EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr A Kwele-Siakam	**AND**	The Co-Operative Group Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL ON AN OPEN PRELIMINARY HEARING

HELD AT Birmingham **ON** 12 and 13 March 2018

EMPLOYMENT JUDGE Dimbylow

Representation
For the claimant: Dr I Ibakakombo, Lay Representative
For the respondent: Mr G Graham, Counsel

JUDGMENT

1. The claims for direct race discrimination and victimisation which took place before 23 June 2015 were presented out of time. They do not form part of a continuing act. I do not find it just and equitable to extend the time. Therefore, the tribunal has no jurisdiction to hear these claims and they are dismissed.

2. I make no order for a deposit pursuant to Rule 39 for the claims which are in time, and they shall now proceed to a hearing.

REASONS

1. The claims and background to this Open Preliminary Hearing (OPH). This is a claim by Mr Alphonse Kwele-Siakam (the claimant) against his present employer The Co-Operative Group Limited (the respondent). The claim form was presented on 19 November 2015 and in it the claimant brought claims of: direct race discrimination, indirect race discrimination and victimisation. The response form was presented on 23 December 2015 and all of the claims were denied. In its defence, the respondent took time points; and also asked for the claims to be struck out as having no reasonable prospect of success or for a deposit to be ordered as the claims had little reasonable prospect of success. A Closed Preliminary Hearing (CPH) took place before Acting Regional Employment Judge Findlay on 15 January 2016. Judge Findlay

directed that there should be an OPH to determine 3 preliminary points concerning: time, striking out and deposit. She gave various directions for the just disposal of the OPH, including: the provision of further information by the claimant, a schedule of loss, disclosure of documents, the preparation of an agreed bundle and the exchange of witness statements. The OPH took place before Employment Judge Butler on 7 and 23 March 2016. All of the claims were struck out by him as having no reasonable prospect of success. Full written reasons were supplied with a reserved judgement which were sent to the parties on 18 May 2016. The claimant appealed against the decision to the EAT. The case was heard on 27 July 2017 in the EAT before the Honourable Mrs Justice Slade DBE. The claimant was successful in relation to the claims for direct race discrimination and victimisation; and they were remitted back to a different Employment Judge to deal with. Insofar as the claim for indirect race discrimination was concerned, the claimant was unsuccessful in his appeal.

2. A further CPH took place before Judge Findlay on 3 October 2017. In her preamble or summary of the case, before reciting her orders, Judge Findlay saw that there were 2 preliminary matters to be dealt with arising out of the judgement of the EAT, namely: "(1) whether some of the claimant's complaints are out of time, and if so whether time should be extended or whether they should be dismissed because the tribunal has no jurisdiction to consider them under section 123 of the Equality Act 2010; and (2) whether the claimant should be ordered to pay a deposit as a condition of continuing to advance any allegation or argument, if it seems that any of the allegations or arguments put forward have little reasonable prospect of success." The parties agreed that there should be another OPH to determine these points, as the outcome was capable of having a substantial effect on the time estimate for the final hearing. Judge Findlay gave further orders for the just disposal of the OPH, including the preparation of a bundle and the exchange of any witness statements the parties wanted to rely on. Judge Findlay was quite specific about the nature of the witness statements, which would relate to time, and the means of the claimant in relation to the deposit application. It was not anticipated that the respondent would call any witness evidence, and that turned out to be the case.

3. I take the opportunity of thanking the French interpreter who has assisted the parties and the tribunal during the OPH. At the beginning, I asked the claimant if he would like a complete translation or on an "as and when required" basis. He opted for the complete translation. However, it was quite apparent that the claimant has a good understanding and command of the English language, both verbally and in writing. When called upon to give his evidence, he could read out the affirmation from the card in English without any difficulty or hesitation rather than seek a translation. English is the claimant's fourth language (French, Feefee - the claimant being unsure of the precise spelling of this language - and a Cameroonian dialect being the first 3) and I do not criticise him for seeking the services of an interpreter here at the tribunal.

4. The issues. The issues before me are, as described above, are these:

Issue 1: whether or not any of the claims are out of time; and should I extend the time?

Issue 2: do I order a deposit if any of the claims appear to have little reasonable prospect of success?

