that the respondent has sought to reclassify the roles of Mr Anderson and the claimant or redefine the team structure to try and justify the promotion of Mr Anderson. It is correct to describe Mr Anderson, Mr Kanellopoulos and the claimant as Business Analysts, as they focused mainly (but not exclusively) on project work, which differentiated it from the work of the other sub team within the Beta Middle Office.

419. Mr Anderson, Mr Kanellopoulous and the claimant were also ETFs specialists. The claimant had greater ETFs experience when compared to Mr Anderson. The person required to supervise the Business Analyst team did not, however, need to be an ETFs specialist.

420. The key attributes that were valued by Ms Bradley and Mr Cohen when making their decision to informally promote Mr Anderson, were communication style, teamworking and ethics and organisational skills (i.e. meeting deadlines). This is where Mr Anderson excelled. Although Mr Anderson's generalist experience of working on the first respondent's other systems and within a different team were considered to be valuable attributes that he could offer, ultimately it was his approach to teamwork and organisation skills that were the deciding factors that led them to consider him for the role of supervisor.

421. Ms Bradley and Mr Cohen were also influenced by the fact that Mr Anderson was already on the first respondent's promotion radar which demonstrated that he was well thought of, but also that he wanted and was ready for a management role.

422. The claimant had broader experience that was relevant to the supervisory role that the respondent did not consider. Had the respondent undertaken a recruitment exercise for the informal promotion, this would have enabled a fuller exploration of the claimant's experience.

423. In our opinion, it is regrettable that the respondent did not conduct a recruitment exercise. It is possible that if the claimant had had an opportunity to apply for the informal promotion, he would have been better

able to understand and accept his rejection. The respondent was not legally obliged to conduct such a recruitment exercise and we do not draw any adverse inferences from the fact that they did not.

424. In our judgment, if the respondent had undertaken a recruitment exercise for the informal promotion, this would not have led to the claimant being chosen. The claimant had shown a lack of professional maturity, needed to improve his approach towards communication and work on meeting deadlines. These issues, which were performance issues, effectively ruled him out, for the time being, as a manager in the minds of Ms Bradley and Mr Cohen. This was a fair and reasonable assessment of his overall performance at the time. Their thinking was not influenced, consciously or unconsciously by the claimant being black.

425. In addition, the claimant had not indicated any interest in promotion into a managerial role when the decision to promote Mr Anderson was made. We note that when he subsequently expressed this interest to Ms Bradley on in October 2018, she responded positively with balanced feedback of his strengths and areas for development. This demonstrated that she was not ruling him out as a potential candidate for promotion in the future, but that she did not consider him ready to become a manager at that time.

426. The failure to promote the claimant, when Mr Anderson was promoted clearly constituted less favourable treatment of him when compared to Mr Anderson.

427. In our judgement, the claimant has not proved any primary facts from which the tribunal could properly and fairly conclude that the difference in treatment was because of the claimant was black and Mr Anderson was white. The claimant's claim therefore fails at the first stage of the burden of proof.

428. For the sake of completeness, in our judgment the respondents have, in any event, adduced cogent evidence that the claimant's less favourable treatment was in no sense whatsoever because of the claimant's race. They have explained, with justification, why they informally promoted Mr Anderson based on his performance and qualities.

Issue 6.2 - by the respondent, Marion Mulvey and Sharon Bradley, rejecting the claimant's proposals for (1) morning check in October 2017, and (2) a spreadsheet monitoring tool in December 2017 or January 2018.

429. We have not considered this allegation in view of our finding that it is out of time and it would not be just and equitable to extend time.

Section 27 Equality Act: Victimisation

430. The respondents accept that the claimant's grievance dated 20 November 2018 amounts to a protected act.

11.1 On 19 December 2018 asking the claimant to remain at home while the grievance was investigated

431. The respondent accepts that it asked the claimant to remain at home while the grievance was investigated.

432. Our finding of fact was that this was not imposed on the claimant. He was asked and agreed to taking paid leave and accepted that this was in his in his best interests.

433. Our view is that the claimant was not subjected to a detriment. In our judgment, a reasonable worker would not have considered that he was disadvantaged as a result of being asked to agree to work at home in the circumstances and indeed, the claimant did not consider he was being disadvantaged at the relevant time.

434. This allegation fails on the basis that the claimant was not subjected to a detriment, without the need for any further analysis as to the reasons why the first respondent sought to put the claimant on paid leave.

435. For the sake of completeness, however, we find that the reason the respondent asked the claimant to work from home was not because the claimant had submitted a grievance. Instead, the reason was that the respondent genuinely believed that removing the claimant from the workplace was in everyone's best interests. This included his own best interests and those of his colleagues and arose in light of the difficulties of managing the tensions and working relationships while the grievance was being investigated. The respondent did not act immediately to remove the claimant from the workplace, but only took this action following an incident that had resulted in the claimant reporting his line manager to the police and the line manager becoming very distressed.