5.The evidence. I received oral evidence from the claimant. The parties also made submissions to me, which I mention later; and I received a number of documents which I marked as exhibits as follows:

C1 Claimant's witness statement dated 12 March 2018
C2 Claimant's submissions
C3 Claimant's witness statement dated 3 March 2016
C4 Claimant's bundle of documents (15 pages)
R1 Agreed bundle of documents (501 pages)
R2 Respondent's skeleton argument

6.1 The law. The respondent took time points in defending some of the claims. In dealing with the issue of a continuing act, I had regard to the legacy case law which pre-dated the Equality Act 2010 (EqA), as it is still relevant. In the case of Calder -v- James Finlay Corporation Limited [1989] IRLR 55, which was approved by the House of Lords in Barclays Plc -v- Kapur and others [1991] IRLR 136, where it was held that an act extending over a period gave rise to continuing discrimination throughout employment when the claimant then was told that she was not "eligible" for a mortgage subsidy and alternatively this was subjecting her to a detriment whilst employment continued. A continuing act should be approached as being a rule or regulatory scheme which during its currency continues to have a discriminatory affect. The fact that a claimant continued to be paid less than a comparator was a consequence of the decision not to up-grade, not a continuing act of discrimination in the case of Sougrin -v- Haringey Health Authority [1991] IRLR 447. The matter was looked at again in the case of Cast -v- Croydon College [1998] IRLR 318. The Court of Appeal held, amongst other things, that the claimant's complaint was of several decisions by the employer which indicated the existence of a discriminatory policy in her post and its application to her and that this constituted an "act extending over a period". More recently, the Court of Appeal considered the case in Hendricks -v- Commissioner of Police for the Metropolis [2003] IRLR 96. The question is whether the acts complained of by the claimant amounted to an "act extending over a period" as distinct to a succession of unconnected or isolated specific acts, for which time would begin to run from a date when each specific act was committed. The claimant asserted through Dr Ibakakombo that incidents were linked to one another and that they were evidence of a "continuing state of affairs".

6.2 In considering the exercise of my discretion over the three-month time limit applying to the EqA, I have to consider whether it is "just and equitable" to let the case, or part of it, in after three months if the acts complained of are out of time and do not form part of an act extending over a period. The case

of British Coal Corporation -v- Keeble [1997] IRLR 337 provides the guidance on how to exercise my discretion. This was considered in the case of Chohan -v- Derby Law Centre [2004] IRLR 685 EAT. I also considered the matters mentioned in s.33 of the Limitation Act 1980. Although that refers to the broad discretion for the court to extend the limitation period of three years in cases of personal injury and death, it also requires the court to consider the prejudice which each party would suffer as a result of a decision to be made. I am required to have regard to all the circumstances of the case and, amongst other things: –

(a) The length of and the reasons for the delay.

(b) The extent to which the cogency of the evidence is likely to be affected by the delay.

(c) The extent to which the respondent had co-operated with any request for information.

(d) The promptness with which the claimant acted once he knew of the facts giving rise to the cause of action.

(e) The steps taken by the claimant to obtain appropriate professional advice once he knew of the possibility of taking action.

6.3 In the case of Robertson -v- Bexley Community Centre [2003] IRLR 434 the Court of Appeal confirmed that the employment tribunal had a wide discretion in determining whether or not it was just and equitable to extend the time. The tribunal is entitled to consider anything that it takes to be relevant. Nevertheless, the case re-asserts that time limits are exercised strictly in employment tribunal cases. When considering the discretion over a claim that is out of time, and whether the time should be extended on just and equitable grounds, the Court of Appeal said that there was no presumption that the tribunal should do so. The tribunal cannot hear a complaint, unless the claimant convinces it that it is just and equitable to extend the time. Thus, the exercise of the tribunal's discretion is the exception rather than the rule.

6.4 Striking out a claim and/or ordering a deposit. I mention both of these things, because in his closing submissions, Dr Ibakakombo submitted that I should have regard to the same case law and process which would arise in an application to strike out, as the same guidance also applied to deposit order application. My self-direction on striking out is this: Rule 37 (1) (a) of the Employment Tribunal Rules 2013 provides that all or any part of a claim or response may be struck out if it has no reasonable prospect of success. Tribunals always give special consideration to striking out a claim of discrimination on this ground. In the case of Anyanwu and another -v- South Bank Students' Union and another [2001] ICR 391, the House of Lords highlighted how important it was not to strike out discrimination claims except in the most obvious cases, because they are generally fact sensitive and require a full examination to enable a proper determination of the issues. Such a cautious approach to striking out claims of discrimination has been

emphasized in subsequent cases. This has given rise to the proposition that it is unfair to strike out a claim where there are crucial facts in dispute and there has been no opportunity for the evidence in relation to those facts to be considered. It is a Draconian measure, not entertained lightly. Then, in relation to deposit orders I directed myself as follows: if I were to consider that any specific allegation or argument in a claim had little reasonable prospect of success I may make an order requiring the claimant to pay a deposit as a condition of continuing to advance that allegation or argument. This power also stems from rule 39 (1). It is important that I arrive at a decision which is just, fair and proportionate, having regard to the overriding objective, as more particularly described in Rule 2, which states:

"Overriding objective

2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

6.5 Any further discussion about the law would only amount to what might be described in some quarters as an anxious parade of knowledge.

7. The facts. Insofar as it has been necessary, I make my findings of fact only on the basis of the material before me. The claimant was born on 8 September 1969 and is now 48 years of age. He commenced work for the respondent on 25 July 2005. He was employed as a Warehouse Operative; and he is still an employee. However, he has taken a one-year career break starting on 1 January 2018; and he plans to return on 1 January 2019. During the time that he was working for the respondent, before he went on his career break, and during his career break, he has been undertaking other work as an Uber taxi driver, although more so during his career break.

8. In the claim form the claimant extensively describes detrimental treatment because of his colour, which he describes as Black. He also describes his

ethnicity as Black African. In his oral submissions, Dr Ibakakombo widened the description and asserted that the claimant described himself as "Black Cameroonian." However, he was unable to draw my attention during the hearing to where that was mentioned at all in the claim form or the claimant's further particulars.

9. A fellow employee that the claimant complains about is Mr Nick Obanore, and the claimant described his ethnicity as Black African. Mr Obanore was employed on the same level as the claimant; but was promoted to a position of Team Leader. Stated shortly, the claimant asserts that Mr Obanore was promoted in order to show the respondent in a good light, whereas in reality he was part of racist culture prevailing at the respondent, notwithstanding the fact that he had the same ethnicity as the claimant. Mr Obanore, in an investigatory meeting held on 21 January 2015 with manager Mr Liam Rice, complained in this way about the claimant (page 92):

"From the start Alphonse had a negative attitude by saying he did not want to be in my team as this would affect our relationship. I told him I would conduct myself professionally. He did not want to be in my team because he can not play the game like he can with a white team leader."

Mr Obanore complained that the claimant had behaved in a bullying and intimidating way against him, ripping up a form he had completed as Team Leader during a review meeting; and the claimant standing over him. "The game", in effect, from the respondent's perspective, is the claimant playing up, or complaining, about his level of work, his not meeting targets, and not getting his way, because of race.

10. I mention these facts as they form part of the first of 8 claims for direct discrimination, which are conveniently listed in the claim form on page 19 (28) of the bundle. On the claimant's own account of things in the claim form he had a number of review meetings with Mr Obanore (5 during the period 10 November 2014 to 13 January 2015), in which Mr Obanore raised the subject of the claimant's performance, and his failure to reach his targets. The claimant was then subject to an investigation over his conduct in the meeting on 13 January 2015. Following an investigation by Shift Manager Mr Rice, he decided that the claimant should be invited to a disciplinary hearing because of his conduct and behaviour towards Mr Obanore on 13 January 2015. Another Team Leader, Mr Tony King, carried out the disciplinary process and there were two hearings, on 16 February and 24 February 2015. Mr King decided to issue the claimant with a verbal warning in relation his conduct and inappropriate behavior; and this was confirmed to the claimant in a letter dated 24 February 2015. The claimant exercised his right of appeal and this was dealt with by Mr Michael Murdoch, Back Shift Manager. On 12 May 2015 Mr Murdoch wrote to the claimant confirming the outcome, when he rejected the appeal and upheld the decision to issue the claimant with a verbal warning. On the face of it, the first two claims for direct discrimination by Mr King and Mr Murdoch, with their decisions, are out of time.

11. The claimant summarizes his victimization claims in his claim form on pages 19 (29), (30), and (31). The first claim is against Mr King over the issue of the verbal warning on 24 February 2015 and the first of two against Mr Murdoch occurred on 12 May 2015 with the rejection of his appeal against the verbal warning. Again, these are out of time on the face of it.