11.2 On 19 December 2018 by revoking his remote access to work email

436. The respondent accepts that it revoked the claimant's remote access to work email via its remote access system while he was on paid leave. His access to his work email was not revoked, however, and the claimant continued to be able to access work emails until early May 2019.

437. Our view is that the claimant was not subjected to a detriment by the respondent. He did not need access to the respondent's IT systems while he was not working. The claimant had ensured that he had copies of all the evidence he was relying on for his grievance. had he, however, needed any additional material he could have asked Ms Parry to assist him. Although the claimant had to access his emails via a Blackberry, this did not curtail his emailing activity.

438. In our judgment, a reasonable worker would not have considered that he was disadvantaged as a result of having his remote access to work email and the first respondent's IT systems while he was on paid leave.

439. This allegation fails on the basis that the claimant was not subjected to a detriment, without the need for any further analysis as to the reasons why the first respondent revoked the claimant's remote access.

440. For the sake of completeness, however, we find that the reason the respondent revoked the claimant's remote access was not because the claimant had submitted a grievance. The claimant continued to be able to work and have remote access for a month after submitting his grievance.

441. Instead, the reason was that the claimant's behaviour was, by 19 December 2018, becoming an increasing cause of concern for the respondent. In particular, he had reported his line manager to the police in circumstances where this appeared to be completely without justification. As the claimant did not need access to the respondent's IT systems while he was on paid leave, revoking his access was a proportionate and sensible precautionary security measure in light of the nature of the respondent's business.

11.3 Sharon Bradley, on 18 December 2018, threatening the claimant in front of three colleagues by telling him to communicate with Alexander Anderson

442. This is a repeat of the allegation above, but brought as a claim of victimisation rather than as a claim of harassment.

443. Based on the findings of fact that we have made, our view is that the claimant was not subjected to a detriment. In our judgment, a reasonable worker would not have considered that he was disadvantaged as a result of Ms Bradley's actions towards him on 18 December 2018.

444. This allegation fails on the basis that the claimant was not subjected to a detriment, without the need for any further analysis as to the reasons why Ms Bradley acted as she did.

11.4, 11.5 and 11.6 - On a date after 5 December; by Stuart Cox reporting to Sharon Bradley that the claimant sent sexually explicit material by Grindr (a gay dating app), Thereafter Marion Mulvey, Sharon Bradley and Alexander Anderson telling the claimant they would diffuse the sexually explicit material and by Marion Mulvey, Sharon Bradley and Alexander Anderson on various occasions, diffusing the material, in particular

a. Alexander Anderson asking for the glove picture after the claimant left running gloves behind

b. Alexander Anderson joking about switching the claimant was known to have had a girlfriend), when performing a switch process

c. Alexander Anderson making jokes about a hole, after the claimant commented on the promotion of Marion Mulvey

d. On 11 December, Sharon Bradley putting a paper on the table at a one-to-one meeting with the claimant that appeared to be a photograph

e. On various dates Marion Mulvey and her assistant looking at their phones and commenting "*it's disgusting*" and "*he wants me to use it.*"

f. Sharing the material with Stuart Cox and Dan Brown who made comments about sending pictures by Whatsapp, hole, and switch

445. Our factual finding is that none of these incidents occurred. These allegations therefore also fail on the facts alone, without the requirement for any further analysis.

Issue 11.7 - On 19 December 2018, telling the claimant he could not record office meetings with Lorraine Parry

446. Ms Parry does not dispute telling the claimant that he could not record office meetings with her.

447. We find that Ms Parry provided the claimant with correct information about acceptable behaviour of employees of the first respondent. It was based on her considerable experience of working in the first respondent's Employee Relations department. Many employers operate similar policies. Employees do not have legal right to covertly record meetings at work, albeit that on occasions, such recordings may be admissible in subsequent employment tribunal proceedings.

448. We do not consider that the claimant was subjected to a detriment in relation to this allegation. In our judgment, a reasonable worker would not have considered that he was disadvantaged as a result of Ms Parry's actions.

449. This allegation fails on the basis that the claimant was not subjected to a detriment, without the need for any further analysis as to the reasons why Ms Parry acted as she did. For the sake of completeness, however, we find that it was not because the claimant had submitted a grievance. Instead, the reason was because the claimant was covertly recording meetings contrary to the respondent's policy.

Issue 11.8 - By implication, threatening the claimant with disciplinary action for presenting the grievance: Lorraine Parry wrote "I am concerned" that he had made unsupported allegations about colleagues (the claimant maintains they were supported in the 200 page document) and that she would consider later... how he had conducted himself.

450. It is not in dispute that Ms Parry indicated in the conclusion of the grievance outcome that the first respondent may consider taking further action against the claimant. We find that this was not a threat of disciplinary action, but said simply to inform the claimant that of the possibility of further action at some point in the future.