12. I mention at this stage that in further particulars provided by the claimant (page 40) he raised another issue, on this occasion against Mr Glyn Maude. He refers back to the claim form at paragraphs 69 to 71. Dr Ibakakombo told me this was a further claim for direct race discrimination. The claimant's narrative shows the time-line for the conduct complained of spanning three days from 15 June 2015 to 17 June 2015. Stated shortly, the allegation is that Mr Maude was responsible for the claimant's lack of training, job rotation, promotion, lack of fair treatment at work and being placed in Mr Obanore's team. Furthermore, the claimant asserts that Mr Maude stopped him speaking at a meeting on 17 June 2015, and failed to give him a copy of a policy document.

13. The claimant gave his further particulars on 22 January 2016, following Judge Findlay's Order of 15 January 2016. I am asked by the claimant to read these alongside the narrative attached to the claim form, and when read together, these provide all the claims before the tribunal. Other relevant facts arise out of the ACAS early conciliation certificate. Date A on the certificate is 22 September 2015, and date B is 23 October 2015. The last act complained of appeared to be on 27 October 2015. Given the date of issue of the claim form on 19 November 2015, the last act to be in time would be on 20 August 2015. However, the limitation clock stopped with the reference to ACAS. The parties' agreed position, which I was prepared to accept, was that the last date for an earlier act to be in time would be 23 June 2015.

14. I do not propose to go into too much further detail by way of fact-finding because I am conscious of the fact that this is an OPH; and I do not want to "muddy the waters" (so to speak), for the tribunal dealing with the main hearing. I will refer to some additional facts in my conclusions set out below.

15. The submissions. Mr Graham went first and spoke to his written submissions; and there is no need for me to repeat everything he said in it here. He emphasised that those matters which are out of time were discreet issues based on the claimant's misconduct and did not form part of a continuing act. I should dismiss them as being out of time and not extend the time. The claim against Mr Maude was an unrelated matter, not about performance management, not part of any continuing act. It would not be just and equitable to extend the time. This allegation was nearly 3 years old and likely to be 4 years old by the time of the anticipated trial date. In this instance there is prejudice against the respondent, as Mr Maude no longer works for it. He has been reluctant to get involved in litigation and a witness summons would be required. When I undertake my balancing exercise, I should consider the additional cost to the respondent of allowing an out of time claim proceed, and have regard to the additional cost to the public purse.

16. Whilst the claimant asserted that he had no knowledge of the three-month time limit, he had been in discussion with Dr Ibakakombo, who has the knowledge, by 22 June 2015 at the latest (page 213). This was a letter written on behalf of the claimant by him; and which ended up being (to a large extent) cut and pasted into the claim form. The claimant has a computer at home and access to the Internet and was seeking advice. The claimant could have found out the position on time. His assertion that he was waiting for the internal processes to be concluded was not a sustainable argument, because at the point when he issued the claim, the appeal process had not concluded in 2 instances, and even now still had not concluded in one of them. The warning given to the claimant on 27 October 2015, was appealed by him on 2 November 2015 and heard and dismissed on 17 December 2015. On 15 September 2015 the claimant appealed a grievance outcome; but the appeal process is not concluded. This assertion by the claimant could not be a true reason why he waited.

17. In relation to the deposit orders, Mr Graham submitted I should find that there was little reasonable prospect of success. I should find that the claimant had a history of poor performance, and the figures in relation to it were not in dispute. The case was about the respondent's attempt to line manage the claimant; but the claimant would not engage in the process. It was plain that the claimant was using his race as a means to avoid performance management; and this gave rise to the comments about him on page 92 by Mr Obanore. The claimant admitted ripping up the form during the meeting with Mr Obanore, and it was difficult to see that Mr King's decision to take steps against the claimant was motivated by race. Whilst the claimant accepted the poor performance figures, his case is that discrimination was at play, including a cover-up. The claimant will fail to establish race as a motive and he will not establish having made any protected act. The claims are not brought in good faith. The claimant will fail to get over the threshold test and establish such facts to reverse the initial burden of proof. The claimant has failed to demonstrate appropriate comparators. The claimant, in his first witness statement of 3 March 2016, relies on other cases brought against the respondent, none of which have been successful. The claimant is a man of means, he is working and has a good wage. He failed deliberately to disclose all his bank accounts. He is unable to account for monies going in and out of the one account where he has made disclosure. He has a supposed gambling habit. The claimant's statement of means is inaccurate. This undermines his credibility. I should find that the claimant is deliberately and overtly hiding his financial affairs, taking into account the cash that is being moved around. The documents show that he has the ability to apply for and get credit, as he has recently done, in borrowing the sum of £18,000. Of the 14 claims which are in time, he submitted I should make an order for £1,000 for each allegation; but as a very minimum, £500 for each.

18. I then heard from Dr Ibakakombo and he spoke to his written submissions document, and again there is no need for me to recite everything here. He started off by addressing the issue concerning Mr Maude, and submitted that his conduct was a continuing act. He submitted that all of the acts were

related and continuing; and applying Hendricks I should find they are all in time. The claimant had ignorance of the law, and was awaiting the outcome of the internal matters at the respondent. However, he reached a point where he could only bring a case to the tribunal. If I saw that any issue was out of time, then I should allow it to continue anyway, because it would be referred to by the claimant as background in any event in the main hearing.

19. When I considered the issue of deposits, Dr Ibakakombo reminded me that I had to consider whether the claims had little reasonable prospect of success. He also asserted that I must adopt the same approach as I would if there was no reasonable prospect of success, the case law being the same for both tests. There was a dispute on the facts; and I should pay particular attention to paragraphs 24 and 25 of the judgement from the EAT.

20. Dr Ibakakombo submitted the claimant had obtained a loan for £18,000 and had a plan for it. However, sometimes life is unpredictable. The claimant's father was ill in Africa, and it is traditional in such circumstances for children to send their parents money. Therefore, the claimant did so on 30 January 2018 in the sum of £5,000. Sadly, his father died on 20 February 2018. In relation to the victimisation claims, the claimant made protected acts in good faith. An issue such as this can only be determined at the main hearing and no deposits should be ordered for them. Whilst the claimant has been working for Uber full-time from January 2018, his financial circumstances were still such that any deposit should be modest, and no more than £150 in total.

21. Finally, Dr Ibakakombo referred me to a claim against Mrs Claire Leake, in relation to an event which took place on 18 December 2015. I asked him to show me where it was pleaded in the claim form or in the further information; but he could not find it. In any event, this is something which postdates the claim form and would require further proceedings or an amendment application to bring it into play.

22. My conclusions and reasons. I apply the law to the facts. I deal with the time point first. Including the claim for direct discrimination against Mr Maude which features in the further information provided by the claimant in January 2016, the first three claims for direct discrimination are out of time. There are various strands to the claimant's explanation. He told me that he did not have any knowledge of the law. He has a computer at home and access to the Internet but made no enquiries. He preferred to use the Internet rather than visit his library. In explaining why he waited before issuing, he asserted that whilst he complained in his claim form that there was institutional racism from the very start of his employment, he treated as it is a "mistake" on the part of the respondent at the beginning. However, he went on to say: "Then I found out the company politics." This arose out of the outcome of his grievance. He said this was on 27 October 2015, but that was a written warning. He also said that he waited for the outcome of the procedures at the respondent to have concluded before issuing. He had taken no steps to seek legal advice other than to rely on Dr Ibakakombo. He also referred to friends who advised

him: “People who had been to law school but had not qualified as a lawyer”. Although he had visited the CAB it was not about seeking employment advice.

23. The length of the delay ranges from a few months to a few days, to bring the out of time matters into play. However, the claimant was not convincing in his reasons explaining the delay. Particularly when he asserted that he was waiting for matters to be finalised at the respondent. This was simply untrue. Dr Ibakakombo has the knowledge and I am sure he would have passed it on to the claimant about time limits. Dr Ibakakombo, although not a lawyer, has great experience of representing people here at the employment tribunal in Birmingham, and elsewhere. He has had his own unsuccessful proceedings, involving race discrimination, heard in Birmingham. As he explained to me, he has recently conducted a 35-day hearing before another judge here in Birmingham. I conclude the reasons for the delay are not all those put forward by the claimant.

24. I find that the cogency of the evidence is unlikely to be affected by the delay, as I was able to see considerable amounts of contemporaneous documentation concerning the various disciplinary and grievance procedures complained of by the claimant. As to co-operation by the respondent, or lack of it, this was not an issue. Given the claimant’s assertion about institutional racism, it is a surprise that he did not act sooner; because he knew of the facts when they occurred. He knew he had a right of action, because he had discussed matters with Dr Ibakakombo and other people whom had brought proceedings before the tribunal. The claimant had taken no steps to obtain appropriate professional advice and did nothing to investigate the subject himself.