451. The specific elements of the claimant's behaviour about which she was concerned included:

- That he was covertly recording meetings with her and interactions with his colleagues
- He had reported Ms Bradley to the police
- In her view he had embellished the descriptions of the behaviour of his colleagues in way that was not justified

452. In our judgment, Ms Parry did not subject the claimant to a detriment by including her conclusion. We consider that a reasonable worker ought to have recognises and accepted that the conduct described above might well have consequences and therefore simply pointing this to him would not constitute a detriment.

453. This allegation fails on the basis that the claimant was not subjected to a detriment, without the need for any further analysis as to the reasons why Ms Parry highlighted the possibility of the first respondent taking action against the claimant. For the sake of completeness, however, we find that the reason was not the protected act.

454. In our judgment, Ms Parry's actions were linked to the substance of grievance, but were not because the claimant had submitted a grievance of race discrimination. The suggestion of action being taken against the claimant was not a punishment for raising allegations. Instead, Ms Parry's actions were because of the outlandish nature of some of the allegations that made her think that the claimant might have raised the allegations maliciously. This is an important and nuanced distinction.

455. We consider Ms Parry's view of some of the claimant's allegations as outlandish and embellished was justified. We make no finding that the allegations were malicious and indeed we note that Ms Parry herself did not reach a conclusion on this point. The way some of the allegations are put by the claimant, when compared with the available evidence, does suggest the claimant had, at best, a skewed perception of the events and at worst a possibly malicious motive. A key example of this is the way the claimant represented the context of the Lync chat between him and Mr Anderson on 12 October 2018 referred to above in paragraphs 141 and 142 above.

456. Ms Parry's comments were also linked to her concerns about the claimant's behaviour in reporting Ms Bradley to the police and making the covert recordings. These were not because of the protected act.

Issue 11.9 - Announcing Alexander Anderson's substantive promotion just after telling the claimant the grievance was not upheld (29 January 2019). The claimant says this should have been done on a different day, and before the outcome was given to him.

457. Our finding is that Ms Parry did not deliberately arrange to provide the claimant with the grievance outcome on the same day that the promotion announcement was made.

458. It is possible that Ms Parry ought to have realised that the promotion announcement timing was due at around the end of January 2019 and it was possible that it might coincide. We do not judge that her failure to do so caused the claimant to be subjected to a detriment.

459. Ms Parry's priority was to issue the claimant with the grievance outcome as soon as possible. As she had no control over the timing of the announcement, the only way she could have avoided the timing of the announcement and the timing of delivering the grievance outcome coinciding would have been to delay informing the claimant of the grievance outcome. This would have resulted in a detriment to the claimant.

460. In our view, a reasonable worker would not have considered that he was disadvantaged as a result of Ms Parry's actions. This allegation fails on the basis that the claimant was not subjected to a detriment, without the need for any further analysis as to the reasons why Ms Parry acted as she did.

Issue 11.10 - On 10 May 2019 suspending the claimant's work email account and blocking the claimant's incoming emails to respondent's staff email accounts.

461. The first respondent accepts that it suspended the claimant's remote access to work email and blocked the claimant's incoming emails to certain members of the first respondent's staff email accounts. The action was taken from early May 2018 onwards.

462. We accept that this action might amount to a detriment as it prevented the claimant from corresponding with work colleagues using email. We would have expected him to have other ways of contacting colleagues that were his friends however meaning that any potential detriment was not realised. Indeed, this appears to have been the case as the claimant told the tribunal that he was in contact with a former colleague shortly before the date of the hearing.

463. There was no detriment to the way his grievance appeal proceeded however, or with regard to the investigation of his additional complaints. The claimant was not blocked from communicating via email with relevant members of the first respondent's HR department who were dealing with these matters.

464. In our judgment, a reasonable worker would not have considered that he was disadvantaged as a result of the first respondent's actions.

465. This allegation fails on the basis that the claimant was not subjected to a detriment, without the need for any further analysis as to the reasons why the first respondent acted as it did.

466. For the sake of completeness, however, we find that the reason the respondent suspended the claimant's work email account and blocked the claimant's incoming emails was not because the claimant had submitted a grievance. The claimant continued to be able to send emails for several months after submitting his grievance. The respondent had also tolerated his practice of sending emails to a large email circulation group containing very senior members of staff for a significant period of time, albeit that it had sought to dissuade him from this by trying to reason with him

467. The change in May 2019, was because the claimant started to send emails of an increasingly disturbing nature at this time. It was not simply the nature of the fresh allegations that he raised, but because he chose to email his alleged accusers directly in the emails rather than follow the appropriate channels for communication. He also made deeply personal comments in the emails to them. We consider that the reason the first respondent acted as it did was to protect the claimant's work colleagues.

Overall Conclusion

468. Having considered each allegation separately, we have also stepped back to the consider the position overall. This is to avoid us failing to appreciate that discrimination took place by focussing too closely on specific allegations.

469. In our judgment, the claimant has failed to prove any primary facts from which we could properly and fairly conclude that he was subjected to any unlawful discrimination by any of the respondents because he was black. His claim therefore fails on this basis too.

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Employment Judge E Burns
20 February 2020

Sent to the parties on:

20 February 2020

For the Tribunals Office