25. Applying the test in Hendricks, as Dr Ibakakombo urged me to do, I conclude that the matters which are out of time do not form part of a continuing act. These are all discreet matters. They are individual acts or omissions which are not connected. Therefore, I go on to consider whether I should extend the time on just and equitable grounds. The claimant raises serious allegations against numerous individuals; and he wants them to be held to account. I am surprised therefore to find that his 2 witness statements barely touch upon the time point. His second statement, was served in breach of the order of Judge Findlay, and only provided on the morning of this hearing. His additional bundle of documents was only served at the same time. Mr Graham was given the opportunity to consider them; and helpfully he conceded that whilst there was a breach of the order, there was no prejudice against the respondent, and agreed to them being admitted in evidence. The claimant also provided sparse information as to his means. He has been selective in what he has shown to the respondent and the tribunal, admitting that he has accounts for which he has not provided details about. He produced no documentary support for his gambling habit. He said nothing at all about any assets, other than 2 cars that he owns. The claimant is articulate and intelligent; and knows what he is doing, or failing to do. He has not helped himself, and presented poorly. These factors are all relevant when I consider the justice and equity in extending the time. Regrettably for the claimant, he has not convinced me that it is just and equitable to extend the

time. In conclusion, therefore, the claims for direct race discrimination and victimisation which occurred before 23 June 2015 have been presented out of time. They do not form part of a continuing act; and I do not extend the time on just and equitable grounds. Thus, the tribunal has no jurisdiction to hear these claims and they are dismissed.

26. In relation to the deposit issue, I have thought very long and hard about this. In many ways the claimant's case is a difficult one to establish. He advances arguments over institutional racism which are difficult to assess without conducting a mini trial, which I would not want to do at this stage. The allegations are uncomfortable for the respondent and its witnesses; where they are accused of acting deliberately in both the direct and victimisation claims because of the claimant's colour. I have no statistical evidence before me about the ethnicity of the workforce at large. I found it unhelpful of the claimant to try to introduce nationality as an issue, but I do not allow myself to be side-tracked because of it.

27. Mr Graham raised the issue of the alleged protected acts not being made in good faith. I cannot make that assessment in this hearing. Similarly, it is difficult for me to make an assessment about the motivation of the decision-makers, particularly in relation to the victimisation claims. I conclude that without hearing more evidence and conducting a mini trial I cannot say that there is little reasonable prospect of success at this stage. It may look a weak case in some respects; but that is not enough at this stage. The respondent has a data trail in support of management decisions, but that is not the end of the matter. Of course, the claimant may well be a poor worker who behaves unreasonably and is unable to achieve reasonable targets. He may also be someone who resents being managed, failing unreasonably to carry out reasonable and legitimate management instructions; and someone who behaves badly in demonstrating his resentment of reasonable instructions. The respondent's officers may have acted reasonably, in rejecting any appeal or grievance, and in their findings resulting in disciplinary action against the claimant. However, there may also be taint of discrimination and victimisation notwithstanding the claimant's own poor conduct, performance and lack of ability. I am simply not in possession of sufficient information to conclude that any of the claims have little reasonable prospect of success. I consider it is the job of the tribunal conducting the main hearing to determine the issues of bad faith and the claimant playing a "game" based on his race or colour. If such findings are made at the main hearing, supporting the respondent's view that the claimant has been controlling and manipulative, playing the race card in a game with management, then no doubt the respondent will wish to consider its position in relation to any application for costs that may be appropriate at the time. My decision not to make a deposit order is neutral when considering the issue of costs. Therefore, my decision is that I make no order for a deposit, close though I came close to doing so. For completeness, I do say that if I had made a deposit order it would have been in the sum of £20 for each act of direct discrimination and each act of victimisation. This was an amount that the claimant could clearly afford even on the sparse, and less than frank, information that he had given. It would not have prevented him from having access to justice.

28. I did stand back at the end, before announcing my decision, and concluded that both judgements were just, fair and proportionate bearing in mind the information before me and stage reached in the proceedings.

29. After I announced my judgement and gave oral reasons, Dr Ibakakombo asked for written reasons and these are now provided. We then went on to agree directions for the main hearing and fixed the dates for it. I have signed a separate order confirming the arrangements. The issues to be determined at the hearing are: 6 claims for direct race discrimination (numbered 3 to 8) on page 19 (28) of the bundle; and for victimisation those numbered 2.2B, 3, 4, 5 and 6 on pages 19 (29), (30) and (31).

Employment Judge Dimbylow
15 March 2018